



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2nd Floor Norbert Hill Center

May 4, 2022

9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. April 20, 2022 LOC Meeting Minutes (pg.)

III. Current Business

1. Budget Management and Control Law (pg.)
2. Oneida Nation Gaming Ordinance Amendments (pg.)
3. Oneida Personnel Policies and Procedures Emergency Amendments (pg.)
4. Children's Code Amendments (pg.)

IV. New Submissions

V. Additions

VI. Administrative Updates

1. E-Poll Results: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Request (pg.)
2. Legislative Operating Committee FY22 Second Quarter Report (pg.)
3. Legislative Operating Committee 2022 Semi-Annual Report (pg.)
4. Legislative Reference Office 2022 Semi-Annual Report (pg.)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
April 20, 2022
9:00 a.m.

Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King

Excused: Kirby Metoxen

Others Present: Clorissa N. Santiago, Carmen Vanlanen, Brooke Doxtator, Lawrence Barton, Justin Nishimoto (Microsoft Teams), Eric Boulanger (Microsoft Teams), Rae Skenandore (Microsoft Teams), Amy Spears (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Nic Reynolds (Microsoft Teams)

I. Call to Order and Approval of the Agenda

David P. Jordan called the April 20, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Summers to adopt the agenda; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved

1. April 6, 2022 LOC Meeting Minutes

Motion by Marie Summers to approve the April 6, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Elder Assistance Program Law

Motion by Jennifer Webster to approve the legislative analysis and public meeting packet, and forward the Elder Assistance Program law to a public meeting to be held on May 18, 2022; seconded by Marie Summers. Motion carried unanimously.

2. Oneida Nation Gaming Ordinance Amendments

Motion by Marie Summers to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

3. Children's Code Amendments

Motion by Marie Summers to approve the draft of the Children's Code amendments and direct that a legislative analysis be developed; seconded by Jennifer Webster. Motion carried unanimously.



IV. New Submissions

V. Additions

VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Marie Summers to adjourn at 9:18 a.m.; seconded by Daniel Guzman King.
Motion carried unanimously.



Legislative Operating Committee
May 4, 2022

Budget Management and Control Law Amendments

Submission Date: 10/7/20	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 2/2/22.
LOC Sponsor: Jennifer Webster	Emergency Enacted: 11/24/20, 5/12/21, 11/10/21

Summary: *On August 12, 2020, during an executive session discussion on the supervision of the Chief Financial Officer, the Oneida Business Committee adopted a motion to send the entire subject of supervision of the Chief Financial Officer to the LOC for further analysis to create permanent amendments in the Budget Management and Control law for Tiers III, IV, and V for future events. The Legislative Operating Committee added the Budget Management and Control law amendments to its Active Files List on October 7, 2020. On November 24, 2020, the Oneida Business Committee adopted emergency amendments to the Budget Management and Control law through resolution BC-11-24-20-E to address how the Nation would adopt the budget during the COVID-19 pandemic. The emergency amendments to the Law are set to expire on May 24, 2021. On May 12, 2021, the Oneida Business Committee adopted emergency amendments to the Budget Management and Control law through resolution BC-05-12-21-C to address the Nation's non-compliance with the budget development process and timelines. The emergency amendments to the Law were then extended by the Oneida Business Committee on November 10, 2021, through the adoption of resolution BC-11-10-21-B. The emergency amendments to the Law will now expire on May 12, 2022.*

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

10/21/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Cristina Danforth, Lawrence Barton, Ralinda Ninham-Lamberies, Clorissa N. Santiago, Kristen Hooker, Rae Skenandore, James Petitjean, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work session was to review the Budget Management and Control law line by line and begin discussing potential amendments. Attorney will update the draft based on suggestions during this work meeting, and will note all parking lot issues, and will schedule another work meeting with this team.

11/24/20: *E-Poll Conducted.* This e-poll was titled, "Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet." The requested action of this e-poll was to approve the Budget Management and Control law emergency amendments adoption packet and forward to the Oneida Business Committee. This e-poll was approved by Jennifer

Webster, David P. Jordan, Marie Summers, and Kirby Metoxen. Daniel Guzman King did not provide a response during the e-poll time frame.

11/24/20 OBC: Motion by Lisa Liggins to amend the agenda to add two (2) items [1) item V.D. Adopt resolution entitled Emergency Amendments to the Budget Management and Control Law; and 2) item V.E. Adopt resolution entitled Approval of Final Draft Fiscal Year 2021 Budget and Budget Directives], seconded by Marie Summers. Motion carried.

Motion by Lisa Liggins to adopt resolution 11-24-20-E Emergency Amendments to the Budget Management and Control Law, seconded by David P. Jordan. Motion carried.

12/2/20 LOC: Motion by Kirby Metoxen to enter into the record the results of the November 24, 2020, e-poll titled, "Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet"; seconded by Jennifer Webster. Motion carried unanimously.

12/2/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to provide a brief update to the LOC on the status of holding a work meeting with the Treasurer, Budget Analyst, and Strategic Planner to collect information on how to efficiently and effectively incorporate community input into the budget process.

1/22/21: *Work Meeting.* Present: Clorissa N. Santiago, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore, James Petitjean. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss with Finance potential issues that need to be addressed in the proposed amendments to this law.

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 provide the LOC an update on the January 22 work meeting with Finance, and discuss a plan for moving this item forward.

2/9/21: *Work Meeting.* Present: Clorissa N. Santiago, Cristina Danforth, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore, James Petitjean. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss potential amendments to the Budget Management and Control law and discuss a plan for moving this legislative item forward.

2/25/21: *Work Meeting.* Present: Clorissa N. Santiago, Cristina Danforth, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore, James Petitjean. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a potential outline for a law that would include not only information on the budget, but broader financial policies of the Nation.

4/28/21 OBC: [*Considerations regarding the Budget Management and Control Law*] Motion by Kirby Metoxen to acknowledge we are out of compliance and going forward we get into compliance. Motion failed due to lack of support.

Motion by David P. Jordan to direct the LOC [Legislative Operating Committee] to have emergency amendments to the Budget Management and Control law to remove much of the budget process/deadlines and leave it simply at a budget should be adopted by September 30, 2021 and direct the LOC to continue working with Finance to get the Budget Management and Control law amended, seconded by Jennifer Webster. Motion carried.

- 4/29/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, 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 how to address the 4/28 directive from the Oneida Business Committee to bring forward emergency amendments to the law.
- 5/5/21 LOC:** Motion by Jennifer Webster to approve the Budget Management and Control law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Marie Summers abstained. Motion carried.
- 5/12/21 OBC:** Motion by Lisa Liggins to adopt resolution 05-12-21-C Emergency Amendments to the Budget Management and Control Law, with two (2) changes [1) at line 73, insert "BE IT FURTHER RESOLVED, the deadlines provided in the Fiscal Year 2022 Budget Calendar, which is published on the Oneida Portal and was shared at the April 6, 2021, Budget Kick-off meeting, are suspended until further notice."; and 2) change last resolve to "BE IT FINALLY RESOLVED, the Treasurer shall present a resolution to a special Business Committee work session, scheduled no later than June 11, 2021, which provides the general framework for the Fiscal Year 2022 budget development process, which shall include, but is not limited to, information such as the budget calendar, opportunities for community input and discussion, line item guidance, and new position definition, guidance, and review process."], seconded by Jennifer Webster. Motion carried.
- 5/25/21:** *Work Meeting.* Present: Clorissa N. Santiago, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the draft and begin flushing out potential policies and topics to be included in the law.
- 6/16/21:** *Work Meeting.* Present: Clorissa N. Santiago, Cristina Danforth, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue going through the draft and begin flushing out potential policies and topics to be included in the law.
- 7/7/21:** *Work Meeting.* Present: Clorissa N. Santiago, Cristina Danforth, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue going through the draft and begin flushing out potential policies and topics to be included in the law.
- 10/12/21:** *Work Meeting.* Present: Clorissa N. Santiago, Cristina Danforth, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the updated proposed draft one final time before it is presented to the Legislative Operating Committee for their consideration.
- 10/14/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed draft of amendments to the Law developed by the Treasurer and Finance.
- 10/15/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue reviewing and discussing the proposed draft of amendments to the Law developed by the Treasurer and Finance.

10/20/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated draft and redline of the proposed amendments to the Law to prepare the draft to be formally approved on the next LOC meeting agenda.

11/3/21 LOC: Motion by Jennifer Webster to approve the Budget Management and Control law emergency amendments extensions packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Kirby Metoxen to approve the draft of proposed amendments to the Budget Management and Control law and direct that a legislative analysis be developed; seconded by Jennifer Webster. Motion carried unanimously.

11/3/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss section 121.6-4 of the Law in relation to resolution BC-10-08-08-A and determine next steps for moving forward.

11/4/21: *Work Meeting.* Present: Clorissa N. Santiago, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss with Finance the changes the LOC made to the proposed draft after it was submitted to them, and collect input from Finance.

11/9/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the input on the proposed draft that was collected from the Finance Department.

11/10/21 OBC: Motion by David P. Jordan to adopt resolution 11-10-21-B Extension of the Emergency Amendments to the Budget Management and Control Law, seconded by Kirby Metoxen. Motion carried.

12/9/21: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to briefly review the legislative analysis and the public comment period notice.

12/15/21 LOC: Motion by Jennifer Webster to approve the updated draft, legislative analysis, and public comment period notice, and forward the Budget Management and Control law amendments to a public comment period to be held open until February 2, 2022; seconded by Marie Summers. Motion carried unanimously.

2/2/22: *Public Comment Period Closed.* One (1) submission of written comments was received during the public comment period.

2/16/22 LOC: Motion by Marie Summers to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

2/16/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Lisa Liggins. This was a work meeting held

through Microsoft Teams. The purpose of this work meeting was to review and consider the public comments that were received.

2/24/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and consider the late submission of public comments that were received.

2/24/22: *Work Meeting.* Present: Clorissa N. Santiago, Ralinda Ninham-Lamberies, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss how to clarify section 121.6-5 of the Law regarding obligated future expenditures.

3/2/22: *Work Meeting.* Present: Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review all the revisions that were made to the Law after the public comment period and determine if any other revisions were needed.

3/10/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the input received from Finance and the Oneida Law Office on the final draft of proposed amendments to the Budget Management and Control law.

3/16/22 LOC: Motion by Jennifer Webster to accept the updated public comment review memorandum; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to approve the updated draft and legislative analysis with noted change to section 121.8-2 of the law; seconded by Marie Summers. Motion carried unanimously.

Motion by Marie Summers to approve 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 April 14, 2022; seconded by Jennifer Webster. Motion carried unanimously.


4/14/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review the adopting resolution for the proposed amendments to the Budget Management and Control law.

4/19/22: *Oneida Business Committee Work Session.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Tehassi Hill, Jo Anne House, Clorissa N. Santiago, Lawrence Barton, Rae Skenandore, Justin Nishimoto, Danelle Wilson, Kristal Hill, Rhiannon Danforth, Amy Spears. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the Oneida Business Committee to review and discuss the adopting resolution for the proposed amendments to the Budget Management and Control law with Finance's suggested input.

Next Steps:

- Approve the Budget Management and Control law amendments adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: May 11, 2022
RE: Adoption of the Budget Management and Control Law Amendments

Please find the following attached backup documentation for your consideration of the adoption of the Budget Management and Control Law Amendments:

1. Resolution: Amendments to the Budget Management and Control Law
2. Statement of Effect: Amendments to the Budget Management and Control Law
3. Budget Management and Control Law Amendments Legislative Analysis
4. Budget Management and Control Law Amendments Draft (Redline)
5. Budget Management and Control Law Amendments Draft (Clean)
6. Budget Management and Control Law Amendments Fiscal Impact Statement

Overview

The Budget Management and Control law (“the Law”) set forth the requirements to be followed by the Oneida Business Committee and the Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval, and to establish financial policies and procedures for the Nation which:

- institutionalize best practices in financial management to guide decision makers in making informed decisions regarding the provision of services, implementation of business plans for enterprises, investments, and capital assets;
- provide a long term financial prospective and strategic intent, linking budget allocations to organizational goals, as well as providing fiscal controls and accountability for results and outcomes;
- identify and communicate to the membership of the Nation spending decisions for the government function, grant obligations, enterprises, membership mandates, capital expenditures, technology projects, and capital improvement projects;
- establish a framework for effective financial risk management; and
- encourage participation by the Nation’s membership. [1 O.C. 121.1-1].

On November 24, 2020, the Oneida Business Committee adopted emergency amendments to the Law in response to the COVID-19 pandemic to provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation’s budget. [1 O.C. 121.5-3(b)(1)]. These emergency amendments were set to expire on May 24, 2021.

The Oneida Business Committee then adopted additional emergency amendments to the Law on May 12, 2021, to address the Nation’s non-compliance with the budget development process and

deadlines contained in the Law. The emergency amendments to the Law removed much of the details of the budget process, requirements, and deadlines from the Law, and instead provide that the Treasurer shall develop the necessary guidelines and procedures, including specific deadlines, for the Nation's budget development process, to be reviewed and approved by the Oneida Business Committee. [1 O.C. 121.5-3(a)]. These emergency amendments were subsequently extended through the adoption of resolution BC-11-10-21-B. The emergency amendments to the Law are set to expire on May 12, 2022.

The Legislative Operating has now developed permanent amendments to the Law for consideration by the Oneida Business Committee. The proposed permanent amendments to the Law were developed in collaboration with the Nation's Treasurer, Chief Financial Officer, Assistant Chief Financial Officer, Budget Analyst, and Strategic Planner. The Legislative Operating Committee held twenty-five (25) work meetings on the development of the amendments to the Law.

The proposed amendments to the Law will:

- Revise the name of this law from Budget Management and Control Law to *Budget and Finances Law*;
- Expand the purpose and policy of this Law to address other financial policies and procedures for the Nation beyond just the budget process [1 O.C. 121.1-1, 121.1-2];
- Eliminate the strategic planning provisions from this Law, instead providing simply that the Oneida Business Committee should develop and adopt a strategic plan, broad goals, or priorities for the Nation that the budget shall reflect [1 O.C. 121.4-1(c), 121.5-1(b)];
- Clarify the authority and responsibilities of those individuals who play a part in the Nation's budget process [1 O.C. 121.4];
- Simplify the budget process and procedure contained in the Law to improve the Nation's compliance with the Law and provide more flexibility to adjust the budget development and adoption procedure to meet the Nation's current circumstances [1 O.C. 121.5];
- Include new provisions which address:
 - unbudgeted expenditures [1 O.C. 121.6-4];
 - obligated future expenditures [1 O.C. 121.6-5];
 - capital contributions [1 O.C. 121.6-7];
 - grants [1 O.C. 121.7];
 - debt [1 O.C. 121.8];
 - employment and labor allocations [1 O.C. 121.9]; and
 - unbudgeted positions. [1 O.C. 121.6-4].

A public meeting, in accordance with the Legislative Procedures Act, was not held for the proposed amendments to the Law due to the COVID-19 pandemic. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until May 23, 2022, 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, 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 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 superseded Oneida Business Committee resolution BC-08-13-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*, and provided updated guidelines on holding meetings both indoors and outdoors. This resolution provided that when the following levels are met, indoor meetings of the Nation are feasible, provided that all organizers and participants should consider additional health safety measures when attending such as wearing a face mask, washing hands frequently, and social distancing:

- 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 designated ZIP Codes 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.

During the time of the development of the amendments to this Law the requirements for holding an indoor public meeting provided for in resolution BC-12-08-21-B were not met. The Nation's COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration, *Suspension of Public Meetings under the Legislative Procedures Act*. This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but still 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 amendments to the Law was not held, the public comment period was still held open until February 2, 2022. The Legislative Operating Committee reviewed and considered all public comments that were received on February 16, 2022.

Adoption of the amendments to this Law complies with the process and procedures of 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.

Requested Action

Adopt the Resolution: Amendments to the Budget Management and Control Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Amendments to the Budget Management and Control Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the Budget Management and Control law ("the Law") was adopted by the Oneida Business
- 10 Committee through resolution BC-02-08-17-C, and most recently amended on an
- 11 emergency basis through resolutions BC-11-24-20-E, BC-05-12-21-C, and BC-11-10-21-
- 12 B; and
- 13
- 14 **WHEREAS,** the Law sets forth the requirements to be followed by the Oneida Business Committee and
- 15 Oneida fund units when preparing the budget to be presented to the General Tribal Council
- 16 for approval and to establish a triennial strategy planning process for the Nation's budget;
- 17 and
- 18
- 19 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of*
- 20 *Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for
- 21 the Nation until April 12, 2020, which was subsequently extended by the Oneida Business
- 22 Committee until May 23, 2022, through the adoption of the following resolutions: BC-03-
- 23 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-
- 24 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
- 25 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-
- 26 24-21-F, BC-01-12-22-B, and BC-03-23-22-A; and
- 27
- 28 **WHEREAS,** the COVID-19 pandemic interrupted many processes and procedures of the Nation,
- 29 including the development of the Nation's Fiscal Year 2021 and Fiscal Year 2022 budgets;
- 30 and
- 31
- 32 **WHEREAS,** emergency amendments to the Law were adopted through resolution BC-11-24-20-E to
- 33 address the adoption of the Nation's budget during the COVID-19 Public Health State of
- 34 Emergency by allowing the Oneida Business Committee to adopt the Nation's budget if the
- 35 Nation proclaims an emergency, in accordance with the Emergency Management law,
- 36 which prevents presentation and adoption of the budget by the General Tribal Council; and
- 37
- 38 **WHEREAS,** additional emergency amendments were adopted through resolution BC-05-12-21-C and
- 39 subsequently extended by resolution BC-11-10-21-B to address the Nation's non-
- 40 compliance with the budget development process and deadlines contained in the Law by
- 41 removing the details of the budget process, requirements, and deadlines from the Law,
- 42 and instead providing that the Treasurer shall develop the necessary guidelines and
- 43 procedures, including specific deadlines, for the Nation's budget development process, to
- 44 be reviewed and approved by the Oneida Business Committee; and

- 45
46 **WHEREAS,** the emergency amendments to the Law are set to expire on May 12, 2022; and
47
48 **WHEREAS,** the Legislative Operating Committee has developed permanent amendments to the Law
49 for consideration by the Oneida Business Committee; and
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51 **WHEREAS,** the amendments to the Law revise the name of the Law from the Budget Management and
52 Control law to the Budget and Finance law; and
53
54 **WHEREAS,** the amendments to the Law expand the purpose and policy of this Law to address other
55 financial policies and procedures for the Nation beyond just the budget process; and
56
57 **WHEREAS,** the amendments to the Law eliminate the strategic planning provisions from this Law,
58 instead providing simply that the Oneida Business Committee should develop and adopt a
59 strategic plan, broad goals, or priorities for the Nation that the budget shall reflect; and
60
61 **WHEREAS,** the amendments to the Law clarify the authority and responsibilities of those individuals
62 who play a part in the Nation's budget process; and
63
64 **WHEREAS,** the amendments to the Law simplify the budget process and procedure contained in the
65 Law to improve the Nation's compliance with the Law and provide more flexibility to adjust
66 the budget development and adoption procedure to meet the Nation's current
67 circumstances; and
68
69 **WHEREAS,** the amendments to the Law include new provisions which address unbudgeted
70 expenditures, obligated future expenditures, capital contributions, grants, debt,
71 employment and labor allocations, and unbudgeted positions; and
72
73 **WHEREAS,** in the development of these amendments the Legislative Operating Committee
74 collaborated with and used input from the Treasurer, Chief Financial Officer, Assistant
75 Chief Financial Officer, Budget Analyst; and Strategic Planner; and
76
77 **WHEREAS,** in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact
78 statement were completed for the amendments to the Law; and
79
80 **WHEREAS,** a public meeting on the proposed amendments to this Law was not held in accordance
81 with the Legislative Procedures Act due to the COVID-19 pandemic; and
82
83 **WHEREAS,** on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a
84 *Suspension of Public Meetings under the Legislative Procedures Act* declaration which
85 suspended the Legislative Procedures Act's requirement to hold a public meeting during
86 the public comment period, but allows members of the community to still participate in the
87 legislative process by submitting written comments, questions, data, or input on proposed
88 legislation to the Legislative Operating Committee via e-mail during the public comment
89 period; and
90
91 **WHEREAS,** on December 8, 2021, the Oneida Business Committee adopted resolution BC-12-08-21-
92 B, *Updating Public Gathering Guidelines During Public Health State of Emergency -*
93 *COVID-19*, which superseded Oneida Business Committee resolution BC-08-13-21-A,
94 *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*,
95 and provided updated guidelines on holding meetings both indoors and outdoors; and
96
97 **WHEREAS,** at the time the public comment period was scheduled by the Legislative Operating
98 Committee for the proposed amendments to the Law the Nation did not yet meet the criteria
99 for holding an indoor public meeting as required by resolution BC-12-08-21-B; and

WHEREAS, although an in-person public meeting was not held for the proposed amendments to this Law, the public comment period for the submission of written comments regarding the proposed amendments to this Law was held open until February 2, 2022, in accordance with the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team's *Suspension of Public Meetings under the Legislative Procedures Act* declaration; and

WHEREAS, the Legislative Operating Committee reviewed and considered all public comments received on February 16, 2022; and

NOW THEREFORE BE IT RESOLVED, that the amendments to the Budget Management and Control law are hereby adopted and shall be effective on May 12, 2022.

Budget Schedule and Guidelines Deadline

BE IT FURTHER RESOLVED, in accordance with the requirement provided in section 121.5-4(3) of the Law that the Oneida Business Committee set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval, the Oneida Business Committee hereby sets a deadline of June 1, 2022.

Deadline for the Development of the Procurement Rule Handbook

BE IT FURTHER RESOLVED, in accordance with section 121.6-2 of the Law, which delegates rulemaking authority in accordance with the Administrative Rulemaking law to the Purchasing Department to develop a Procurement Rule Handbook which provides the sign-off process and authorities required to expend funds on behalf of the Nation, the Oneida Business Committee hereby sets a deadline of September 30, 2022, for the Purchasing Department to submit the Procurement Rule Handbook to the Legislative Operating Committee for certification in accordance with the Administrative Rulemaking law.

Notification of Unbudgeted Expenditures to the General Tribal Council

BE IT FURTHER RESOLVED, in accordance with section 121.6-4(b) of the Law, which provides that the Oneida Business Committee shall set through resolution a threshold amount for unbudgeted expenditures that require notification by the Oneida Business Committee to the General Tribal Council at the next available General Tribal Council meeting, the Oneida Business Committee hereby reaffirms resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*, which requires that expenditures for items and specific projects which were not identified in the approved budget and total two hundred and fifty thousand dollars (\$250,000) or more, shall be formally noticed to the General Tribal Council at the next available General Tribal Council regular or special meeting.

Employment Cap and Labor Allocations List

BE IT FURTHER RESOLVED, in accordance with section 121.9-1 of the Law, which requires that the Treasurer and Chief Financial Officer identify a maximum number of full-time equivalent (FTE) employees to be employed by the Nation, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee directs that the employment cap be developed and included in the Budget Schedule and Guidelines resolution to be brought before the Oneida Business Committee for consideration by June 1, 2022.

BE IT FURTHER RESOLVED, in accordance with section 121.9-2 of the Law, which requires that the Treasurer, Chief Financial Officer, Executive Managers, and the Executive Human Resources Director utilize the Nation's employment cap to develop a labor allocations list, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee hereby directs that the labor allocations list resolution be developed and brought before the Oneida Business Committee for consideration within thirty (30) days of the approval of the employment cap.

BE IT FURTHER RESOLVED, in accordance with section 121.9-2(b) of the Law, which requires that the Treasurer, Chief Financial Officer, Executive Managers, and Executive Human Resources Director develop

a standard operating procedure which identifies a process for the consideration of requests to revise the labor allocations list, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee hereby directs that the standard operating procedure be developed and brought before the Oneida Business Committee for consideration by June 1, 2022.

Budget Contingency Planning

BE IT FURTHER RESOLVED, in accordance with section 121.10-1 of the Law, which requires that the Oneida Business Committee work with the Chief Financial Officer, Executive Managers, and managers to create a budget contingency plan, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee hereby directs that guidelines for the contents of the budget contingency plan shall be issued by Finance by November 1, 2022, with the final budget contingency to be brought forward to the Oneida Business Committee for consideration by April 1, 2023.

BE IT FURTHER RESOLVED, in accordance with section 121.10-4(b) of the Law, which requires that the Treasurer, in consultation with the Chief Financial Officer, establish the percentage of the annual budget that shall be set aside in the Permanent Executive Contingency Fund account until the established level has been achieved, to be approved through the adoption of a resolution by the Oneida Business Committee, it is hereby established that a minimum of one percent (1%) of the annual budget shall be set aside in the Permanent Executive Contingency Fund account until a minimum reserve of one (1) year of operating expenses can be established.

One Year Review of the Budget and Finances Law

BE IT FINALLY RESOLVED, the Legislative Reference Office shall collaborate with the Nation's Treasurer and Chief Financial Officer to conduct a one (1) year review of the Budget and Finances law and provide the Oneida Business Committee a report on the use and implementation of the Law.



Statement of Effect
Amendments to the Budget Management and Control Law

Summary

This resolution adopts amendments to the Budget Management and Control law.

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

Date: April 29, 2022

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Budget Management and Control law (“the Law”). The purpose of the Law is to set forth the requirements to be followed by the Oneida Business Committee and the Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval, and to establish financial policies and procedures for the Nation which:

- institutionalize best practices in financial management to guide decision makers in making informed decisions regarding the provision of services, implementation of business plans for enterprises, investments, and capital assets;
- provide a long term financial prospective and strategic intent, linking budget allocations to organizational goals, as well as providing fiscal controls and accountability for results and outcomes;
- identify and communicate to the membership of the Nation spending decisions for the government function, grant obligations, enterprises, membership mandates, capital expenditures, technology projects, and capital improvement projects;
- establish a framework for effective financial risk management; and
- encourage participation by the Nation’s membership. [1 O.C. 121.1-1].

On November 24, 2020, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-11-24-20-E to address the adoption of the Nation’s budget during the COVID-19 Public Health State of Emergency by allowing the Oneida Business Committee to adopt the Nation’s budget if the Nation proclaims an emergency, in accordance with the Emergency Management law, which prevents presentation and adoption of the budget by the General Tribal Council. Then on May 12, 2021, the Oneida Business Committee adopted additional emergency amendments through resolution BC-05-12-21-C, which were subsequently extended by resolution BC-11-10-21-B, to address the Nation’s non-compliance with the budget development process and deadlines contained in the Law by removing the details of the budget process, requirements, and deadlines from the Law, and instead providing that the Treasurer shall develop the necessary guidelines and procedures, including specific deadlines, for the Nation’s budget development process, to be reviewed and approved by the Oneida Business Committee.

The emergency amendments to the Law are set to expire on May 12, 2022. The Legislative Operating has now developed permanent amendments for consideration by the Oneida Business Committee. The proposed amendments to the Law will:

- Revise the name of this law from Budget Management and Control Law to *Budget and Finances Law*;
- Expand the purpose and policy of this Law to address other financial policies and procedures for the Nation beyond just the budget process [1 O.C. 121.1-1, 121.1-2];
- Eliminate the strategic planning provisions from this Law, instead providing simply that the Oneida Business Committee should develop and adopt a strategic plan, broad goals, or priorities for the Nation that the budget shall reflect [1 O.C. 121.4-1(c), 121.5-1(b)];
- Clarify the authority and responsibilities of those individuals who play a part in the Nation's budget process [1 O.C. 121.4];
- Simplify the budget process and procedure contained in the Law to improve the Nation's compliance with the Law and provide more flexibility to adjust the budget development and adoption procedure to meet the Nation's current circumstances [1 O.C. 121.5];
- Include new provisions which address:
 - unbudgeted expenditures [1 O.C. 121.6-4];
 - obligated future expenditures [1 O.C. 121.6-5];
 - capital contributions [1 O.C. 121.6-7];
 - grants [1 O.C. 121.7];
 - debt [1 O.C. 121.8];
 - employment and labor allocations [1 O.C. 121.9]; and
 - unbudgeted positions. [1 O.C. 121.6-4].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to the Law comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the proposed amendments to the Law was not held due to the COVID-19 pandemic. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until May 23, 2022, 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, 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 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 superseded Oneida Business Committee resolution BC-08-13-21-A, *Setting Public*

Gathering Guidelines During Public Health State of Emergency - COVID-19, and provided updated guidelines on holding meetings both indoors and outdoors. This resolution provided that when the following levels are met, indoor meetings of the Nation are feasible, provided that all organizers and participants should consider additional health safety measures when attending such as wearing a face mask, washing hands frequently, and social distancing:

- 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 designated ZIP Codes 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.

During the time of the development of the amendments to this Law the requirements for holding an indoor public meeting provided for in resolution BC-12-08-21-B were not met. The Nation's COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration, *Suspension of Public Meetings under the Legislative Procedures Act*. This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but still 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 amendments to the Law was not held, the public comment period was still held open until February 2, 2022. The Legislative Operating Committee reviewed and considered all public comments received on February 16, 2022.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

This resolution provides that the amendments to the law would become effective on May 12, 2022, in accordance with the LPA. [1 O.C. 109.9-3].

Additionally, this resolution contains various other directives or deadlines that are required by the Law to be set through the adoption of a resolution by the Oneida Business Committee, including:

- ***Budget Schedule and Guidelines Deadline.*** In accordance with the requirement provided in section 121.5-4(3) of the Law that the Oneida Business Committee set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval, the Oneida Business Committee hereby sets a deadline of June 1, 2022.
- ***Deadline for the Development of the Procurement Rule Handbook.*** In accordance with section 121.6-2 of the Law, which delegates rulemaking authority in accordance with the

Administrative Rulemaking law to the Purchasing Department to develop a Procurement Rule Handbook which provides the sign-off process and authorities required to expend funds on behalf of the Nation, the Oneida Business Committee hereby sets a deadline of September 30, 2022, for the Purchasing Department to submit the Procurement Rule Handbook to the Legislative Operating Committee for certification in accordance with the Administrative Rulemaking law.

- ***Notification of Unbudgeted Expenditures to the General Tribal Council.*** In accordance with section 121.6-4(b) of the Law, which provides that the Oneida Business Committee shall set through resolution a threshold amount for unbudgeted expenditures that require notification by the Oneida Business Committee to the General Tribal Council at the next available General Tribal Council meeting, the Oneida Business Committee hereby reaffirms resolution BC-10-08-08-A, Adopting Expenditure Authorization and Reporting Requirements, which requires that expenditures for items and specific projects which were not identified in the approved budget and total two hundred and fifty thousand dollars (\$250,000) or more, shall be formally noticed to the General Tribal Council at the next available General Tribal Council regular or special meeting.
- ***Employment Cap and Labor Allocations List.***
 - In accordance with section 121.9-1 of the Law, which requires that the Treasurer and Chief Financial Officer identify a maximum number of full-time equivalent (FTE) employees to be employed by the Nation, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee directs that the employment cap be developed and included in the Budget Schedule and Guidelines resolution to be brought before the Oneida Business Committee for consideration by June 1, 2022.
 - In accordance with section 121.9-2 of the Law, which requires that the Treasurer, Chief Financial Officer, Executive Managers, and the Executive Human Resources Director utilize the Nation's employment cap to develop a labor allocations list, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee hereby directs that the labor allocations list resolution be developed and brought before the Oneida Business Committee for consideration within thirty (30) days of the approval of the employment cap.
 - In accordance with section 121.9-2(b) of the Law, which requires that the Treasurer, Chief Financial Officer, Executive Managers, and Executive Human Resources Director develop a standard operating procedure which identifies a process for the consideration of requests to revise the labor allocations list, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee hereby directs that the standard operating procedure be developed and brought before the Oneida Business Committee for consideration by June 1, 2022.
- ***Budget Contingency Planning.***
 - In accordance with section 121.10-1 of the Law, which requires that the Oneida Business Committee work with the Chief Financial Officer, Executive Managers, and managers to create a budget contingency plan, to be approved through the adoption of a resolution by the Oneida Business Committee, the Oneida Business Committee hereby directs that guidelines for the contents of the budget contingency

plan shall be issued by Finance by November 1, 2022, with the final budget contingency to be brought forward to the Oneida Business Committee for consideration by April 1, 2023.

- In accordance with section 121.10-4(b) of the Law, which requires that the Treasurer, in consultation with the Chief Financial Officer, establish the percentage of the annual budget that shall be set aside in the Permanent Executive Contingency Fund account until the established level has been achieved, to be approved through the adoption of a resolution by the Oneida Business Committee, it is hereby established that a minimum of one percent (1%) of the annual budget shall be set aside in the Permanent Executive Contingency Fund account until a minimum reserve of one (1) year of operating expenses can be established.

This resolution then directs the Legislative Reference Office to collaborate with the Nation's Treasurer and Chief Financial Officer to conduct a one (1) year review of the Budget and Finances law and provide the Oneida Business Committee a report on the use and implementation of the Law.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws, as it complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.



BUDGET MANAGEMENT AND CONTROL LAW AMENDMENTS 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"> ▪ Revise the name of this law from Budget Management and Control Law to <i>Budget and Finances Law</i>; ▪ Expand the purpose and policy of this Law to address other financial policies and procedures for the Nation beyond just the budget process [1 O.C. 121.1-1, 121.1-2]; ▪ Eliminate the strategic planning provisions from this Law, instead providing simply that the Oneida Business Committee should develop and adopt a strategic plan, broad goals, or priorities for the Nation that the budget shall reflect [1 O.C. 121.4-1(c), 121.5-1(b)]; ▪ Clarify the authority and responsibilities of those individuals who play a part in the Nation's budget process [1 O.C. 121.4]; ▪ Simplify the budget process and procedure contained in the Law to improve the Nation's compliance with the Law and provide more flexibility to adjust the budget development and adoption procedure to meet the Nation's current circumstances [1 O.C. 121.5]; ▪ Include new provisions which address: <ul style="list-style-type: none"> ▪ unbudgeted expenditures [1 O.C. 121.6-4]; ▪ obligated future expenditures [1 O.C. 121.6-5]; ▪ capital contributions [1 O.C. 121.6-7]; ▪ grants [1 O.C. 121.7]; ▪ debt [1 O.C. 121.8]; ▪ employment and labor allocations [1 O.C. 121.9]; and ▪ unbudgeted positions. [1 O.C. 121.6-4].
Purpose	<p>To set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval, and to establish financial policies and procedures for the Nation which:</p> <ul style="list-style-type: none"> ▪ institutionalize best practices in financial management to guide decision makers in making informed decisions regarding the provision of services, implementation of business plans for enterprises, investments, and capital assets; ▪ provide a long term financial prospective and strategic intent, linking budget allocations to organizational goals, as well as providing fiscal controls and accountability for results and outcomes; ▪ identify and communicate to the membership of the Nation spending decisions for the government function, grant obligations, enterprises, membership mandates, capital expenditures, technology projects, and capital improvement projects; ▪ establish a framework for effective financial risk management; and ▪ encourage participation by the Nation's membership. [1 O.C. 121.1-1].
Affected Entities	Oneida Business Committee, Finance Administration, Executive Managers, Oneida Fund Units.

Related Legislation	Legislative Procedures Act, Internal Audit law, Emergency Management law, Oneida Personnel Policies and Procedures, Administrative Rulemaking law, Furlough Policy, Layoff Policy, Conflict of Interest law, Code of Ethics law, Removal law.
Public Meeting	A public comment period was held open until February 2, 2022. A public meeting was not held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Fiscal Impact	The Finance Department provided a fiscal impact statement on April 14, 2022.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. *Background.*** The Budget Management and Control law ("the Law") was adopted by the Oneida Business Committee through resolution BC-02-08-17-C to set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget. [1 O.C. 121.1-1]. On August 12, 2020, during an executive session discussion on the supervision of the Chief Financial Officer, the Oneida Business Committee adopted a motion to send the entire subject of supervision of the Chief Financial Officer to the LOC for further analysis to create permanent amendments in the Budget Management and Control law for Tiers III, IV, and V for future events. The Legislative Operating Committee added the Law to its Active Files List on October 7, 2020.
- B. *Emergency Amendments Adopted through Resolution BC-11-24-20-E.*** In November 2020, the Oneida Business Committee sought emergency amendments to the Law to address the adoption of the Nation's budget during the COVID-19 Public Health State of Emergency. Due to the COVID-19 pandemic, holding a General Tribal Council meeting to adopt the budget would place members in significant jeopardy of contact with the virus and cause the virus to spread throughout the community, which would unduly jeopardize the health and safety of elders, children, and adults. On November 24, 2020, the Oneida Business Committee adopted an emergency amendment to the Law through the adoption of resolution BC-11-24-20-E which included a new provision that provided that if the Nation proclaims an emergency, in accordance with the Emergency Management law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. These emergency amendments to the Law were set to expire on May 24, 2021.
- C. *Emergency Amendments Adopted through Resolution BC-05-12-21-C.*** At the April 28, 2021, Oneida Business Committee meeting the Nation's Secretary provided a memorandum which expressed concerns regarding the Nation's lack of compliance with the Law and requested that the Oneida Business Committee make one of the following considerations: an emergency repeal of the Law due to the fact that the processes and procedures, specifically the deadlines for the various steps of the budget process contained in the law are not currently being followed; or emergency amendments to the Law to remove much of the budget process and/or deadlines and revise the Law so it simply states a budget should be adopted by September 30th. The Oneida Business Committee then adopted a motion directing the Legislative Operating Committee to develop emergency amendments to the Law to address this issue. The Oneida Business Committee then adopted emergency amendments to the Law on May 12, 2021, through resolution BC-05-12-21-C which removed details of the budget process from the Law and instead directed the Treasurer to develop the necessary guidelines and procedures, including specific deadlines, for the Nation's budget development process, and then submit those guidelines for the development of the budget to the Oneida Business Committee for review and approval. These emergency amendments to the Law were set to expire on November 12, 2021.

- D. *Emergency Amendments Extended through Resolution BC-11-10-21-B.*** On November 10, 2021, the Oneida Business Committee extended the emergency amendments to the Law adopted through resolution BC-05-12-21-C for an additional six (6) month period. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the Law was requested to provide additional time for the Legislative Operating Committee to process the adoption of permanent amendments to the Law. The emergency amendments to the Law will now expire on May 12, 2022.
- E.** The Legislative Operating Committee is now seeking the permanent adoption of comprehensive amendments to the Law.

SECTION 3. CONSULTATION AND OUTREACH

- A.** The following positions within the Nation participated in the development of this Law and legislative analysis:
- Treasurer;
 - Chief Financial Officer;
 - Assistant Chief Financial Officer;
 - Budget Analyst; and
 - Strategic Planner.
- B.** The following laws of the Nation were reviewed in the drafting of this analysis:
- Legislative Procedures Act;
 - Internal Audit law;
 - Emergency Management law;
 - Oneida Personnel Policies and Procedures;
 - Administrative Rulemaking law;
 - Furlough Policy;
 - Layoff Policy;
 - Conflict of Interest law;
 - Code of Ethics law; and
 - Removal law.

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 this Law to its Active Files List.
 - On November 24, 2020, the Oneida Business Committee adopted an emergency amendment to the Law through the adoption of resolution BC-11-24-20-E to address the adoption of the Nation's budget during the COVID-19 Public Health State of Emergency.
 - On May 12, 2021, the Oneida Business Committee adopted additional emergency amendments through resolution BC-05-12-21-C which removed details of the budget process from the Law and instead directed the Treasurer to develop the necessary guidelines and procedures, including specific deadlines, for the Nation's budget development process, and then submit those guidelines for the development of the budget to the Oneida Business Committee for review and approval.

- 82 ▪ On November 3, 2021, the Legislative Operating Committee approved the draft of proposed
83 amendments to the Law.
- 84 ▪ Additionally, on November 3, 2021, the Legislative Operating Committee approved the
85 emergency amendments extensions packet and forwarded these items to the Oneida Business
86 Committee for consideration.
- 87 ▪ On November 10, 2021, the Oneida Business Committee extended the emergency amendments
88 to the Law for an additional six (6) month period through the adoption of resolution BC-11-10-
89 21-B.
- 90 ▪ On December 15, 2021, the Legislative Operating Committee approved an updated draft of
91 amendments to the Law and legislative analysis. The Legislative Operating Committee also
92 directed that a public comment period be held open for the proposed amendments to this Law
93 until February 2, 2022.
- 94 ▪ Notification of this public comment period was:
 - 95 ▪ posted on the Nation's website on the Oneida Register;
 - 96 ▪ electronically provided to every director, manager, and supervisor of the Nation;
 - 97 ▪ published in the Kalihwisaks on both January 12, 2022, and January 26, 2022; and
 - 98 ▪ shared by members of the LOC during Facebook Live events.
- 99 ▪ The public comment period for the proposed amendments to the Law closed on February 2, 2022.
100 One (1) submission of written comments were received during this public comment period. One
101 late submission of comments was received on February 16, 2022.
- 102 ▪ On February 16, 2022, the Legislative Operating Committee accepted the public comments and the
103 public comment review memorandum and deferred to a work meeting for further discussion.
- 104 ▪ On March 16, 2022, the Legislative Operating Committee accepted the updated public comment
105 review memorandum, approved the updated draft and legislative analysis with noted change to
106 section 121.8-2 of the law, and approved the fiscal impact statement request memorandum and
107 forwarded to the Finance Department directing that a fiscal impact statement be prepared and
108 submitted to the LOC by April 14, 2022.
- 109 ▪ On April 14, 2022, the Finance Department provided a fiscal impact statement.
- 110 **B.** At the time this legislative analysis was developed the following work meetings had been held
111 regarding the development of this Law:
 - 112 ▪ October 21, 2020: LOC work meeting held with the Treasurer, Chief Financial Officer,
113 Assistant Chief Financial Officer, Budget Analyst, and Strategic Planner.
 - 114 ▪ December 2, 2020: LOC work meeting.
 - 115 ▪ January 22, 2021: Work meeting with Chief Financial Officer, Assistant Chief Financial
116 Officer, Budget Analyst, and Strategic Planner.
 - 117 ▪ January 28, 2021: LOC work meeting.
 - 118 ▪ February 9, 2021: Work meeting with Treasurer, Chief Financial Officer, Assistant Chief
119 Financial Officer, Budget Analyst, and Strategic Planner.
 - 120 ▪ February 25, 2021: Work meeting with Treasurer, Chief Financial Officer, Assistant Chief
121 Financial Officer, Budget Analyst, and Strategic Planner.
 - 122 ▪ April 29, 2021: LOC work meeting.
 - 123 ▪ May 25, 2021: Work meeting with Chief Financial Officer, Assistant Chief Financial Officer,
124 and Budget Analyst.

- June 16, 2021: Work meeting with Treasurer, Chief Financial Officer, Assistant Chief Financial Officer, and Budget Analyst.
- July 7, 2021: Work meeting with Treasurer, Chief Financial Officer, Assistant Chief Financial Officer, and Budget Analyst.
- October 12, 2021: Work meeting with Treasurer, Chief Financial Officer, Assistant Chief Financial Officer, and Budget Analyst.
- October 14, 2021: LOC work meeting.
- October 15, 2021: LOC work meeting.
- October 20, 2021: LOC work meeting.
- November 3, 2021: LOC work meeting.
- November 4, 2021: Work Meeting with the Chief Financial Officer, Assistant Chief Financial Officer, and Budget Analyst.
- November 9, 2021: LOC work meeting.
- December 9, 2021: LOC work meeting.
- February 16, 2022: LOC work meeting.
- February 24, 2022: LOC work meeting.
- February 24, 2022: Work Meeting with the Assistant Chief Financial Officer, and Budget Analyst.
- March 2, 2022: LOC work meeting.
- March 10, 2022: LOC work meeting.
- April 14, 2022: LOC work meeting.
- April 19, 2022: OBC Work Session.

C. ***COVID-19 Pandemic's Effect on the Legislative Process.*** The world is currently facing a pandemic of COVID-19. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. A public meeting for the proposed amendments to the Law was not held due to the COVID-19 pandemic, but a public comment period for the submission of written comments was still held open.

- ***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 March 24, 2022, 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, 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.
- ***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.

▪ *Oneida Business Committee Resolution BC-12-8-21-B, Updating Public Gathering Guidelines During Public Health State of Emergency - COVID-19.*

▪ 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 superseded Oneida Business Committee resolution BC-08-13-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*, and provides updated guidelines on holding meetings both indoors and outdoors.

▪ This resolution provides that when the following levels are met, indoor meetings of the Nation are feasible, provided that all organizers and participants should consider additional health safety measures when attending such as wearing a face mask, washing hands frequently, and social distancing:

▪ 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 designated ZIP Codes 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.

▪ *Conclusion.*

▪ Although a public meeting was not held on the proposed amendments to the Law, a public comment period was still held open until February 2, 2022, in accordance with resolution BC-12-08-21-B and the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Purpose and Policy. Both the purpose and policy section of this law has been extended through the proposed amendments. The purpose of this Law has always been to set forth the requirements to be followed by the Oneida Business Committee and the Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval, but now the Law goes on to provide that the purpose is also to establish financial policies and procedures for the Nation which: institutionalize best practices in financial management to guide decision makers in making informed decisions regarding the provision of services, implementation of business plans for enterprises, investments, and capital assets; provide a long term financial prospective and strategic intent, linking budget allocations to organizational goals, as well as providing fiscal controls and accountability for results and outcomes; identify and communicate to the membership of the Nation spending decisions for the government

function, grant obligations, enterprises, membership mandates, capital expenditures, technology projects, and capital improvement projects; establish a framework for effective financial risk management; and encourage participation by the Nation's membership. [1 O.C. 121.1-1]. The policy of the Nation has been amended so that it is clear that the Nation relies on balanced-based budgeting strategies, not value-based budgeting strategies as previously included in the Law, which identify the proper authorities and ensure compliance and enforcement. [1 O.C. 121.1-2]. The policy has also been expanded to include that the Nation shall use Generally Accepted Accounting Principles (GAAP), established by the Financial Accounting Standards Board, and the Governmental Accounting Standards Board (GASB) in accounting and reporting for the financial activities of the various entities of the Nation, unless they conflict with applicable legal requirements. [1 O.C. 121.1-2].

- **Effect.** The proposed amendments to the purpose and policy provisions of the Law provide greater insight on the various general financial policies and procedures of the Nation that this Law governs in addition to the requirements to be followed by the Oneida Business Committee and the Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval.

B. Removal of the Strategic Planning Provisions. The provisions of the Law regarding strategic planning, previously found in section 121.4, has been removed from the Law. Previously, the Law included detailed provisions on the Oneida Business Committee's development of the triennial strategic plan, as well as the fund unit's contribution to the strategic plan. Now, the Law simply references that it is a responsibility of the Oneida Business Committee to develop priorities, a strategic plan, or broad goals to assist in guiding the budget [1 O.C. 121.4-1(c)], and to review the draft budget developed by the Treasurer each year to ensure that it is consistent with the Nation's strategic plan, broad goals, and budget strategy. [1 O.C. 121.5-4(b)]. The budget is required to align with any strategic plan, broad goals, or priorities developed and adopted by the Oneida Business Committee on behalf of the Nation. [1 O.C. 121.5-1(b)].

- **Effect.** The provisions of the Law regarding the strategic planning process were removed to allow greater flexibility in how the Oneida Business Committee and the corresponding fund units develop a strategic plan. In August 2020, the Oneida Business Committee hired a Strategic Planner whose role and responsibilities include assisting the Oneida Business Committee with their strategic planning responsibilities. Removing the details of the strategic planning process from this Law will allow the Strategic Planner flexibility in changing the process for how a strategic plan is developed until the most effective and efficient process is found.

C. Authority and Responsibilities. Section 121.4 has been reorganized as the authority and responsibilities section of the Law and contains provisions that were previously found in the Law as well as new provisions. This section of the Law provides the various authority and responsibilities of different entities including the Oneida Business Committee, the Treasurer, the Chief Financial Officer (CFO), and the managers. The authorities and responsibilities of the Oneida Business Committee has been expanded. Previously the Law provided that the Oneida Business Committee was responsible for budget oversight, necessary emergency action, and supervision of the CFO. Now the Law provides that the Oneida Business Committee shall oversee the development and implementation of the Nation's budget; develop priorities, a strategic plan, or broad goals to assist in guiding the budget; and exercise the authority provided in Article IV, Section 1, of the Constitution and Bylaws of the Oneida Nation, as delegated to the Oneida Business Committee by the General Tribal Council. [1 O.C. 121.4-1]. In regard to the authority and responsibilities of the Treasurer, the Law has been expanded to include accept, receive, receipt for, preserve and safeguard all funds in the custody of the Nation, whether they

be funds of the Nation or special funds for which the Nation is acting as trustee or custodian; and deposit all funds in such depository as the Nation shall direct and shall make and preserve a faithful record of such funds in addition to the responsibilities previously found in the Law. [1 O.C. 121.4-2]. In regard to the authority and responsibilities of the CFO, the Law has been expanded to include the following responsibilities in addition to the responsibilities previously found in the Law: ensure the Nation's budget is properly implemented; assist with the submission and presentation of the Treasurer's report to the Oneida Business Committee, which shall specifically include any monthly variances that are either: a difference of three percent (3%) or more from the adopted annual budget or fifty thousand dollars (\$50,000) or more in total; provide the Oneida Business Committee with information and reports as requested; present the Treasurer's report and hold financial condition meetings with the Nation's management on a minimum of a quarterly basis; and inform the appropriate Executive Manager of any fund unit which does not follow the budget development process guidelines or deadlines as set forth by the Treasurer. [1 O.C. 121.4-3]. Regarding the authority and responsibilities of the managers, the Law has been expanded to include the following responsibilities in addition to the responsibilities previously found in the Law submit a budget for their fund unit in accordance with the budget schedule and guidelines as adopted by the Oneida Business Committee; and that the managers report to their relevant Executive Manager in addition to the CFO any explanations and corrective action for monthly variances. [1 O.C. 121.4-3].

- **Effect.** The expansion of the authorities and responsibilities section of the Law ensures that the authorities and responsibilities of the various entities and individuals who play a role in the execution of this Law is clear and transparent to all parties involved. The increased transparency in the authorities and responsibilities in the proposed amendments also hopes to increase accountability and compliance with the Law.

D. General Information on the Budget. The Law provides general information on the Nation's budget. The Nation is required to develop, adopt, and manage an annual budget, of which, all revenues and expenditures of the Nation shall be in accordance with. [1 O.C. 121.5-1]. The Nation's budget is required to be a balanced budget, meaning that it does not propose to spend more funds than are reasonably expected to become available to the Nation during that fiscal year. [1 O.C. 121.5-1(a)]. The Law expressly prohibits underwriting debt resources or the utilization of existing debt instruments to balance the Nation's annual budget. [1 O.C. 121.5-1(a)(1)]. Information on the Nation's corporate entities is not included in the Nation's budget. [1 O.C. 121.5-1(c)]. The provisions regarding the content of the budget remain as previously provided in the Law, except that a new requirement for the content of the budget was included. Now the Law requires that a summary of employment position counts, including prior year, current year, and budgeted year be included in the Nation's budget. [1 O.C. 121.5-2(e)]. A new provision was added to the Law to address the fund categories of the Nation's budget. The Nation's budget is now required to include the General Fund – which is the Nation's main operating fund which is used to account for all financial resources not accounted for in other funds; the Permanent Executive Contingency Fund – which is used by the Nation to prevent default on debt and to sustain operations during times of extreme financial distress; and the Grant Reserve Fund – which is used by the Nation to pre-fund the expenditures of grants upon receipt. [1 O.C. 121.5-3].

- **Effect.** The proposed amendments to the Law provide greater clarification on general principles regarding the Nation's budget. The requirement that the Nation's budget be a balanced budget, that was not balanced using debt instruments, sets the overall tone and provides guidance for how the budget is then developed.

301 **E. *Budget Adoption Procedure.*** The Law sets forth the procedure to be followed when developing the
302 Nation's budget. Previously, the Law was very detailed and contained a great amount of process and
303 procedure regarding the development of the budget. Previously the budget development and adoption
304 procedure in the Law was as follows: the Treasurer's office was required to schedule at least one (1)
305 community input budget meeting prior to December 1st of each year where community members are
306 afforded an opportunity to provide input as to what should be included in the upcoming fiscal year
307 budget. The Treasurer then had to place a community budget input meeting packet on the Oneida
308 Business Committee agenda no later than the last Oneida Business Committee meeting in January. The
309 Oneida Business Committee was then required to review the community budget input meeting packet
310 and hold work meetings to create a priority list of services of the Nation, which had to be approved by
311 resolution no later than the last meeting in February. Then the Chief Financial Officer was required to
312 develop the necessary guidelines, including specific deadlines, to be followed by the managers that
313 have budget responsibility in preparing and submitting proposed budgets, and submit those guidelines,
314 as approved by the Treasurer, to the Oneida Business Committee. The Oneida Business Committee was
315 then responsible for revising the guidelines as necessary and approving those guidelines within thirty
316 (30) calendar days of receiving the guidelines from the Chief Financial Officer. The Chief Financial
317 Officer was then responsible for receiving, reviewing, and compiling the proposed budgets into the
318 Nation's draft budget, and presenting that draft budget to the Oneida Business Committee no later than
319 the last Oneida Business Committee meeting in May. In the month of May, the CFO and the Oneida
320 Business Committee would meet to review the draft budget and provide any recommendations for
321 modifications, and then meet with the managers of each fund unit for which the Oneida Business
322 Committee is considering altering the fund unit's proposed budget. The Oneida Business Committee
323 was required to complete all meetings with fund unit managers by the end of June each year. The
324 Oneida Business Committee would then work with fund unit managers and the CFO to compile a final
325 draft budget to be presented to the General Tribal Council, which had to be approved, by resolution of
326 the Oneida Business Committee, to be presented to the General Tribal Council by the end of July each
327 year. Once the Oneida Business Committee has approved the final draft budget, the Treasurer was then
328 required to hold, at a minimum, two (2) community informational meetings to present the contents of
329 the final draft budget that will be presented to the General Tribal Council. The Oneida Business
330 Committee was required to present the budget to the General Tribal Council with a request for adoption
331 by resolution no later than September 30th of each year. In the event that the General Tribal Council
332 did not adopt a budget by September 30th, the Oneida Business Committee was permitted to adopt a
333 continuing budget resolution(s) until such time as a budget is adopted. The proposed amendments to
334 the Law take a much more simplified approach. The proposed amendments to the Law provide that the
335 Treasurer shall develop the necessary guidelines, including specific timelines and deadlines, to be
336 followed by the managers that have budget responsibility in preparing and submitting proposed
337 budgets, and that the Treasurer shall submit the guidelines to the Oneida Business Committee for review
338 and approval through the adoption of a resolution. [1 O.C. 121.5-4(a)]. The deadline for when the
339 Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and
340 approval shall be set through the adoption of a resolution. [1 O.C. 121.5-4(a)(3)]. The Treasurer's
341 guidelines are required to include at least one (1) opportunity for community input from the Nation's
342 membership on what should be included in the upcoming fiscal year budget. [1 O.C. 121.5-4(a)(1)].
343 Each fund unit is then responsible for complying with the budget schedule and guidelines to submit a
344 proposed budget to the Treasurer. [1 O.C. 121.5-4(a)(2)]. The provisions of the Law regarding the

review and compilation of all annual proposed budgets into the final draft budget to be presented to the General Tribal Council, and subsequent community meetings regarding the budget, are substantially similar to the provisions of the Law that were previously excluded without excess process and deadline dates. [1 O.C. 121.5-4(b)-(e)]. The proposed amendments to the Law add clarification as to the use of continuing budget resolutions and provides that continuing budget resolutions may only stay in effect for up to three (3) months, and if the General Tribal Council does not adopt a budget within three (3) months of the adoption of the continuing budget resolution, then the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-4(e)(1)]. The proposed amendments to the Law also include a new emergency budget adoption provision which provides that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management law, that stays in effect for at least one (1) month and prevents the presentation to and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-4(e)(2)]. The proposed amendments then address amendments to the Nation's budget and provides that after the budget is adopted, amendments of the budget shall not be permitted unless it is necessary to avoid a budget deficit, and the Oneida Business Committee is responsible for adopting an amendment to the budget through resolution of the Nation, but notification of the budget amendment is required to be made at the next available General Tribal Council meeting. [1 O.C. 121.5-5].

▪ **Effect.** The proposed amendments to the Law greatly simplify and streamline the budget development and adoption procedure. Since the original adoption of this Law in 2017, the Nation has struggled to comply with all the provisions and deadlines contained in this Law. Although the proposed amendments to the Law keep the same general framework, it provides more flexibility to adjust the budget development and adoption procedure to meet the Nation's current circumstances so that the most effective and efficient process can be utilized.

F. Expenditures and Assets. Section 121.6 of the Law provides information on expenditures and assets and addresses the following topics: authority to expend funds, the Procurement Rule Handbook, fees and charges, unbudgeted expenditures, obligated future expenditures, unexpended funds, capital contributions, and capital improvements. Previously, the Law provided that the Treasurer's authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. The Law then previously provided that authority is necessarily delegated to other managers, including executive managers, of the Nation who manage the budgets, pursuant to their job descriptions based on the procurement manual rules developed by the Purchasing Department. Now the Law has been revised to provide that it is the Oneida Business Committee that has the authority to expend appropriated funds in accordance with the Nation's adopted budget pursuant to the Procurement Rule Handbook developed by the Purchasing Department, and that the authority to expend funds is then necessarily delegated to other managers, including Executive Managers of the Nation who manage budgets pursuant to their job descriptions based on the Procurement Rule Handbook. [1 O.C. 121.6-1]. The provision on fees and charges remains substantively the same as previously included in the Law. [1 O.C. 121.6-3]. The provision regarding unbudgeted expenditures is a new addition to the Law and provides guidance on the approval of unbudgeted expenditures, when notification of unbudgeted expenditures is required to go to the General Tribal Council, and the requirement for spending plans for unbudgeted supplemental funding that is received by the Nation. [1 O.C. 121.6-4]. The provision regarding obligated future expenditures is a new addition to the Law and prohibits any fund unit from obligating the Nation to make any future expenditures beyond the current budget year unless the fund unit identifies, and the Oneida Business Committee approves through the adoption of a resolution, the

source and extent of any future funds that are recommended to be held in reserve to meet that future obligation. [1 O.C. 121.6-5]. This section does not apply to a fund unit that has an approved multi-year contract. The provisions regarding unexpended capital improvement funds and unexpended capital expenditure funds remain the same as previously found in the Law, except that clarification was added that unexpended capital expenditure funds shall be returned to the General Fund. [1 O.C. 121.6-6]. The provision regarding capital contributions is a new addition to the Law and requires that any capital contributions made by the Nation be identified in the annual budget, and any reassignment of a loan provided by the Nation into a capital contribution be noticed to the General Tribal Council. [1 O.C. 121.6-7]. The Law then prohibits any assets of the Nation from being divested or borrowed against to balance the annual budget. [1 O.C. 121.6-8]. The provisions of the Law regarding capital improvement plans for both government services and enterprises remains as found previously in the Law. [1 O.C. 121.6-9].

▪ **Effect.** The proposed amendments to the Law expend the information that is provided in the Law regarding expenditures and assets of the Nation. New provisions were included in the Law regarding unbudgeted expenditures, obligated future expenditures, and capital contributions to provide greater insight on how these issues should be handled by the Nation since the Law was previously silent on these matters. It should be noted that the Law provides that the Oneida Business Committee shall set through resolution a threshold amount for unbudgeted expenditures that require notification by the Oneida Business Committee to the General Tribal Council at the next available General Tribal Council meeting. [1 O.C. 121.6-4(b)]. Notification of unbudgeted expenditures is currently addressed by Oneida Business Committee resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*. Resolution BC-10-08-08-A requires that expenditures for items and specific projects which were not identified in the approved budget and total two hundred and fifty thousand dollars (\$250,000) or more, shall be formally noticed to the General Tribal Council at the next available General Tribal Council regular or special meeting. This resolution would control notification of unbudgeted expenditure in compliance with section 121.6-4 of this Law until such a time that the resolution is amended, rescinded, or superseded to provide a different threshold for unbudgeted expenditures that requires notification to the General Tribal Council.

G. Grants. A new section regarding grants was added to the Law. Previously, the Law referenced grants in regard to budget contingency planning, how grant funding may be utilized, and the exhaustion of non-tribal funds. The Law previously provided that grant funds are exempt from requirements of the budget contingency plan and any cost containment initiatives as such funding is not reliant on Tribal contributions. Now the Law addresses expending grant funds, exhaustion of non-tribal funds, grant reporting, a Grant Reserve Fund Account, and grant funded positions. The Law currently reflects the same guidance on expending grant funds as was previously included in the Law, except now the Law clarifies that grant funds may also be utilized for incentives and retention efforts. [1 O.C. 121.7-1(a)]. The Law then clarifies that Grant funds may be utilized for an expenditure even when other policies of the Nation do not allow for Tribal contribution to make that same expenditure, if only grant funds are utilized for the expenditure and all requirements or obligations of the grant are met, provided that, grant funds may be subject to the requirements of the budget contingency plan and any cost containment initiatives adopted by the Oneida Business Committee. [1 O.C. 121.7-1(b)]. The provision on the exhaustion of non-tribal funds remains the same as previously included in the Law. The provisions on grant reporting are new additions to the Law. At the time of submission of proposed annual budgets,

any fund unit which receives grant funding is required to submit a status report of the grant funding received to the Oneida Business Committee. [1 O.C. 121.7-3]. The Law now creates a Grant Reserve Fund account for the Nation, which is an obligated fund, to be used to pre-fund the expenditures of grants upon receipt, that is fully funded with separately identified cash resources. [1 O.C. 121.7-4]. The Law then provides guidance on grant funded positions, providing that if the grant funding for a fully grant funded position is eliminated, then the position shall be eliminated. [1 O.C. 121.7-5]. To transition a position from grant funding to being funded through the Nation's budget, a manager shall follow the standard procedure for seeking the development and approval of a new position in the Nation's annual budget and labor allocations. [1 O.C. 121.7-5].

- **Effect.** The purpose of the new provisions regarding grants that have been added to the Law is to add clarification to ensure that grants are utilized effectively and efficiently within Nation. The expanded provisions of the Law regarding the utilization of grants will provide more flexibility in how grant funds are spent. The provisions of the Law regarding grant reporting will ensure that pertinent information on grants is efficiently tracked and shared with the Oneida Business Committee. The creation of the Grant Reserve Fund account will ensure that the Nation is prepared and ready to pre-fund the expenditure of grants if needed.

H. Debts. A new section regarding debt was added to the Law. Previously, the Law only referenced debt in regard to allowable payments to be made from the Permanent Executive Contingency Fund account under budget contingency planning guidelines. This new section of the Law addresses general provisions on debt, notice of the acquisition of debt, use of debt, credit ratios, and corporate debt. The Law provides that any acquisition of debt by the Nation shall be processed in accordance with sound fiscal diligence, and that the Nation will comply with all relevant federal and state banking laws, rules, and policies applicable to the credit agreement. [1 O.C. 121.8-1]. Any debt instrument utilized by the Nation is prohibited from exceeding the life of what is being encumbered. [1 O.C. 121.8-1(a)]. The Law now provides guidance on when the acquisition of debt is required to be noticed to the General Tribal Council. Any debt underwritten by the Nation for ten million dollars (\$10,000,000) or more shall be noticed to the General Tribal Council at the next available meeting prior to the execution of the credit agreement encumbering all pledges of repayment. [1 O.C. 121.8-2]. If emergency circumstances exist which prevents the notice of the acquisition of debt to the General Tribal Council, the Oneida Business Committee may move forward with the acquisition of debt. [1 O.C. 121.8-2(a)]. Credit can then be used for project capital, general use, financing of equity, and all unspecified uses. [1 O.C. 121.8-3]. The Law then provides guidance on maintaining fiscally responsible prudent credit ratios – such as the Debt Service Coverage Ratio and the Fixed Charge Coverage Ratio – in accordance with low-risk debt financing options at the specific financial institution. [1 O.C. 121.8-4]. The section on debt then prohibits the Nation from being obligated to any debt obligations of its corporate entities. [1 O.C. 121.8-5].

- **Effect.** It is essential for effective budget management and financial control that the Nation have guidelines for the acquisition and utilization of debt. The provisions included in the Law will assist in ensuring that the Nation is fiscally responsible and exercising sound diligence if utilizing debt in the future.

I. Employment and Labor Allocations. A new section regarding employment and labor was added to the Law. Previously the Law did not address employment levels within the Nation or labor allocations. This new section of the Law addresses an employment cap for the Nation, a labor allocations list, and unbudgeted positions. The Law will now require that the Oneida Business Committee adopt an

employment cap for the Nation which sets the maximum number of full-time equivalent employees to be employed by the Nation. [1 O.C. 121.9-1]. The Law also requires that the Oneida Business Committee adopt a labor allocations list which identifies the number of full-time equivalent employees each employment area of the Nation is allocated. [1 O.C. 121.9-2]. The Law then prohibits any position which has not been specifically budgeted for and included in the labor allocation list, while specifying that budgeted labor dollars and approved positions shall not be transferrable in any form. [1 O.C. 121.9-3]. Although unbudgeted positions are expressly prohibited, and exception was included in the Law which allows the Oneida Business Committee to authorize unbudgeted positions for a fund unit. [1 O.C. 121.9-3(a)].

▪ **Effect.** This is the first time that an employment cap or a labor allocations list is addressed in the Law. These provisions were included in the Law to ensure that the Nation maintains a manageable employment level. Costs related to maintaining the thousands of individuals employed by the Nation is one of the Nation's highest costs it must budget for, so it is essential that we are able to ensure that the Nation maintains control over sustainable employee levels. The requirement to maintain a labor allocation list will also ensure that the labor distribution throughout the various employment areas of the Nation is regularly reviewed so that it can be ensured that labor is allocated throughout the employment areas based on the needs of the Nation so that the best service can be provided by all employment areas. [1 O.C. 121.9-2]. Although this will be the first time the Law addresses an employment cap, this issue has previously been addressed through resolution by the Oneida Business Committee. One such example of the Oneida Business Committee adopting an employment cap for the Nation occurred within the adoption of the Fiscal Year 2021 budget as adopted through resolution BC-11-24-20-F, *Approval of Final Draft Fiscal Year 2021 Budget and Budget Directives*, which set an employment cap of two thousand and two hundred (2,200) employees.

J. **Budget Contingency Planning.** The provisions of the Law regarding budget contingency planning were moved from what used to be the strategic planning section of the Law to its own section. The amendments to the budget contingency planning section of the Law clarifies that emergency proclamations qualify as extreme financial distress, while tribal shutdowns – which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year – does not qualify as extreme financial distress. [1 O.C. 121.10-1(a)]. The Law requires that the Oneida Business Committee maintain a Permanent Executive Contingency Fund account. Previously, the Law provided that the Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required in the Permanent Executive Contingency account, that the Treasurer shall set aside business continuity funds in the Permanent Executive Contingency account until the established level has been achieved. Now the Law was clarified that the Permanent Executive Contingency Fund account is a restricted fund, and that Permanent Executive Contingency Fund account shall consist of a minimum reserve of one (1) year of operating expenses to ensure continuity of business for the Nation. [1 O.C. 121.10-4(a)]. The amendments also clarify that the Oneida Business Committee shall approve through the adoption of a resolution the percentage of the annual budget that is required to be set aside in the Permanent Executive Contingency Fund account until the established level has been achieved. [1 O.C. 121.10-4(b)].

▪ **Effect.** Regarding the clarification on what constitutes extreme financial distress, Tribal shutdowns was removed from the Law as an example of extreme financial distress because it was not accurate that the General Tribal Council not approving a budget for the Nation prior to the beginning of a

new fiscal year that means the Nation has shut down and is in extreme financial distress. The Law already addresses if the General Tribal Council does not adopt a budget by September 30th of each year and provides that the Oneida Business Committee may then adopt a continuing budget resolution(s) until such time as a budget is adopted. [1 O.C. 121.5-4(e)(1)]. Therefore, budget contingency planning for if the General Tribal Council does not adopt a budget by September 30th of each year is not necessary. Additionally, emergency proclamations were added as an example of extreme financial distress based on the Nation's experience with the COVID-19 pandemic and its resulting emergency proclamations. Regarding the amendments on the Permanent Executive Contingency Fund Account, clarification was added so that the Law is specific as to what level of funds is required to be in the Permanent Executive Contingency Fund account, and that the Oneida Business Committee will approve through resolution the percentage of the annual budget that is required to be set aside in the Permanent Executive Contingency Fund account each year. These clarifications will ensure that the Treasurer and the Oneida Business Committee can properly plan to fund the Permanent Executive Contingency Fund account so that the Nation is prepared for times of extreme financial distress.

K. Reporting. Clarification was added to this section of the Law which provides that the Treasurer's monthly reports to the Oneida Business Committee should include revenue and expense summaries. [1 O.C. 121.11-1(a)]. Additionally, a new provision was added to this section of the Law which addresses annual and semi-annual reporting to the General Tribal Council. The Law now states that the Treasurer shall report on all receipts and expenditures and the amount and nature of all funds in their possession and custody, at the annual and semi-annual General Tribal Council meetings, and at such other times as requested by the General Tribal Council or the Oneida Business Committee. [1 O.C. 121.11-2]. The Treasurer's reports are also required to include an independently audited annual financial statement that provides the status or conclusion of all the receipts and debts in possession of the Treasurer including, but not limited to, all corporations owned in full or in part by the Nation. [1 O.C. 121.11-2(a)].

▪ **Effect.** The revisions to the Law in this section provide more clarify on what information is expected to be included in the Treasurer's reports to the Oneida Business Committee and the General Tribal Council. Although a new addition to this Law, the requirements of section 121.11-2(a) are not new requirements for the Treasurer's reports, and this information was previously contained in resolution GTC-11-15-08-C, *Treasurer's Report to include all Receipts and Expenditures and the Amount and Nature of all Funds in the Treasurer's Possession and Custody*.

L. Enforcement. A provision was added to the enforcement section of the Law that provides that the Executive Managers shall notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. [1 O.C. 121.12-1(a)]. A list of any fund unit of an elected entity which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council. [1 O.C. 121.12-1(a)].

▪ **Effect.** This provision was added to the Law to encourage compliance with the Law by the fund units and ensure there is accountability for those fund units that do not comply with the Law. Requiring this information to be shared to the Oneida Business Committee or in the annual report to the General Tribal Council also ensures transparency with the information shared with the Oneida Business Committee and the General Tribal Council.

M. Minor Drafting Changes. Additional drafting and formatting changes have been made throughout the Law for clarity.

SECTION 6. EXISTING LEGISLATION

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

- *Administrative Rulemaking law.* The Administrative Rulemaking law provides an efficient, effective, and democratic process for enacting and revising administrative rules. [1 O.C. 106.1-2].
 - Previously, this Law required the Procurement Manual to be adopted as rules in accordance with the Administrative Rulemaking law. The proposed amendments to the Law remove this provision and now only require that the Procurement Manual be approved by the Oneida Business Committee through the adoption of a resolution. [1 O.C. 121.6-2].
 - This Law no longer delegates authority for the promulgation of rules in accordance with the Administrative Rulemaking law.
- *Internal Audit Law.* The Internal Audit law creates a process by which internal audits are conducted upon the Nation's entities and to delegate responsibilities for the purposes of conducting such audits. [1 O.C. 108.1-1].
 - The Law provides that the Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Nation's Audit law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected fund units or of fund units deemed necessary by the Oneida Business Committee or Internal Audit Department. [1 O.C. 121.11-3].
 - Any internal audits conducted by the Internal Audit Department shall be made in accordance with the audit process provided in the Internal Audit law. [1 O.C. 108.6].
- *Emergency Management Law.* The purpose of the Emergency Management law is to provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; provide for the direction of emergency management, response, and recovery on the Reservation, as well as coordinating with other agencies, victims, businesses, and organizations; establish the use of the National Incident Management System (NIMS); and designate authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].
 - This Law provides that if the Nation proclaims an emergency, in accordance with the Emergency Management law, that stays in effect for at least one (1) month and prevents the presentation to and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-4(e)(2)].
 - Under the Emergency Management law, the Oneida Business Committee is delegated the responsibility to proclaim or ratify the existence of an emergency. [3 O.C. 302.8-1]. An emergency means a situation that poses an immediate risk to health, life, safety, property, or environment which requires urgent intervention to prevent further illness, injury, death, or other worsening of the situation. [3 O.C. 302.3-1(f)]. No proclamation of an emergency by the Oneida Business Committee may last for longer than sixty (60) days, unless renewed by the Oneida Business Committee. [3 O.C. 302.8-2].
- *Oneida Personnel Policies and Procedures.* The Oneida Personnel Policies and Procedures is the Nation's law which governs employment. The Oneida Personnel Policies and Procedures

provides the process for handling complaints, disciplinary actions, and grievances. [Section V.D.].

- The Law provides that violations of this Law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position. [1 O.C. 121.12-2].
- An employee of the Nation who violates this Law may be addressed through the disciplinary procedures found in Section V.D. of the Oneida Personnel Policies and Procedures.
- *Conflict of Interest Law.* The Conflict of Interest law ensures that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1].
 - The Law provides that violations of this Law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position. [1 O.C. 121.12-2].
 - The Conflict of Interest law provides that if a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of interest shall be concluded within seven (7) days of the employee being placed on leave. A supervisor shall terminate an employee from his or her employment with the Nation when an investigation substantiates that the employee failed to disclose a conflict of interest. [2 O.C. 217.6-1].
 - The Conflict of Interest law provides that an Oneida Business Committee member who fails to disclose a conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant to laws of the Nation regarding penalties. [2 O.C. 217.6-2].
 - The Conflict of Interest law provides that an elected or appointed official of the Nation who fails to disclose a conflict of interest may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to removal pursuant to the Removal Law for elected members, or have their appointment terminated by the Oneida Business Committee pursuant to the law governing board, committees and commissions for appointed members. [2 O.C. 217.6-3].
- *Code of Ethics.* The Code of Ethics law promotes the highest ethical conduct in all its elected and appointed officials, and employees. [1 O.C. 103.1-1].
 - The Law provides that violations of this Law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position. [1 O.C. 121.12-2].

- The Code of Ethics law provides that a government official who violates any portion of the Code of Ethics as it applies to them, may be subject to removal, if elected, or termination, if appointed. [1 O.C. 103.6-1(a)].
- The Code of Ethics law provides that an individual from a program or enterprise of the Nation who violates any portion of the Code of Ethics as it applies to them, may be subject to the disciplinary procedures found in the Oneida Personnel Policies and Procedures. [1 O.C. 103.6-1(b)].
- **Removal Law.** The Removal law governs the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1].
 - The Law provides that violations of this Law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position. [1 O.C. 121.12-2].
 - An elected official of the Nation who violates this Law may be addressed through the removal procedures found the Removal law.
- **Furlough Policy.** The Furlough Policy enables the Nation to implement a furlough as a tool to remedy an operating budget deficit. [2 O.C. 205.1-1].
 - This Law provides that as part of the budget contingency plan, the Oneida Business Committee may require the use of cost saving tools, provided that the use of such complies with all laws of the Nation. [1 O.C. 121.10-2]. Cost saving tools may include furloughs. [1 O.C. 121.10-2(c)].
 - Any furloughs made as part of the Nation's budget contingency plan shall be made in accordance with the furlough process provided in the Furlough Policy. [2 O.C. 205].
- **Layoff Policy.** The purpose of the Layoff Policy is to establish a fair, respectful policy for employee layoff and recall which enables the Nation's programs and enterprises to operate effectively and efficiently in varying economic conditions within the parameters of Oneida Nation Seventh Generation mission, priorities, and objectives. [2 O.C. 207.1-1].
 - This Law provides that as part of the budget contingency plan, the Oneida Business Committee may require the use of cost saving tools, provided that the use of such complies with all laws of the Nation. Cost saving tools may include layoffs.
 - Any layoffs made as part of the Nation's budget contingency plan shall be made in accordance with the layoff process provided in the Layoff Policy. [2 O.C. 207].

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. Enforcement.** The Law provides that all employees and officials of the Nation are required to comply with and enforce this Law to the greatest extent possible. [1 O.C. 121.12-1]. The Executive Managers are required to notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. A list of any fund unit of an elected entity which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council. [1 O.C. 121.12-1].
- B. Consequences of Violation of this Law.** Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position. [1

O.C. 121.12-2]. Additionally, this Law does not preclude the Nation from pursuing civil or criminal charges under any federal or state civil or criminal laws, or any laws of the Nation. [1 O.C. 121.12-3].

SECTION 9. OTHER CONSIDERATIONS

A. *Approval Through Adoption of a Resolution.* There are many instances throughout this Law in which the approval of information, plans, or guidelines by the Oneida Business Committee or the General Tribal Council is required to occur through the adoption of a resolution.

▪ *Examples.* Examples of the requirement of approval through the adoption of a resolution can be seen in the following instances throughout the Law:

- *Section 121.5-4 Budget Schedule and Guidelines.* The Treasurer is required to submit budget guidelines to the Oneida Business Committee for review and approval through the adoption of a resolution.
- *Section 121.5-4(3) Budget Schedule and Guidelines Deadline.* The Oneida Business Committee is required to set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval.
- *Section 121.5-4(c) Final Draft Budget.* The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council.
- *Section 121.5-4(e) Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year.
- *Section 121.5-4(e)(1) Continuing Budget Resolution.* If the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted by the General Tribal Council.
- *Section 121.5-5 Amendments to the Nation's Budget.* The Oneida Business Committee shall be responsible for adopting any amendment to the budget through resolution of the Nation.
- *Section 121.6-2 Procurement Manual.* The Procurement Manual, and any amendments thereto, shall be approved by the Oneida Business Committee through adoption of a resolution.
- *Section 121.6-4(a) Approval of Unbudgeted Expenditures.* The Oneida Business Committee shall approve any unbudgeted expenditure through the adoption of a resolution prior to the expenditure being made by a fund unit.
- *Section 121.6-4(b) Notification of Unbudgeted Expenditures.* The Oneida Business Committee shall set through resolution a threshold amount for unbudgeted expenditures that require notification by the Oneida Business Committee to the General Tribal Council at the next available General Tribal Council meeting.
- *Section 121.6-4(c) Unbudgeted Supplemental Funding.* If the Nation receives any supplemental or emergency funding of two hundred and fifty thousand dollars (\$250,000) or more, the Oneida Business Committee shall develop and adopt, through resolution, a spending plan to guide expenditures of the supplemental funding in accordance with any provided guidance for the supplemental funding and audit compliance.

- 737 ▪ **Section 121.6-5 Obligated Future Expenditures.** No fund unit shall obligate the Nation
738 to make any future expenditures beyond the current budget year unless the fund unit
739 identifies, and the Oneida Business Committee approves through the adoption of a
740 resolution, the source and extent of any future funds that are recommended to be held in
741 reserve to meet that future obligation.
- 742 ▪ **Section 121.9-1 Employment Cap.** The Oneida Business Committee shall have the
743 authority to approve this employment cap, and any amendments thereto, through the
744 adoption of a resolution.
- 745 ▪ **Section 121.9-2 Labor Allocations List.** The Oneida Business Committee shall have the
746 authority to adopt the labor allocation list, and any amendments thereto, through the
747 adoption of a resolution.
- 748 ▪ **Section 121.9-2 Labor Allocations List SOP.** The Oneida Business Committee shall
749 approve this standard operating procedure for revisions to the labor allocations list, and
750 any amendments thereto, through the adoption of a resolution.
- 751 ▪ **Section 121.9-3 Unbudgeted Positions.** The Oneida Business Committee shall authorize
752 the approval of an unbudgeted position through the adoption of a resolution.
- 753 ▪ **Section 121.10-1(b) Budget Contingency Plan.** The Oneida Business Committee shall
754 approve the budget contingency plan, and any amendments thereto, through the adoption
755 of a resolution.
- 756 ▪ **Section 121.10-4 Permanent Executive Contingency Fund Account.** The Treasurer, in
757 consultation with the CFO, shall establish, and the Oneida Business Committee shall
758 approve through the adoption of a resolution, the percentage of the annual budget that shall
759 be set aside in the Permanent Executive Contingency Fund account until the established
760 level has been achieved.
- 761 ▪ **Conclusion.** The Legislative Operating Committee will need to ensure that any information that is
762 required to be approved through resolution prior to this Law being implemented is presented to the
763 Oneida Business Committee for consideration in a resolution at the time of adoption of this Law.
764 Additionally, the Legislative Operating Committee will need to ensure the Oneida Business
765 Committee is aware of its responsibilities of approving information, guidelines, or plans through
766 the adoption of a resolution when it is applicable.
- 767 B. **Fiscal Impact.** Under the Legislative Procedures Act, a fiscal impact statement is required for all
768 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
769 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
770 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
771 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
772 completing the fiscal impact statement.
- 773 ▪ **Conclusion.** The Finance Department provided a fiscal impact statement for the proposed
774 amendments to this Law on April 14, 2022.

775

Title 1. Government and Finances – Chapter 121

BUDGET MANAGEMENT AND CONTROL

Twahwistatye'nítha?

We have a certain amount of money

BUDGET AND FINANCES

121.1.	Purpose and Policy	121.7.	Appropriation of the Nation's Funds
121.2.	Adoption, Amendment, Repeal	121.8.	Budget Authority
121.3.	Definitions	121.9.	Budget Transfers; Amendments
121.4.	Strategic Planning	121.10.	Reporting
121.5.	Budget Process	121.11.	Authorizations and Signatures
121.6.	Capital Improvements	121.12.	Enforcement and Penalties

121.1. Purpose and Policy

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval, and to establish financial policies and procedures for the Nation which: a triennial strategy planning process for the Nation's budget.

(a) institutionalize best practices in financial management to guide decision makers in making informed decisions regarding the provision of services, implementation of business plans for enterprises, investments, and capital assets;

(b) provide a long term financial prospective and strategic intent, linking budget allocations to organizational goals, as well as providing fiscal controls and accountability for results and outcomes;

(c) identify and communicate to the membership of the Nation spending decisions for the government function, grant obligations, enterprises, membership mandates, capital expenditures, technology projects, and capital improvement projects;

(d) establish a framework for effective financial risk management; and

(e) encourage participation by the Nation's membership.

121.1-2. *Policy.* It is the policy of the Nation to rely on value-based balanced-based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement. The Nation shall use Generally Accepted Accounting Principles (GAAP), established by the Financial Accounting Standards Board, and the Governmental Accounting Standards Board (GASB) in accounting and reporting for the financial activities of the various entities of the Nation, unless they conflict with applicable legal requirements.

121.2. Adoption, Amendment, Repeal

121.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-08-17-C, and amended by resolution BC- - - - .

121.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. 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.

121.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law amends or repeals the

requirements of resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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.

~~(a) “Appropriation” means the legislative act of designating funds for a specific purpose in accordance with the provisions contained in this law.~~

(a) “Balanced budget” means that the cost of current expenses and service provisions is equal to the forecasted current revenue sources.

(b) “Capital contribution” means an act of giving money or assets to a company or organization.

~~(b)c~~ “Capital expenditure” means any non-recurring and non-physical improvement as follows:

(1) Any item with a cost of five thousand dollars (\$5,000.~~00~~) or more and ~~an~~ estimated useful life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000.~~00~~), but the total purchase price for all of the items is ten thousand dollars (\$10,000.~~00~~) or more.

~~(e)d~~ “Capital improvement” means a non-recurring expenditure for physical improvements, including costs for:

(1) acquisition of existing buildings, land, or interests in land;

(A) Acquisition of existing buildings and land completed by the Oneida Land Commission are not included in this definition.

(2) construction of new buildings or other structures, including additions and major alterations;

(3) acquisition of fixed equipment;

(4) landscaping;

(5) physical infrastructure; and

(6) similar expenditures with a cost of five thousand dollars (\$5,000.~~00~~) or more and ~~an estimated a useful~~ life of one (1) year or more.¹

~~(e)f~~ “CFO” means the Nation’s Chief Financial Officer, or their designee at their discretion.

~~(e)f~~ “Debt” means the secured or unsecured obligations owed by the Nation.

(g) “Debt Service Coverage Ratio” means a measurement of creditors available cash flow to pay debt obligations. This ratio evaluates if an entity has income capacity to service debts.

¹ ~~Acquisition of existing buildings and land completed by the Oneida Land Commission are not included in the definition of “Capital Improvement.”~~

(h) “Enterprise” means any area or activity of the Nation that is engaged in for the business of profit.

~~(f) “Economic life” means the length of time an asset is expected to be useful.~~

(g) “Executive Manager” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee who is responsible for a department or division of the Nation, as identified by the Oneida Business Committee through the adoption of a resolution. ~~any one of the following positions within the Nation: Chief Executive Officer/General Manager, Gaming General Manager, Legal Counsel and/or Chief Financial Officer.~~

(h) “Expenditure report” means a financial report which includes, but is not limited to, a statement of cash flows, revenues, costs and expenses, assets, liabilities, and a statement of financial position.

(k) “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.

(i) “Fiscal year” means the one (1) year period each year from October 1st to September 30th.

(m) “Fixed Charge Coverage Ratio” means a measurement of a creditors capacity of earnings level or ability to cover its fixed charges such as debt payments, interest expenses, and leases expenses. Financial institutions will evaluate this ratio for purposes of credit risk.

(j) “Fund unit” means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.

(o) “Government service” means any area or activity of the Nation that is not expected to create revenue for the Nation and not expected to make a profit at any time.

~~(k) “General reserve fund” means the Nation’s main operating fund which is used to account for all financial resources not accounted for in other funds.~~

~~(l) “GTC allocations” means expenditures directed by the General Tribal Council as required payments and/or benefits to the Nation’s membership and are supported by either a General Tribal Council or Oneida Business Committee resolution.~~

(mp) “Line item” means the specific account within a fund unit’s budget or category that expenditures are charged to.

(nq) “Manager” means the person in charge of directing, controlling, and administering the activities of a fund unit.

(or) “Nation” means the Oneida Nation.

~~(p) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and enforce this law.~~

(s) “Secretary” means the Oneida Nation Secretary, or their designee at their discretion.

(qt) “Treasurer” means the elected Oneida Nation Treasurer, or his or her their designee at their discretion.

121.4. Strategic Planning Authority and Responsibilities

121.4-1. Oneida Business Committee. The Oneida Business Committee shall:

(a) oversee the development of the Nation’s budget;

(b) oversee the implementation of the Nation's budget;
 (c) develop priorities, a strategic plan, or broad goals to assist in guiding the budget; and
 (d) exercise the authority provided in Article IV, Section 1, of the Constitution and Bylaws of the Oneida Nation, as delegated to the Oneida Business Committee by the General Tribal Council. *Triennial Strategic Plan.* Prior to December 1st of each year, the Oneida Business Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan which includes, but is not limited to:

(a) Major policy and budgetary goals for the Nation, both long and short term;
(b) Specific strategies and planned actions for achieving each goal; and
(c) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

(1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and

(2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-2. *Treasurer.* In accordance with the Constitution and Bylaws of the Oneida Nation, the Nation's Treasurer shall:

(a) accept, receive, receipt for, preserve and safeguard all funds in the custody of the Nation, whether they be funds of the Nation or special funds for which the Nation is acting as trustee or custodian;

(b) deposit all funds in such depository as the Nation shall direct and shall make and preserve a faithful record of such funds;

(c) submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee or the General Tribal Council at:

(1) the annual General Tribal Council meeting;

(2) the semi-annual General Tribal Council meeting; and

(3) other such times as may be directed by the Oneida Business Committee or the General Tribal Council; and

(d) present the proposed draft budget to the General Tribal Council at the annual budget meeting. *Fund Units' Contributions to the Triennial Strategic Plan.* Managers shall

annually develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns with the triennial strategic plan established by the Oneida Business Committee pursuant to 121.4 1. Managers shall submit the fund unit's triennial strategic plan to the CFO when the fund unit's budget is due and, at a minimum, shall include the following in the plan:

(a) A statement of the fund unit's mission;

(b) Specific goals including a description of the fund unit's strategies as part of its service group provided in 121.5 3(e) which aligns with the goals established in the Nation's triennial strategic plan;

(c) Specific strategies for achieving each of the fund unit's goals; and

(d) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

(1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and

(2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-3. *Chief Financial Officer.* The CFO shall:

- (a) ensure the Nation's budget is properly implemented;
- (b) provide managers with monthly revenue and expense reports;
- (c) assist with the submission and presentation of the Treasurer's report to the Oneida Business Committee, which shall specifically include any monthly variances that are either:
 - (1) a difference of three percent (3%) or more from the adopted annual budget; or
 - (2) fifty thousand dollars (\$50,000) or more in total;
- (d) provide the Oneida Business Committee with information and reports as requested;
- (e) present the Treasurer's report and hold financial condition meetings with the Nation's management on a minimum of a quarterly basis; and
- (f) inform the appropriate Executive Manager of any fund unit which does not follow the budget development process guidelines or deadlines as set forth by the Treasurer.

~~*Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, executive managers and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation. The Oneida Business Committee shall approve, by resolution, the budget contingency plan and any amendments thereto. The Oneida Business Committee is responsible for the implementation of the budget contingency plan, provided that such implementation is predicated on the Oneida Business Committee's determination that the Nation is under extreme financial distress. For the purposes of this section, extreme financial distress includes, but is not limited to, natural or human-made disasters, United States Government shutdown, Tribal shutdown (which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year) and economic downturns.~~

~~(a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business Committee may require stabilization funds, reductions of expenditures, furloughs and other cost saving tools provided that such tools are in compliance with the Nation's laws, specifically the Nation's employment laws, rules and policies.~~

~~(b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a Permanent Executive Contingency account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress. The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required in the Permanent Executive Contingency account. The Treasurer shall set aside business continuity funds in the Permanent Executive Contingency account until the established level has been achieved. Funds in the Permanent Executive Contingency may only be used for the following purposes and only to the extent that alternative funding sources are unavailable:~~

- (1) Payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) Employee payroll, including all applicable taxes;
- (3) Payments to vendors for gaming and retail;
- (4) Payments to vendors for governmental operations;
- (5) Payments to any other debt; and
- (6) To sustain any of the Nation's other operations during implementation of the budget contingency plan.

~~(e) *Grant Funds.* Grant funds are exempt from requirements of the budget contingency plan and any cost containment initiatives as such funding is not reliant on Tribal contributions. Grant funds shall be spent according to any non-negotiable grant requirements and guidelines of the granting agency to include purchases, travel, training, hiring grant required positions and any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.~~

121.4-4. Managers. Managers shall:

~~(a) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant to this law;~~

~~(b) Report to the CFO and their relevant Executive Manager explanations and corrective actions for any monthly variance that is either:~~

~~(1) a difference of three percent (3%) or more from the adopted annual budget; or~~

~~(2) fifty thousand dollars (\$50,000) or more in total;~~

~~(c) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month; and~~

~~(d) submit a budget for their fund unit in accordance with the budget schedule and guidelines as adopted by the Oneida Business Committee.~~

121.5. Budget Process

~~121.5-1. *General.* The Nation shall develop, adopt, and manage an annual budget. All revenues and expenditures of the Nation shall be in accordance with the annual budget adopted by the General Tribal Council. In creating the budget to present to the General Tribal Council for consideration, the Oneida Business Committee, executive managers and managers shall follow the processes provided in this law. The Oneida Business Committee may alter the deadlines provided in this law only upon a showing of good cause, provided that, the Oneida Business Committee shall approve any such alterations by resolution.~~

~~(a) The Nation's budget shall be a balanced budget and not propose to spend more funds than are reasonably expected to become available to the Nation during that fiscal year.~~

~~(1) Underwriting debt resources or the utilization of existing debt instruments shall be expressly prohibited from use to balance the Nation's annual budget.~~

~~(b) The budget shall align with any strategic plan, broad goals, or priorities developed and adopted by the Oneida Business Committee on behalf of the Nation.~~

~~(c) The Nation's corporate entities shall not be included in the Nation's budget.~~

~~121.5-2. *Content of the Budget.* The Nation's budget shall include the following information:~~

~~(a) Estimated revenues to be received from all sources;~~

~~(b) The individual budgets of each fund unit;~~

~~(c) A description of each line item within each fund unit's budget;~~

~~(d) The estimated expenditures by each fund unit; and~~

~~(e) Summary of employment position counts including prior year, current year, and budgeted year.~~

~~*Community Input Budget Meeting(s).* The Treasurer's office shall schedule, at a minimum, one (1) community input budget meeting(s) prior to December 1st of each year. At the community input budget meeting(s), the Treasurer shall afford community members an opportunity to provide input as to what should be included in the upcoming fiscal year budget. Any fund units that plan to request forecast variations for the upcoming budget shall present the need and anticipated dollar amount of the requested forecast variation. For the purposes of this section, a forecast variation is~~

a fund unit's requested deviation from the performance targets the fund unit submitted pursuant to 121.4-2(d)(2).

~~(a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded and transcribed.~~

~~(b) The CFO shall provide recommendations as to any forecast variations requested by fund units.~~

~~(c) The CFO and any relevant managers shall provide responses and/or recommendations to all comments and considerations presented by community members.~~

~~(d) The Treasurer shall work with the CFO to place a community budget input meeting packet on the Oneida Business Committee agenda no later than the last Oneida Business Committee Meeting in January. At a minimum, the packet is required to include:~~

~~(1) The community input budget meeting(s) transcript(s);~~

~~(2) Any applicable fund unit's requested forecast variations; and~~

~~(3) Responses and/or recommendations by the CFO and any relevant managers regarding requests for forecast variations and community members' comments and considerations related to forecast variations.~~

121.5-3. *Fund Categories.* The Nation's budget shall include, but not be limited to, the following categories of fund accounts:

(a) *General Fund.* The General Fund account is the Nation's main operating fund which is used to account for all financial resources not accounted for in other funds.

(b) *Permanent Executive Contingency Fund.* The Permanent Executive Contingency Fund account is used by the Nation to prevent default on debt and to sustain operations during times of extreme financial distress.

(c) *Grant Reserve Fund.* The Grant Reserve Fund account is used by the Nation to pre-fund the expenditures of grants upon receipt.

~~*Priority List Established by the Oneida Business Committee.* The Oneida Business Committee shall review the community input budget meeting packet and shall hold work meetings to create a priority list.~~

~~(a) The Oneida Business Committee shall establish the priority list by placing the following services provided by the Nation in chronological order with the lowest number having the highest priority. The order of the following service groups provided below has no relation to the service groups' anticipated and/or required placement within the Oneida Business Committee's priority list; the Oneida Business Committee's priority list may vary from year to year based on the needs of the Nation.~~

~~(1) Protection and Preservation of Natural Resources~~

~~(2) Protection and Preservation of Oneida Culture and Language~~

~~(3) Education and Literacy~~

~~(4) Health Care~~

~~(5) Economic Enterprises~~

~~(6) Building and Property Maintenance~~

~~(7) Human Services~~

~~(8) Public Safety~~

~~(9) Housing~~

~~(10) Utilities, Wells, Wastewater and Septic~~

~~(11) Planning, Zoning and Development~~

~~(12) Membership Administration~~

~~(13) Government Administration~~

~~(b) The Oneida Business Committee shall approve the priority list by resolution no later than the last meeting in February.~~

~~(c) The CFO shall maintain a list which places each fund unit into a corresponding service group.~~

121.5-4. Budget Adoption Procedure. The Nation shall develop and adopt its budget according to the following procedures:

(a) Budget Schedule and Guidelines. The Treasurer shall develop the necessary guidelines, including specific timelines and deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. The Treasurer shall submit the guidelines to the Oneida Business Committee for review and approval through the adoption of a resolution.

(1) The budget schedule and guidelines shall include at least one (1) opportunity for community input from the Nation's membership on what should be included in the upcoming fiscal year budget.

(2) Each fund unit shall be responsible for complying with the budget schedule and guidelines to submit a proposed budget to the Treasurer. The Finance Administration shall not submit any budget on behalf of a fund unit unless granted express permission by the Oneida Business Committee.

(3) The Oneida Business Committee shall set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval.

(b) Annual Proposed Budgets. The Treasurer shall receive, review, and compile the proposed budgets from all the fund units into the Nation's draft budget. The Treasurer shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's strategic plan, broad goals, and budget strategy.

(1) Notification of Budget Increase or Decrease. The Treasurer shall identify in the budget guidelines a percentage of an increase or decrease in a fund unit's budget from the prior year budget that is required to be noticed to the Oneida Business Committee. The Treasurer shall notify the Oneida Business Committee of any fund units whose proposed budget increased or decreased by this percentage.

(c) Final Draft Budget. The Oneida Business Committee shall work with the Treasurer, CFO, and managers to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council.

(d) Community Meetings. Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

(e) Budget Adoption. The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. The General Tribal Council shall be responsible for adopting the Nation's budget.

(1) Continuing Budget Resolution. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may

adopt a continuing budget resolution(s) for a period of time not to exceed three (3) months, until such time as a budget is adopted by the General Tribal Council. If the General Tribal Council does not adopt a budget within three (3) months of the adoption of the continuing budget resolution, then the Oneida Business Committee shall adopt the Nation's budget.

(2) Emergency Budget Adoption. In the event that the Nation proclaims an emergency, in accordance with the Emergency Management law, that stays in effect for at least one (1) month and prevents the presentation to and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget.

~~Annual Proposed Budgets. The CFO shall develop the necessary guidelines, including specific deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall include in the guidelines the exact amount that each service group's cumulative budget is required to be increased/decreased in accordance with its placement on the priority list. The CFO shall submit the guidelines, as approved by the Treasurer, to the Oneida Business Committee for review in accordance with the deadline as set by the Oneida Business Committee. The Oneida Business Committee may revise the guidelines as it deems necessary and shall approve a set of budgetary guidelines within thirty (30) calendar days of the date the budgetary guidelines proposed by the CFO were received.~~

~~(a) In accordance with the approved budgetary guidelines, fund units offering like services shall meet together to review each fund unit's budget and discuss strategies for attaining compliance with the approved budgetary guidelines. Each service group shall submit one (1) draft budget which contains each fund unit's individual proposed budget and demonstrates cumulative compliance with the approved budgetary guidelines.~~

~~(b) The CFO shall receive, review and compile the proposed budgets into the Nation's draft budget which the CFO shall present to the Oneida Business Committee no later than the last Oneida Business Committee meeting in May. The CFO may not alter any proposed budgets until such budgets have been reviewed by the Oneida Business Committee.~~

~~(1) The CFO shall return any service group's draft budget that is in non-compliance with the approved budgetary guidelines within ten (10) business days of the date the budget was submitted to the CFO.~~

~~(2) Upon return, the CFO shall notice the service group of the amount of its non-compliance and provide the service group with a deadline for a compliant resubmission.~~

~~(3) Any service group's budget that remains in non-compliance upon the expiration of the deadline provided by the CFO shall be included in the draft budget submitted to the Oneida Business Committee noting the dollar amount of the service group's non-compliance. A service group's continued non-compliance may result in employee discipline according to the Nation's laws, rules and policies governing employment.~~

121.5-5. Amendments to the Nation's Budget. After the budget is adopted, amendments of the budget shall not be permitted unless it is necessary to avoid a budget deficit. The Treasurer and CFO shall identify when forecasted revenue and forecasted expenses are impacted in a manner which creates a deficit for the current fiscal year. The CFO shall provide the Oneida Business Committee a written fiscal analysis and any input on the potential budget amendment. The Oneida

Business Committee shall be responsible for adopting an amendment to the budget through resolution of the Nation. The Oneida Business Committee shall present notification of the budget amendment at the next available General Tribal Council meeting.

~~Content of Budget.~~ The CFO shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's spending priorities and budget strategy. The Nation's draft budget shall include, but is not limited to:

- (a) ~~Estimated revenues to be received from all sources for the year which the budget covers;~~
- (b) ~~The individual budgets of each fund unit;~~
- (c) ~~A description of each line item within each fund unit's budget;~~
- (d) ~~The estimated expenditures by each fund unit; and~~
- (e) ~~Each fund unit's strategic plan showing alignment with the Nation's goals.~~

~~121.5-6. Review of Draft Budget.~~ In the month of May, the CFO shall meet with the Oneida Business Committee to review the draft budget and provide any recommendations for modifications.

(a) ~~Following the Oneida Business Committee's review of the draft budget with the CFO, the Oneida Business Committee shall schedule meetings with managers of each fund unit for which the Oneida Business Committee is considering altering the fund unit's proposed budget.~~

(b) ~~The Oneida Business Committee shall complete all meetings with fund unit managers required by this section by the end of June each year.~~

~~121.5-7. Final Draft Budget.~~ The Oneida Business Committee shall work with fund unit managers and the CFO to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council by the end of July each year.

~~121.5-8. Community Meetings.~~ Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

~~121.5-9. Budget Adoption.~~ The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted.

121.6. Capital Improvements Expenditures and Assets

~~121.6-1. Authority to Expend Funds.~~ The Oneida Business Committee shall have the authority to expend appropriated funds in accordance with the Nation's adopted budget pursuant to the Procurement Rule Handbook developed by the Purchasing Department. The authority to expend funds is then necessarily delegated to other managers, including Executive Managers of the Nation who manage budgets pursuant to their job descriptions based on the Procurement Rule Handbook manual. Capital Improvement Plan for Government Services. The Oneida Business Committee shall develop and the General Tribal Council shall approve a capital improvement plan for government services and shall reassess the plan once every five (5) years. The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed or that have been modified at the time of the reassessment.

121.6-2. *Procurement Rule Handbook* The Purchasing Department is delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop a Procurement Rule Handbook which provides the sign-off process and authorities required to expend funds on behalf of the Nation. ~~Capital Improvement Plan for Enterprises. Capital improvement plans for enterprises may be brought forward as needed in accordance with the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly create, provided that the rules shall include a provision that the Oneida Business Committee shall approve all capital improvement plans.~~

121.6-3. *Fees and Charges.* A program or service of the Nation funded through Tribal contribution may charge fees for their services to cover operational costs.

(a) Before charging fees for services, a program or service shall first determine the full cost of providing the program or service. The full cost of providing a program or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation.

(b) Fees and charges may cover the full cost of service or goods whenever such fee or charge would not present an undue financial burden to the recipient.

(c) Programs and services charging fees may offer fee waivers, provided that the program or service has developed a standard operating procedure which outlines fee waiver eligibility and requirements. ~~Capital Improvement Plan Implementation. Capital Improvement plans shall be implemented, contingent on available funding capacity, using the capital improvement rules.~~

121.6-4. *Unbudgeted Expenditures.*

(a) *Approval of Unbudgeted Expenditures.* A fund unit shall not make an unbudgeted expenditure unless approval is granted by the Oneida Business Committee. The CFO shall provide the Oneida Business Committee a written fiscal analysis and any input on the potential unbudgeted expenditure. The Oneida Business Committee shall approve any unbudgeted expenditure through the adoption of a resolution prior to the expenditure being made by a fund unit.

(b) *Notification of Unbudgeted Expenditures.* The Oneida Business Committee shall set through resolution a threshold amount for unbudgeted expenditures that require notification by the Oneida Business Committee to the General Tribal Council at the next available General Tribal Council meeting.

(c) *Unbudgeted Supplemental Funding.* In the event that the Nation receives any supplemental or emergency funding of two hundred and fifty thousand dollars (\$250,000) or more, the Oneida Business Committee shall develop and adopt, through resolution, a spending plan to guide expenditures of the supplemental funding in accordance with any provided guidance for the supplemental funding and audit compliance.

121.6-5. *Obligated Future Expenditures.* Notwithstanding an approved multi-year contract, no fund unit shall obligate the Nation to make any future expenditures beyond the current budget year unless the fund unit identifies, and the Oneida Business Committee approves through the adoption of a resolution, the source and extent of any future funds that are recommended to be held in reserve to meet that future obligation.

121.6-6. *Unexpended Funds.*

(a) *Unexpended Capital Improvement Funds.* Unexpended capital improvement funds shall carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted until the project is

complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the ~~G~~eneral ~~F~~und.

(b) Unexpended Capital Expenditure Funds. The ~~Treasurer~~ shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be returned to the General Fund.

121.6-7. Capital Contributions. Any capital contributions made by the Nation shall be identified in the annual budget.

(a) Any reassignment of a loan provided by the Nation into a capital contribution shall be noticed to the General Tribal Council.

121.6-8. Assets of the Nation shall not be divested, or borrowed against, to balance the annual budget.

121.6-9. Capital Improvements.

(a) Capital Improvement Plan for Government Services. The Oneida Business Committee shall develop, and the General Tribal Council shall approve, a capital improvement plan for government services.

(1) The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities.

(2) The capital improvement plan for government services shall be reassessed once every five (5) years. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed or that have been modified at the time of the reassessment.

(b) Capital Improvement Plan for Enterprises. Capital improvement plans for enterprises may be brought forward as needed, provided that the Oneida Business Committee shall approve all capital improvement plans for enterprises.

(c) Capital Improvement Plan Implementation. Capital improvement plans ~~for government services and enterprises~~ shall be implemented, contingent on available funding capacity.

121.7. Appropriation of the Nation's Funds ~~Grants~~

121.7-1. Expending Grant Funds. Grant funds shall be ~~expended~~ according to any non-negotiable grant requirements and guidelines of the granting agency.

(a) Grant funds may be utilized for, but not limited to, the following:

(1) purchases;

(2) travel;

(3) training;

(4) hiring grant required positions;

(5) incentives and retention efforts; and

(6) any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.

(b) Grant funds may be utilized for an expenditure even when other policies of the Nation do not allow for Tribal contribution to make that same expenditure, if only grant funds are utilized for the expenditure and all requirements or obligations of the grant are met. Provided that, grant funds may be subject to the requirements of the budget contingency plan and any cost containment initiatives adopted by the Oneida Business Committee.
Unexpended Capital Improvement Funds. ~~Unless the fund unit qualifies for an exception~~

~~as provided in the capital improvement rules, unexpended capital improvement funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted until the project is complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the general fund to be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.~~

121.7-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which the Nation's funds have also been appropriated, those grant funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed to make up an otherwise shortfall in the overall fund unit budget or there is a restriction on the grant funds that provide otherwise. ~~*Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.~~

121.7-3. *Grant Reporting.* At the time of submission of proposed annual budgets, any fund unit which receives grant funding shall submit a status report of the grant funding received to the Oneida Business Committee. The status report shall include, but not be limited to:

- (a) information on the progress of the utilization of the grant funds;
- (b) the number of employees the grant funding supports fully or partially; and
- (c) compliance with obligations of the grant funding.

121.7-4. *Grant Reserve Fund Account.* The Oneida Business Committee shall maintain a Grant Reserve Fund account within the ownership investment report to be used to pre-fund the expenditures of grants upon receipt. The Grant Reserve Fund account shall be an obligated fund, that is fully funded with separately identified cash resources.

(a) The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of funds required in the Grant Reserve Fund account relative to the scale of grant dollars we receive on an annual basis.

(b) The Treasurer shall set aside funds within the budget in the Grant Reserve Fund account until the established level has been achieved.

121.7-5. *Grant Funded Positions.* If the grant funding for a fully grant funded position is eliminated, then the position shall be eliminated. To transition a position from grant funding to being funded through the Nation's budget, a manager shall follow the standard procedure for seeking the development and approval of a new position in the Nation's annual budget and labor allocations.

121.8. ~~Budget Authority Debts~~

121.8-1. *General.* The acquisition of debt by the Nation shall be processed in accordance with sound fiscal diligence. The Nation shall comply with all relevant federal and state banking laws, rules, and policies applicable to the credit agreement.

(a) Any debt instrument utilized by the Nation shall not exceed the life of what is being encumbered. ~~*Authority to Expend Funds.* The Treasurer's authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. This authority is necessarily delegated to other managers, including executive managers, of the Nation who manage the budgets, pursuant to their job~~

~~descriptions based on the procurement manual rules developed by the Purchasing Department;~~

121.8-2. Acquisition of Debt. Any debt underwritten by the Nation for ten million dollars (\$10,000,000) or more shall be noticed to the General Tribal Council at the next available meeting prior to the execution of the credit agreement encumbering all pledges of repayment.

(a) ~~If emergency circumstances exist which prevents the notice of the acquisition of debt to the General Tribal Council, the Oneida Business Committee may proceed with the acquisition of debt.~~ Exhaustion of Non-Tribal Funds.—When grant funds provide for forward funding as applicable to a function for which the Nation's funds have also been appropriated, those grant funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed to make up an otherwise shortfall in the overall fund unit budget or there is a restriction on the grant funds that provide otherwise.

121.8-3. Use of Debt. Credit proceeds may be utilized for project capital, general use, financing of equity, and all unspecified uses. Compliance with debt covenants is required to avoid credit default. ~~In addition to the authority and responsibilities provided elsewhere in this law, the following positions and fund units shall have the authority and responsibilities as outlined below:~~

~~(a) Oneida Business Committee.~~—Once the Nation's annual budget is adopted by the General Tribal Council, the authority of the Oneida Business Committee is limited to budget oversight except as otherwise provided in this law. However, these limitations do not prevent the Oneida Business Committee, with input from the CFO, from taking necessary action, on an emergency basis and within the scope of its authority, to protect and safeguard the resources and general welfare of the Nation and ensure compliance with applicable laws, regulations and requirements. The OBC shall ensure that the CFO performs the duties and responsibilities as assigned under this law.

~~(b) Treasurer.~~ In addition to the Treasurer's Constitutional responsibilities, the Nation's Treasurer shall:

~~(1) Submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council at:~~

~~(A) The annual General Tribal Council meeting;~~

~~(B) The semi-annual General Tribal Council meeting; and~~

~~(C) Other such times as may be directed by the Oneida Business Committee and/or the General Tribal Council.~~

~~(2) Present the proposed draft budget to the General Tribal Council at the annual budget meeting as required by section 121.5-9.~~

~~(c) Chief Financial Officer.~~ Once the Nation's budget is properly adopted, the CFO shall ensure that it is properly implemented. The CFO shall:

~~(1) Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;~~

~~(2) Submit, to the Oneida Business Committee, a written report of any monthly variances that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and~~

~~(3) Conduct financial condition meetings with the Nation's management on a quarterly basis.~~

~~(d) Managers.~~ Managers of each business unit shall:

~~(1) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant this law;~~

~~(2) Report to the CFO explanations and corrective actions for any monthly variance that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and~~

~~(3) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month.~~

121.8-4. Credit Ratios. Maintaining fiscally responsible prudent credit ratios is consistent with effective budget management and financial control.

(a) Debt Service Coverage Ratio. The Debt Service Coverage Ratio shall not exceed the acceptable range as defined by low-risk debt financing options at the specific financial institution.

(b) Fixed Charge Coverage Ratio. The Fixed Charge Coverage Ratio shall be maintained at the acceptable range as defined by low-risk debt financing options at the specific financial institution.

121.8-5. Corporate Debt. The Nation shall not be obligated to any debt obligations of its corporate entities.

121.9. ~~Budget Transfers; Amendments~~ Employment and Labor Allocations

121.9-1. Employment Cap. The Treasurer and CFO shall identify a maximum number of full-time equivalent (FTE) employees to be employed by the Nation. The Oneida Business Committee shall have the authority to approve this employment cap, and any amendments thereto, through the adoption of a resolution. The employment cap shall be reviewed annually by the Oneida Business Committee.

(a) Employment positions that are fully funded through grants shall not be included in the employment cap.

(b) The Nation shall not exceed the number of FTE employees identified in the employment cap. ~~Budget Transfers.~~ After the budget is adopted, transfer of funds within the budget is not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the approved budget as required to accurately reflect the amount of grant funding actually received.

121.9-2. Labor Allocations List. The Treasurer, CFO, Executive Managers, and the Executive Human Resources Director shall utilize the Nation's employment cap to develop a labor allocations list. The labor allocations list shall identify the number of FTE employees each employment area of the Nation is allocated. The Oneida Business Committee shall have the authority to adopt the labor allocation list, and any amendments thereto, through the adoption of a resolution. The Oneida Business Committee shall review the labor allocations list on an annual basis.

(a) The total number of FTE employees identified in the labor allocations list shall not exceed the Nation's employment cap.

(b) The Treasurer, CFO, Executive Managers, and Executive Human Resources Director shall develop a standard operating procedure which identifies a process for the consideration of requests to revise the labor allocations list. The Oneida Business Committee shall approve this standard operating procedure, and any amendments thereto, through the adoption of a resolution.

~~Budget Amendments.~~ After the budget is adopted, amendments of the budget are not permitted except as provided in section 121.8-3(a).

121.9-3. *Unbudgeted Positions.* Any position which has not been specifically budgeted for and included in the labor allocation list shall be prohibited. Budgeted labor dollars and approved positions shall not be transferrable in any form.

(a) *Exception.* The Oneida Business Committee may authorize an unbudgeted position for a fund unit. The CFO shall provide the Oneida Business Committee a written fiscal analysis and any input on the potential unbudgeted position. The Oneida Business Committee shall authorize the unbudgeted position through the adoption of a resolution.

121.10. Reporting Budget Contingency Planning

121.10-1. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, Executive Managers, and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation.

(a) *Extreme financial distress includes, but is not limited to:*

- (1) *natural or human-made disasters;*
- (2) *United States Government shutdown;*
- (3) *emergency proclamations; and*
- (4) *economic downturns.*

(b) *The Oneida Business Committee shall approve the budget contingency plan, and any amendments thereto, through the adoption of a resolution. Monthly Reporting.* The CFO shall provide copies of the monthly Treasurer's reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee Meeting held for the acceptance of such reports.

121.10-2. *Cost Saving Tools.* As part of the budget contingency plan, the Oneida Business Committee may require the use of cost saving tools, provided that the use of such tools complies with all laws of the Nation. Cost saving tools may include, but are not limited to, the use of the following:

- (a) *stabilization funds;*
- (b) *reductions of expenditures;*
- (c) *furloughs; and*
- (d) *layoffs. Audits.* The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected fund units or of fund units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each fund unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

121.10-3. *When the Oneida Business Committee determines that the Nation is under extreme financial distress, the Oneida Business Committee shall be responsible for implementing the budget contingency plan.*

121.10-4. *Permanent Executive Contingency Fund Account.* The Oneida Business Committee shall maintain a Permanent Executive Contingency Fund account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress. The Permanent Executive Contingency Fund account shall be a restricted fund.

(a) The Permanent Executive Contingency Fund account shall consist of a minimum reserve of one (1) year of operating expenses to ensure continuity of business for the Nation.

(b) The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve through the adoption of a resolution, the percentage of the annual budget that shall be set aside in the Permanent Executive Contingency Fund account until the established level has been achieved.

(c) Funds in the Permanent Executive Contingency Fund account may only be used when the Oneida Business Committee has determined that the Nation is under extreme financial distress for the following purposes and only to the extent that alternative funding sources are unavailable:

(1) Ppayments to notes payable to debt service, both principal and interest, and applicable service fees;

(2) Eemployee payroll, including all applicable taxes;

(3) Ppayments to vendors for gaming and retail;

(4) Ppayments to vendors for governmental operations;

(5) Ppayments to any other debt; and

(6) Tto sustain any of the Nation's other operations during implementation of the budget contingency plan.

121.11. ~~Authorizations and Signatures~~ Reporting

121.11-1. Monthly Reporting. The Treasurer shall provide monthly reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with the Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee meeting held for the acceptance of such reports.

(a) The Treasurer's monthly reports shall include revenue and expense summaries.

~~General. The procurement manual rules developed by the Purchasing Department shall provide the sign-off process and authorities required to expend funds on behalf of the Nation.~~

121.11-2. Annual and Semi-Annual Reporting to the General Tribal Council. The Treasurer shall report on all receipts and expenditures and the amount and nature of all funds in their possession and custody, at the annual and semi-annual General Tribal Council meetings, and at such other times as requested by the General Tribal Council or the Oneida Business Committee.

(a) The Treasurer reports shall include an independently audited annual financial statement that provides the status or conclusion of all the receipts and debts in possession of the Treasurer including, but not limited to, all corporations owned in full or in part by the Nation.

~~Fees and Charges. Managers of programs and services requiring Tribal contribution that desire to charge fees for their services shall determine the full cost of providing the program and/or service and, only then, may charge fees to cover operational costs. The full cost of providing a program and/or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service and/or goods whenever such fee or charge would not present an undue financial burden to recipient. Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.~~

121.11-3. Audits. The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Nation's Audit law, the Financial

Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected fund units or of fund units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each fund unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

121.12. Enforcement

121.12-1. *Compliance and Enforcement.* All employees and officials of the Nation shall comply with and enforce this law to the greatest extent possible.

(a) The Executive Managers shall notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. A list of any fund units of an elected entity which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position.

121.12-3. *Civil ~~and/or~~ Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil ~~and/or~~ criminal charges under applicable law. Violations of applicable federal or state civil ~~and/or~~ criminal laws, or any laws of the Nation, may be pursued in a court having jurisdiction over any such matter.

End.

Adopted-BC-02-08-17-C

Emergency Amended – BC-11-24-20-E

Emergency Amended – BC-05-12-21-C

Emergency Extension – BC-11-10-21-B

Amended – BC- - - -

Title 1. Government and Finances – Chapter 121

Twahwistatye'nítha?

We have a certain amount of money

BUDGET AND FINANCES

121.1. Purpose and Policy
121.2. Adoption, Amendment, Repeal
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121.4. Authority and Responsibilities
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121.7. Grants
121.8. Debts
121.9. Employment and Labor Allocations
121.10. Budget Contingency Planning
121.11. Reporting
121.12. Enforcement

121.1. Purpose and Policy

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and the Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval, and to establish financial policies and procedures for the Nation which:

- (a) institutionalize best practices in financial management to guide decision makers in making informed decisions regarding the provision of services, implementation of business plans for enterprises, investments, and capital assets;
- (b) provide a long term financial prospective and strategic intent, linking budget allocations to organizational goals, as well as providing fiscal controls and accountability for results and outcomes;
- (c) identify and communicate to the membership of the Nation spending decisions for the government function, grant obligations, enterprises, membership mandates, capital expenditures, technology projects, and capital improvement projects;
- (d) establish a framework for effective financial risk management; and
- (e) encourage participation by the Nation's membership.

121.1-2. *Policy.* It is the policy of the Nation to rely on balanced-based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement. The Nation shall use Generally Accepted Accounting Principles (GAAP), established by the Financial Accounting Standards Board, and the Governmental Accounting Standards Board (GASB) in accounting and reporting for the financial activities of the various entities of the Nation, unless they conflict with applicable legal requirements.

121.2. Adoption, Amendment, Repeal

121.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-08-17-C, and amended by resolution BC-__-__-__.

121.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. 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.

121.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law amends or repeals the

requirements of resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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.

(a) “Balanced budget” means that the cost of current expenses and service provisions is equal to the forecasted current revenue sources.

(b) “Capital contribution” means an act of giving money or assets to a company or organization.

(c) “Capital expenditure” means any non-recurring and non-physical improvement as follows:

(1) Any item with a cost of five thousand dollars (\$5,000) or more and a useful life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000), but the total purchase price for all of the items is ten thousand dollars (\$10,000) or more.

(d) “Capital improvement” means a non-recurring expenditure for physical improvements, including costs for:

(1) acquisition of existing buildings, land, or interests in land;

(A) Acquisition of existing buildings and land completed by the Oneida Land Commission are not included in this definition.

(2) construction of new buildings or other structures, including additions and major alterations;

(3) acquisition of fixed equipment;

(4) landscaping;

(5) physical infrastructure; and

(6) similar expenditures with a cost of five thousand dollars (\$5,000.00) or more and a useful life of one (1) year or more.

(e) “CFO” means the Nation’s Chief Financial Officer, or their designee at their discretion.

(f) “Debt” means the secured or unsecured obligations owed by the Nation.

(g) “Debt Service Coverage Ratio” means a measurement of creditors available cash flow to pay debt obligations. This ratio evaluates if an entity has income capacity to service debts.

(h) “Enterprise” means any area or activity of the Nation that is engaged in for the business of profit.

(i) “Executive Manager” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee who is responsible for a department or division of the Nation, as identified by the Oneida Business Committee through the adoption of a resolution.

(j) “Expenditure report” means a financial report which includes, but is not limited to, a statement of cash flows, revenues, costs and expenses, assets, liabilities, and a statement of financial position.

(k) “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.

(l) “Fiscal year” means the one (1) year period each year from October 1st to September 30th.

(m) “Fixed Charge Coverage Ratio” means a measurement of a creditors capacity of earnings level or ability to cover its fixed charges such as debt payments, interest expenses, and leases expenses. Financial institutions will evaluate this ratio for purposes of credit risk.

(n) “Fund unit” means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.

(o) “Government service” means any area or activity of the Nation that is not expected to create revenue for the Nation and not expected to make a profit at any time.

(p) “Line item” means the specific account within a fund unit’s budget or category that expenditures are charged to.

(q) “Manager” means the person in charge of directing, controlling, and administering the activities of a fund unit.

(r) “Nation” means the Oneida Nation.

(s) “Secretary” means the Oneida Nation Secretary, or their designee at their discretion.

(t) “Treasurer” means the Oneida Nation Treasurer, or their designee at their discretion.

121.4. Authority and Responsibilities

121.4-1. *Oneida Business Committee*. The Oneida Business Committee shall:

- (a) oversee the development of the Nation’s budget;
- (b) oversee the implementation of the Nation’s budget;
- (c) develop priorities, a strategic plan, or broad goals to assist in guiding the budget; and
- (d) exercise the authority provided in Article IV, Section 1, of the Constitution and Bylaws of the Oneida Nation, as delegated to the Oneida Business Committee by the General Tribal Council.

121.4-2. *Treasurer*. In accordance with the Constitution and Bylaws of the Oneida Nation, the Nation’s Treasurer shall:

- (a) accept, receive, receipt for, preserve and safeguard all funds in the custody of the Nation, whether they be funds of the Nation or special funds for which the Nation is acting as trustee or custodian;
- (b) deposit all funds in such depository as the Nation shall direct and shall make and preserve a faithful record of such funds;
- (c) submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee or the General Tribal Council at:
 - (1) the annual General Tribal Council meeting;
 - (2) the semi-annual General Tribal Council meeting; and
 - (3) other such times as may be directed by the Oneida Business Committee or the General Tribal Council; and
- (d) present the proposed draft budget to the General Tribal Council at the annual budget meeting.

121.4-3. *Chief Financial Officer*. The CFO shall:

- (a) ensure the Nation's budget is properly implemented;
- (b) provide managers with monthly revenue and expense reports;
- (c) assist with the submission and presentation of the Treasurer's report to the Oneida Business Committee, which shall specifically include any monthly variances that are either:
 - (1) a difference of three percent (3%) or more from the adopted annual budget; or
 - (2) fifty thousand dollars (\$50,000) or more in total;
- (d) provide the Oneida Business Committee with information and reports as requested;
- (e) present the Treasurer's report and hold financial condition meetings with the Nation's management on a minimum of a quarterly basis; and
- (f) inform the appropriate Executive Manager of any fund unit which does not follow the budget development process guidelines or deadlines as set forth by the Treasurer.

121.4-4. *Managers*. Managers shall:

- (a) ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant to this law;
- (b) report to the CFO and their relevant Executive Manager explanations and corrective actions for any monthly variance that is either:
 - (1) a difference of three percent (3%) or more from the adopted annual budget; or
 - (2) fifty thousand dollars (\$50,000) or more in total;
- (c) submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month; and
- (d) submit a budget for their fund unit in accordance with the budget schedule and guidelines as adopted by the Oneida Business Committee.

121.5. Budget

121.5-1. The Nation shall develop, adopt, and manage an annual budget. All revenues and expenditures of the Nation shall be in accordance with the annual budget.

- (a) The Nation's budget shall be a balanced budget and not propose to spend more funds than are reasonably expected to become available to the Nation during that fiscal year.
 - (1) Underwriting debt resources or the utilization of existing debt instruments shall be expressly prohibited from use to balance the Nation's annual budget.
- (b) The budget shall align with any strategic plan, broad goals, or priorities developed and adopted by the Oneida Business Committee on behalf of the Nation.
- (c) The Nation's corporate entities shall not be included in the Nation's budget.

121.5-2. *Content of the Budget*. The Nation's budget shall include the following information:

- (a) Estimated revenues to be received from all sources;
- (b) The individual budgets of each fund unit;
- (c) A description of each line item within each fund unit's budget;
- (d) The estimated expenditures by each fund unit; and
- (e) Summary of employment position counts including prior year, current year, and budgeted year.

121.5-3. *Fund Categories*. The Nation's budget shall include, but not be limited to, the following categories of fund accounts:

- (a) *General Fund*. The General Fund account is the Nation's main operating fund which is used to account for all financial resources not accounted for in other funds.

(b) *Permanent Executive Contingency Fund*. The Permanent Executive Contingency Fund account is used by the Nation to prevent default on debt and to sustain operations during times of extreme financial distress.

(c) *Grant Reserve Fund*. The Grant Reserve Fund account is used by the Nation to pre-fund the expenditures of grants upon receipt.

121.5-4. *Budget Adoption Procedure*. The Nation shall develop and adopt its budget according to the following procedures:

(a) *Budget Schedule and Guidelines*. The Treasurer shall develop the necessary guidelines, including specific timelines and deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. The Treasurer shall submit the guidelines to the Oneida Business Committee for review and approval through the adoption of a resolution.

(1) The budget schedule and guidelines shall include at least one (1) opportunity for community input from the Nation's membership on what should be included in the upcoming fiscal year budget.

(2) Each fund unit shall be responsible for complying with the budget schedule and guidelines to submit a proposed budget to the Treasurer. The Finance Administration shall not submit any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee.

(3) The Oneida Business Committee shall set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval.

(b) *Annual Proposed Budgets*. The Treasurer shall receive, review, and compile the proposed budgets from all the fund units into the Nation's draft budget. The Treasurer shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's strategic plan, broad goals, and budget strategy.

(1) *Notification of Budget Increase or Decrease*. The Treasurer shall identify in the budget guidelines a percentage of an increase or decrease in a fund unit's budget from the prior year budget that is required to be noticed to the Oneida Business Committee. The Treasurer shall notify the Oneida Business Committee of any fund units whose proposed budget increased or decreased by this percentage.

(c) *Final Draft Budget*. The Oneida Business Committee shall work with the Treasurer, CFO, and managers to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council.

(d) *Community Meetings*. Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

(e) *Budget Adoption*. The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. The General Tribal Council shall be responsible for adopting the Nation's budget.

(1) *Continuing Budget Resolution.* In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution for a period of time not to exceed three (3) months, until such time as a budget is adopted by the General Tribal Council. If the General Tribal Council does not adopt a budget within three (3) months of the adoption of the continuing budget resolution, then the Oneida Business Committee shall adopt the Nation's budget.

(2) *Emergency Budget Adoption.* In the event that the Nation proclaims an emergency, in accordance with the Emergency Management law, that stays in effect for at least one (1) month and prevents the presentation to and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget.

121.5-5. *Amendments to the Nation's Budget.* After the budget is adopted, amendments of the budget shall not be permitted unless it is necessary to avoid a budget deficit. The Treasurer and CFO shall identify when forecasted revenue and forecasted expenses are impacted in a manner which creates a deficit for the current fiscal year. The CFO shall provide the Oneida Business Committee a written fiscal analysis and any input on the potential budget amendment. The Oneida Business Committee shall be responsible for adopting an amendment to the budget through resolution of the Nation. The Oneida Business Committee shall present notification of the budget amendment at the next available General Tribal Council meeting.

121.6. Expenditures and Assets

121.6-1. *Authority to Expend Funds.* The Oneida Business Committee shall have the authority to expend appropriated funds in accordance with the Nation's adopted budget pursuant to the Procurement Rule Handbook developed by the Purchasing Department. The authority to expend funds is then necessarily delegated to other managers, including Executive Managers of the Nation who manage budgets pursuant to their job descriptions based on the Procurement Rule Handbook.

121.6-2. *Procurement Rule Handbook.* The Purchasing Department is delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop a Procurement Rule Handbook which provides the sign-off process and authorities required to expend funds on behalf of the Nation.

121.6-3. *Fees and Charges.* A program or service of the Nation funded through Tribal contribution may charge fees for their services to cover operational costs.

(a) Before charging fees for services, a program or service shall first determine the full cost of providing the program or service. The full cost of providing a program or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation.

(b) Fees and charges may cover the full cost of service or goods whenever such fee or charge would not present an undue financial burden to the recipient.

(c) Programs and services charging fees may offer fee waivers, provided that the program or service has developed a standard operating procedure which outlines fee waiver eligibility and requirements.

121.6-4. *Unbudgeted Expenditures.*

(a) *Approval of Unbudgeted Expenditures.* A fund unit shall not make an unbudgeted expenditure unless approval is granted by the Oneida Business Committee. The CFO shall

provide the Oneida Business Committee a written fiscal analysis and any input on the potential unbudgeted expenditure. The Oneida Business Committee shall approve any unbudgeted expenditure through the adoption of a resolution prior to the expenditure being made by a fund unit.

(b) *Notification of Unbudgeted Expenditures.* The Oneida Business Committee shall set through resolution a threshold amount for unbudgeted expenditures that require notification by the Oneida Business Committee to the General Tribal Council at the next available General Tribal Council meeting.

(c) *Unbudgeted Supplemental Funding.* In the event that the Nation receives any supplemental or emergency funding of two hundred and fifty thousand dollars (\$250,000) or more, the Oneida Business Committee shall develop and adopt, through resolution, a spending plan to guide expenditures of the supplemental funding in accordance with any provided guidance for the supplemental funding and audit compliance.

121.6-5. *Obligated Future Expenditures.* Notwithstanding an approved multi-year contract, no fund unit shall obligate the Nation to make any future expenditures beyond the current budget year unless the fund unit identifies, and the Oneida Business Committee approves through the adoption of a resolution, the source and extent of any future funds that are recommended to be held in reserve to meet that future obligation.

121.6-6. *Unexpended Funds.*

(a) *Unexpended Capital Improvement Funds.* Unexpended capital improvement funds shall carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted until the project is complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the General Fund.

(b) *Unexpended Capital Expenditure Funds.* The Treasurer shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be returned to the General Fund.

121.6-7. *Capital Contributions.* Any capital contributions made by the Nation shall be identified in the annual budget.

(a) Any reassignment of a loan provided by the Nation into a capital contribution shall be noticed to the General Tribal Council.

121.6-8. Assets of the Nation shall not be divested, or borrowed against, to balance the annual budget.

121.6-9. *Capital Improvements.*

(a) *Capital Improvement Plan for Government Services.* The Oneida Business Committee shall develop, and the General Tribal Council shall approve, a capital improvement plan for government services.

(1) The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities.

(2) The capital improvement plan for government services shall be reassessed once every five (5) years. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed or that have been modified at the time of the reassessment.

(b) *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises may be brought forward as needed, provided that the Oneida Business Committee shall approve all capital improvement plans for enterprises.

(c) *Capital Improvement Plan Implementation.* Capital improvement plans for government services and enterprises shall be implemented, contingent on available funding capacity.

121.7. Grants

121.7-1. *Expending Grant Funds.* Grant funds shall be expended according to any non-negotiable grant requirements and guidelines of the granting agency.

(a) Grant funds may be utilized for, but not limited to, the following:

(1) purchases;

(2) travel;

(3) training;

(4) hiring grant required positions;

(5) incentives and retention efforts; and

(6) any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.

(b) Grant funds may be utilized for an expenditure even when other policies of the Nation do not allow for Tribal contribution to make that same expenditure, if only grant funds are utilized for the expenditure and all requirements or obligations of the grant are met. Provided that, grant funds may be subject to the requirements of the budget contingency plan and any cost containment initiatives adopted by the Oneida Business Committee.

121.7-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which the Nation's funds have also been appropriated, those grant funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed to make up an otherwise shortfall in the overall fund unit budget or there is a restriction on the grant funds that provide otherwise.

121.7-3. *Grant Reporting.* At the time of submission of proposed annual budgets, any fund unit which receives grant funding shall submit a status report of the grant funding received to the Oneida Business Committee. The status report shall include, but not be limited to:

(a) information on the progress of the utilization of the grant funds;

(b) the number of employees the grant funding supports fully or partially; and

(c) compliance with obligations of the grant funding.

121.7-4. *Grant Reserve Fund Account.* The Oneida Business Committee shall maintain a Grant Reserve Fund account within the ownership investment report to be used to pre-fund the expenditures of grants upon receipt. The Grant Reserve Fund account shall be an obligated fund, that is fully funded with separately identified cash resources.

(a) The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of funds required in the Grant Reserve Fund account relative to the scale of grant dollars we receive on an annual basis.

(b) The Treasurer shall set aside funds within the budget in the Grant Reserve Fund account until the established level has been achieved.

121.7-5. *Grant Funded Positions.* If the grant funding for a fully grant funded position is eliminated, then the position shall be eliminated. To transition a position from grant funding to

being funded through the Nation's budget, a manager shall follow the standard procedure for seeking the development and approval of a new position in the Nation's annual budget and labor allocations.

121.8. Debts

121.8-1. *General.* The acquisition of debt by the Nation shall be processed in accordance with sound fiscal diligence. The Nation shall comply with all relevant federal and state banking laws, rules, and policies applicable to the credit agreement.

(a) Any debt instrument utilized by the Nation shall not exceed the life of what is being encumbered.

121.8-2. *Acquisition of Debt.* Any debt underwritten by the Nation for ten million dollars (\$10,000,000) or more shall be noticed to the General Tribal Council at the next available meeting prior to the execution of the credit agreement encumbering all pledges of repayment.

(a) If emergency circumstances exist which prevents the notice of the acquisition of debt to the General Tribal Council, the Oneida Business Committee may proceed with the acquisition of debt.

121.8-3. *Use of Debt.* Credit proceeds may be utilized for project capital, general use, financing of equity, and all unspecified uses. Compliance with debt covenants is required to avoid credit default.

121.8-4. *Credit Ratios.* Maintaining fiscally responsible prudent credit ratios is consistent with effective budget management and financial control.

(a) *Debt Service Coverage Ratio.* The Debt Service Coverage Ratio shall not exceed the acceptable range as defined by low-risk debt financing options at the specific financial institution.

(b) *Fixed Charge Coverage Ratio.* The Fixed Charge Coverage Ratio shall be maintained at the acceptable range as defined by low-risk debt financing options at the specific financial institution.

121.8-5. *Corporate Debt.* The Nation shall not be obligated to any debt obligations of its corporate entities.

121.9. Employment and Labor Allocations

121.9-1. *Employment Cap.* The Treasurer and CFO shall identify a maximum number of full-time equivalent (FTE) employees to be employed by the Nation. The Oneida Business Committee shall have the authority to approve this employment cap, and any amendments thereto, through the adoption of a resolution. The employment cap shall be reviewed annually by the Oneida Business Committee.

(a) Employment positions that are fully funded through grants shall not be included in the employment cap.

(b) The Nation shall not exceed the number of FTE employees identified in the employment cap.

121.9-2. *Labor Allocations List.* The Treasurer, CFO, Executive Managers, and the Executive Human Resources Director shall utilize the Nation's employment cap to develop a labor allocations list. The labor allocations list shall identify the number of FTE employees each employment area of the Nation is allocated. The Oneida Business Committee shall have the authority to adopt the labor allocation list, and any amendments thereto, through the adoption of a

resolution. The Oneida Business Committee shall review the labor allocations list on an annual basis.

(a) The total number of FTE employees identified in the labor allocations list shall not exceed the Nation's employment cap.

(b) The Treasurer, CFO, Executive Managers, and Executive Human Resources Director shall develop a standard operating procedure which identifies a process for the consideration of requests to revise the labor allocations list. The Oneida Business Committee shall approve this standard operating procedure, and any amendments thereto, through the adoption of a resolution.

121.9-3. *Unbudgeted Positions*. Any position which has not been specifically budgeted for and included in the labor allocation list shall be prohibited. Budgeted labor dollars and approved positions shall not be transferrable in any form.

(a) *Exception*. The Oneida Business Committee may authorize an unbudgeted position for a fund unit. The CFO shall provide the Oneida Business Committee a written fiscal analysis and any input on the potential unbudgeted position. The Oneida Business Committee shall authorize the unbudgeted position through the adoption of a resolution.

121.10. Budget Contingency Planning

121.10-1. *Budget Contingency Plan*. The Oneida Business Committee shall work with the CFO, Executive Managers, and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation.

(a) Extreme financial distress includes, but is not limited to:

- (1) natural or human-made disasters;
- (2) United States Government shutdown;
- (3) emergency proclamations; and
- (4) economic downturns.

(b) The Oneida Business Committee shall approve the budget contingency plan, and any amendments thereto, through the adoption of a resolution.

121.10-2. *Cost Saving Tools*. As part of the budget contingency plan, the Oneida Business Committee may require the use of cost saving tools, provided that the use of such complies with all laws of the Nation. Cost saving tools may include, but are not limited to, the use of the following:

- (a) stabilization funds;
- (b) reductions of expenditures;
- (c) furloughs; and
- (d) layoffs.

121.10-3. When the Oneida Business Committee determines that the Nation is under extreme financial distress, the Oneida Business Committee shall be responsible for implementing the budget contingency plan.

121.10-4. *Permanent Executive Contingency Fund Account*. The Oneida Business Committee shall maintain a Permanent Executive Contingency Fund account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress. The Permanent Executive Contingency Fund account shall be a restricted fund.

(a) The Permanent Executive Contingency Fund account shall consist of a minimum reserve of one (1) year of operating expenses to ensure continuity of business for the Nation.

(b) The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve through the adoption of a resolution, the percentage of the annual budget that shall be set aside in the Permanent Executive Contingency Fund account until the established level has been achieved.

(c) Funds in the Permanent Executive Contingency Fund account may only be used when the Oneida Business Committee has determined that the Nation is under extreme financial distress for the following purposes and only to the extent that alternative funding sources are unavailable:

- (1) payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) employee payroll, including all applicable taxes;
- (3) payments to vendors for gaming and retail;
- (4) payments to vendors for governmental operations;
- (5) payments to any other debt; and
- (6) to sustain any of the Nation's other operations during implementation of the budget contingency plan.

121.11. Reporting

121.11-1. *Monthly Reporting.* The Treasurer shall provide monthly reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with the Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee meeting held for the acceptance of such reports.

(a) The Treasurer's monthly reports shall include revenue and expense summaries.

121.11-2. *Annual and Semi-Annual Reporting to the General Tribal Council.* The Treasurer shall report on all receipts and expenditures and the amount and nature of all funds in their possession and custody, at the annual and semi-annual General Tribal Council meetings, and at such other times as requested by the General Tribal Council or the Oneida Business Committee.

(a) The Treasurer reports shall include an independently audited annual financial statement that provides the status or conclusion of all the receipts and debts in possession of the Treasurer including, but not limited to, all corporations owned in full or in part by the Nation.

121.11-3. *Audits.* The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Nation's Audit law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected fund units or of fund units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each fund unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

121.12. Enforcement

121.12-1. *Compliance and Enforcement.* All employees and officials of the Nation shall comply with and enforce this law to the greatest extent possible.

(a) The Executive Managers shall notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. A list of any fund units of an elected entity which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws and policies including, but not limited to, those related to employment with the Nation, conflicts of interest, ethics, and removal from an elected position.

121.12-3. *Civil or Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil or criminal charges under applicable law. Violations of applicable federal or state civil or criminal laws, or any laws of the Nation, may be pursued in a court having jurisdiction over any such matter.

End.

Adopted – BC-02-08-17-C

Emergency Amended – BC-11-24-20-E

Emergency Amended – BC-05-12-21-C

Emergency Extension – BC-11-10-21-B

Amended – BC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: April 14, 2022

RE: **Fiscal Impact of the Budget and Finances Law**

Digitally signed by RaLinda
Ninham-Lamberies
Date: 2022.04.14 14:31:20
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I. Estimated Fiscal Impact Summary

Law: Budget and Finances Law		
Implementing Agency		
Estimated time to comply	Indeterminate	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$0	\$0

II. Background

A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-02-08-17-C; emergency amendments by resolution BC-11-24-20-E, BC-05-12-21-C and BC-11-10-21-B.

B. Summary of Content

The amendment includes makes the following changes to the Budget and Finances Law:

- The Law expands the purpose to establish financial policies and procedures of the Nation to institutionalize best practices in financial management and to provide guidance to decision makers;
- Implement business plans for enterprises, investments, and capital assets;
- Provide a long term financial prospective and strategic intent;
- Link budget allocation to organizational goals;

- Provide fiscal controls & accountability;
- Provide accountability for allocations, results, and outcomes;
- Communicate to the membership spending decisions for government functions, grant obligations, enterprises, General Tribal Council mandates, reinvestment in infrastructure through capital improvement projects, capital assets, land, and technology projects;
- Establish a framework for effective financial risk management; and
- Comply with all internal and external audit requirements.

III. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office expenses, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

IV. Executive Summary of Findings

- The Law will not govern the strategic planning process. Development of the triennial strategic plan will be a responsibility of the Oneida Business Committee.
- The Law provides various authorities to the Oneida Business Committee, the Oneida Tribal Treasurer, the Chief Financial Officer (CFO), and the managers.
- The Law governs the development, adoption, and management of the annual budget. The annual budget must be balanced and prohibits the utilization of debt resources or debt instruments to balance the annual budget.
- The Law governs the budget adoption process and limits the continuing budget resolution to a maximum of three (3) months. If General Tribal Council is unable to meet within the three (3) months to adopt the budget, the Oneida Business Committee will adopt the budget as provided by the proposed law.
- The Law provides guidance on unbudgeted expenditures, identifies when notification of the General Tribal Council is required for unbudgeted expenditures, and prohibits obligations for future expenditures beyond the current budget year unless the funding is in reserve and approved by the Oneida Business Committee.

- The Law governs the overall debt and acquisition of new debt. Debt shall be in accordance with sound fiscal diligence, relevant state and federal banking laws, rules, and/or policies.
- The proposed law does not require the General Tribal Council notice or approval of debt less than \$10 million.
- It is unclear if the \$10 million is per project or a consolidated amount.
- Debt of \$10 million or more shall be noticed to the General Tribal Council at the next available General Tribal Council meeting prior to the execution of the debt agreement pledging repayment.
- The Law requires an employment cap, a labor allocations list, and addresses unbudgeted positions.
- The annual budget shall be adopted by General Tribal Council as provided by the Law and the Oneida Constitution.

V. Agency

The Law governs the overarching budget process and establishes requirements of the Oneida Business Committee, Finance Administration, Executive Managers, and Oneida Fund Units.

VI. Financial Impact

There is no direct fiscal impact of the Law as it governs the rules, process, and procedures to be utilized in the annual budget process.

VII. Recommendation

Finance Department does not make a recommendation in regard to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
May 4, 2022

Oneida Nation Gaming Ordinance Amendments

Submission Date: 12/2/2020	Public Meetings: 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 4/13/22.
LOC Sponsor: Jennifer Webster	Emergency Enacted: 5/12/21, 11/10/21 Expires: 5/12/22

Summary: *This item was added to the Active Files List on December 2, 2020 per the November 10, 2020 directive of the Oneida Business Committee that the Legislative Operating Committee place the Law Enforcement Ordinance and/or the Oneida Nation Gaming Ordinance on the Active Files List to address the placement of Gaming's Internal Security Department. Following a work meeting with the Oneida Law Office, this item was designated as emergency legislation under the Legislative Procedures Act by the Legislative Operating Committee to expedite the disposal of the legal issue that exists under the current law. The Oneida Business Committee adopted the emergency amendments to the Oneida Nation Gaming Ordinance on May 12, 2021, through resolution BC-05-12-21-D. The emergency adoption of the amendments to the Oneida Nation Gaming Ordinance was set to expire on November 12, 2021. On November 10, 2021, the Oneida Business Committee extended the emergency amendments for an additional six (6) month period through the adoption of resolution BC-11-10-21-A. The emergency amendments to the Oneida Nation Gaming Ordinance Are now set to expire of May 12, 2022.*

12/2/20 LOC: Motion by Jennifer Webster to add the Oneida Nation Gaming Ordinance Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

1/7/2021: *Work Meeting.* Present: James Bittorf, Kelly McAndrews, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to discuss the issue that is driving the need for amendments to be made to the Oneida Nation Gaming Ordinance. The next step is for the drafting attorney to schedule a meeting with the Legislative Operating Committee to convey the information that was shared during that meeting and discuss the most effective manner in which to move forward.

1/14/21: *Work Meeting.* Present: Marie Summers, David Jordan, Kirby Metoxen, Daniel Guzman-King, Kristal Hill, Clorissa Santiago, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this meeting was to provide the Legislative Operating Committee with additional information regarding the issue that prompted this item to be added to the Active Files List by motion of the Oneida Business Committee and to have the LOC decide whether to process the amendments relating to this issue on an emergency basis moving

forward. Per consensus of the LOC, the amendments will be processed as an emergency based on the risk of continued litigation that exists under the status quo.

- 2/19/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Chad Fuss, Kelly McAndrews, Jonas Hill, William Cornelius, Richard VanBoxtel, Clorissa Santiago, Michelle Braaten, Katsitsiyo Danforth, Joel Maxam, Eric Boulanger, Kristal Hill, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to provide the LOC with an opportunity to hear from various stakeholders regarding the issue of placing Internal Security for Gaming under an area other than the Oneida Police Department. The next step will be for the drafting attorney to schedule a follow-up work meeting with the LOC to have it decide where to move Internal Security so the drafting attorney can move forward with the development of emergency amendments reflective of the LOC's decision.
- 2/25/21:** *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristal Hill, Clorissa Santiago, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to have a discussion with the LOC in follow-up to the meeting of February 19, 2021 between the LOC and the work group on the reorganization of the Internal Security Department to an area within the Nation other than under the Oneida Police Department.
- 3/11/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman-King, Jennifer Webster, Marie Summers, Kristal Hill, Jo Anne House, Clorissa Santiago, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to finish the discussion regarding where to house the Internal Security Department on a temporary basis pending its permanent placement under a department other than the Oneida Police Department. The next step is for the LRO attorney to draft a memo to the stakeholders regarding the plan moving forward and to schedule a follow-up meeting with those stakeholders to have a final discussion on the issue.
- 4/7/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristen Hooker. The purpose of this work meeting was to review and discuss the submissions received in response to the memo that was sent out on March 16, 2021 per the directive of the Legislative Operating Committee during the previous work meeting of March 11, 2021. Next steps are for the Legislative Reference Office Attorney to: (1) draft a memo to the stakeholders who were sent the March 16th memo, informing them of the LOC's decision to temporarily place the Internal Security Department under the Oneida Business Committee while a more permanent placement is developed; and (2) begin processing emergency amendments to ONGO that reassign the oversight of the Internal Security Department to the Oneida Business Committee.
- 4/29/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristen Hooker, Kristal Hill, Rhiannon Metoxen. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to go through the draft of emergency amendments to ONGO with the Legislative Operating Committee. The next step is for the Legislative Reference Office Attorney to prepare the emergency amendments adoption packet for an upcoming Legislative Operating Committee meeting.
- 5/5/21 LOC:** Motion by Marie Summers to approve the Oneida Nation Gaming Ordinance Emergency Amendments and Legislative Analysis and forward to the Oneida Business Committee for consideration; Seconded by Jennifer Webster. Motion carried.

5/12/21 OBC: Motion by Lisa Liggins to adopt resolution 05-12-21-D Emergency Amendments to the Oneida Nation Gaming Ordinance; Seconded by Jennifer Webster. Motion carried.

5/19/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristal Hill, Kristen Hooker. The purpose of this work meeting was to develop a plan for moving forward with the permanent amendments to ONGO, which will include a permanent placement for the Gaming Security Department to be transferred to when the emergency amendment period expires. The next step is for the drafting attorney to set up a workgroup to develop amendments for the permanent re-assignment of the Gaming Security Department to a newly established Public Safety Commission that will absorb the Oneida Police Commission.

6/30/21: *Work Meeting.* Present: Mark Powless (OGC), Eric Boulanger, Kelly McAndrews, Jonas Hill, Jessica Vandekamp, Michelle Braaten, Reynold Danforth, Katsitsiyo Danforth, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of the work meeting was to discuss with the workgroup the permanent placement of the Gaming Security Department under ONGO. Following a discussion, the consensus of the workgroup mirrored that of the LOC, which was to place the Security Department under a newly established Public Safety Commission that will absorb the currently established Oneida Police Commission.

9/1/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This work meeting was held through Microsoft Teams. The purpose of the work meeting was to have the LOC begin making policy decisions relating to the establishment of the Public Safety Commission, which will absorb the currently established Oneida Police Commission and be the permanent place for the Gaming Security Department to be assigned under section 501.9 of ONGO.

10/6/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This work meeting was held through Microsoft Teams. During this work meeting, the LOC went through ONGO line by line to highlight which provisions the LOC would like to see added, removed and/or revised during the amendment process. The next step is for the drafting attorney to set up a meeting with the workgroup to go through a similar process with respect to the law.

10/22/21: *Work Meeting.* Present: Mark Powless SR, William Cornelius, Richard VanBoxtel, Eric Boulanger, James Martin JR, Michelle Braaten, Carmen Vanlanen, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of the meeting was to go through ONGO line-by-line with the workgroup to collect any information or suggestions regarding possible amendments to ONGO that the workgroup would like to have the LOC consider as it moves forward with the amendment process.

11/3/21 LOC: Motion by Jennifer Webster to approve the Oneida Nation Gaming Ordinance emergency amendments extension packet and forward to the Oneida Business Committee for consideration; Seconded by Marie Summers. Motion carried unanimously.

11/10/21 OBC: Motion by Marie Summers to adopt resolution 11-10-21-A Extension of Emergency Amendments to the Oneida Nation Gaming Ordinance; Seconded by David P. Jordan. Motion carried.

- 12/09/21:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Marie Summers, Kristal Hill, Rhiannon Metoxen, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to have the LOC review a first draft of amendments to the Oneida Law Enforcement Ordinance. For purposes of efficiency, amendments to the Ordinance should be developed and adopted simultaneous with the amendments to ONGO; specifically, those relating to the placement of the Security Department, which is now going to report directly to a Public Safety Commission once the Oneida Police Commission is re-established as such under the Oneida Law Enforcement Ordinance. The next step is for the drafting attorney to meet with the heads of the Police Department and Conservation Department to discuss possibly removing the Conservation Department from the Oneida Police Department's oversight to have it report directly to the Public Safety Commission.
- 12/15/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Daniel Guzman-King, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to discuss the meeting scheduled for December 21, 2021 with the heads of the Oneida Police Department and the Conservation Department to discuss the transition of the Conservation Department from under the Oneida Police Department to under the Public Safety Commission.
- 12/21/21:** *Work Meeting.* Present: David Jordan, Daniel Guzman-King, Marie Summers, Kristal Hill, Eric Boulanger, Joel Maxam, Shad Webster, Terry Metoxen, Nicole Rommel, Rhiannon Metoxen, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to discuss with representatives from the Oneida Police Department and Conservation Department the possibility of removing the Conservation Department from under the Police Department and placing it under the Public Safety Commission, which will be a re-established version of the Oneida Police Commission, but with enlarged oversight responsibilities. The next step is for the Police Department and Conservation Department to forward their internal policies/protocols to the LRO so it may review them in anticipation of discussing the transfer in more depth with the LOC.
- 1/28/22:** *Work Meeting.* Present: Richard Van Boxtel, Jeanette Ninham, Kristen Hooker, Carmen Vanlanen. This was a meeting held through Microsoft Teams. The purpose of the meeting was to hear from members of the Oneida Police Commission in regard to the proposal to reorganize the Commission, as well as the Conservation Department, in a manner that better suits the Nation and its members.
- 3/10/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the draft and public comment period notice.
- 3/16/22:** Motion by Daniel Guzman King to approve the draft and legislative analysis of the amendments to ONGO and direct that a public comment period be held open for the proposed amendments to ONGO until April 13, 2022; seconded by Marie Summers. Motion carried unanimously.
- 4/13/22:** *Public Comment Period Closed.* One (1) submission of written comments was received during the public comment period.

4/20/22 LOC: Motion by Marie Summers to accept the public comments and public comment review memorandum and defer to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

4/20/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the public comments that were received.

4/20/22: *E-Poll Conducted.* This e-poll was titled, “*Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Request.*” The requested action of this e-poll was to approve the updated public comment review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to ONGO be prepared and submitted to the LOC by May 3, 2022. This e-poll was approved by David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, and Marie Summers.

Next Steps:

- Approve the Oneida Nation Gaming Ordinance amendments adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: May 11, 2022
RE: Adoption of the Oneida Nation Gaming Ordinance Amendments

Please find the following attached backup documentation for your consideration of the adoption of amendments to the Oneida Nation Gaming Ordinance:

1. Resolution: Amendments to the Oneida Nation Gaming Ordinance
2. Statement of Effect: Amendments to the Oneida Nation Gaming Ordinance
3. Oneida Nation Gaming Ordinance Legislative Analysis
4. Oneida Nation Gaming Ordinance Draft (Redline)
5. Oneida Nation Gaming Ordinance Draft (Clean)
6. Oneida Nation Gaming Ordinance Fiscal Impact Statement

Overview

The Oneida Nation Gaming Ordinance (“ONGO”) governs all Gaming Activities that occur on lands under the jurisdiction of the Nation and all individuals or entities that engage in said Gaming Activities, including those who provide goods or services to persons or entities engaged in Gaming Activities. [5 O.C. 501.1-1].

On May 12, 2021, the Oneida Business Committee adopted emergency amendments to ONGO through resolution BC-05-12-21-D to protect the Nation against potential exposure to litigation/legal claims relating to ONGO’s placement of the Gaming Security Department (“Security”) within the Nation’s organizational structure. More specifically, the emergency amendments removed an avenue for potential liability that had arisen with respect to Security being placed under the Oneida Police Department in section 501.9-1 of ONGO by temporarily reassigning Security to the Oneida Business Committee while a more appropriate permanent placement could be established and vetted, absent the risks that existed under the status quo. [5 O.C. 501.9-1]. The emergency amendments to ONGO were subsequently extended for an additional six (6) month period by the Oneidas Business Committee through the adoption of resolution BC-11-10-21-A. The emergency amendments to ONGO are set to expire on May 12, 2022.

The Legislative Operating has now developed permanent amendments to ONGO for consideration by the Oneida Business Committee. The proposed permanent amendments to ONGO were developed in collaboration with the Oneida Law Office, Oneida Police Department, Internal Security Department, Oneida Gaming Commission, Gaming Management, and the Oneida Police Commission. The Legislative Operating Committee held eighteen (18) work meetings on the development of the amendments to ONGO.

The proposed amendments to ONGO will:

- Remove Security as a department under the Oneida Police Department within the Nation's organizational structure [5 O.C. 501.9-1];
- Eliminate the Executive Director position within the Oneida Gaming Commission and instead provide that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of personnel of the Commission [5 O.C. 501.6-16]; and
- Make non-material changes to certain language within ONGO that will bring it up to date with the Nation's current drafting practices.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the proposed amendments to ONGO due to the COVID-19 pandemic. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until May 23, 2022, 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, 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 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 superseded Oneida Business Committee resolution BC-08-13-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*, and provided updated guidelines on holding meetings both indoors and outdoors. This resolution provided that when the following levels are met, indoor meetings of the Nation are feasible, provided that all organizers and participants should consider additional health safety measures when attending such as wearing a face mask, washing hands frequently, and social distancing:

- 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 designated ZIP Codes 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.

During the time of the development of the amendments to ONGO the requirements for holding an indoor public meeting provided for in resolution BC-12-08-21-B were not met. The Nation's COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration, *Suspension of Public Meetings under the Legislative Procedures Act*. This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but still 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 amendments to ONGO was not held, the public comment period was still held open until April 13, 2022. The Legislative Operating Committee reviewed and considered all public comments that were received on April 20, 2022.

Adoption of the amendments to ONGO complies with the process and procedures of 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.

Requested Action

Adopt the Resolution: Amendments to the Oneida Nation Gaming Ordinance.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Amendments to the Oneida Nation Gaming Ordinance

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the Oneida Nation Gaming Ordinance ("ONGO") was adopted by the Oneida General
- 10 Tribal Council through resolution GTC-07-05-04-A; subsequently amended by the Oneida
- 11 Business Committee through the adoption of resolutions BC-10-06-04-D, BC-03-23-05-C,
- 12 BC-09-23-09-D, BC-06-24-14-B and BC-09-09-15-A; and most recently amended by the
- 13 Oneida Business Committee on an emergency basis through the adoption of resolutions
- 14 BC-05-12-21-D and BC-11-10-21-A; and
- 15
- 16 **WHEREAS,** the purpose of ONGO is to govern all Gaming Activities that occur on lands under the
- 17 jurisdiction of the Nation and all individuals or entities that engage in said Gaming Activities,
- 18 including those who provide goods or services to persons or entities engaged in Gaming
- 19 Activities; and
- 20
- 21 **WHEREAS,** section 501.9 of ONGO assigns certain responsibilities to the Gaming Security Department
- 22 ("Security") that are meant to protect Gaming assets, patrons and Gaming Employees from
- 23 an activity, repeat activity or ongoing activities which could injure or jeopardize Gaming
- 24 assets, patrons and Gaming Employees; and
- 25
- 26 **WHEREAS,** in late 2020, the Oneida Law Office raised concerns over a possible legal issue regarding
- 27 the placement of Security under the Oneida Police Department in section 501.9-1 of ONGO
- 28 that could expose the Nation to unnecessary litigation costs, regardless of merit; and
- 29
- 30 **WHEREAS,** on May 12, 2021, the Oneida Business Committee adopted emergency amendments to
- 31 ONGO through the adoption of resolution BC-05-12-21-D that expeditiously disposed of
- 32 the issue by temporarily reassigning Security to the Oneida Business Committee so that
- 33 the Nation could explore a more appropriate option to permanently place it, without
- 34 worrying about the legal risks that existed under the status quo; and
- 35
- 36 **WHEREAS,** the emergency amendments to ONGO were subsequently extended for an additional six
- 37 (6) month period by the Oneidas Business Committee through the adoption of resolution
- 38 BC-11-10-21-A; and
- 39
- 40 **WHEREAS,** the emergency amendments to the Law are set to expire on May 12, 2022; and
- 41
- 42 **WHEREAS,** the Legislative Operating Committee has developed permanent amendments to ONGO for
- 43 consideration by the Oneida Business Committee; and
- 44

- 45 **WHEREAS,** the amendments to ONGO remove Security as a department under the Oneida Police
46 Department within the Nation's organizational structure; and
47
- 48 **WHEREAS,** the amendments to ONGO eliminate the Executive Director position within the Oneida
49 Gaming Commission and instead provide that the Oneida Gaming Commission, or
50 designee, shall be responsible for the hiring and managing of personnel of the
51 Commission; and
52
- 53 **WHEREAS,** the amendments to ONGO make other make non-material changes to certain language
54 that will bring it up to date with the Nation's current drafting practices; and
55
- 56 **WHEREAS,** in the development of these amendments the Legislative Operating Committee
57 collaborated with the Oneida Law Office, Oneida Police Department, Internal Security
58 Department, Oneida Gaming Commission, Gaming Management, and the Oneida Police
59 Commission; and
60
- 61 **WHEREAS,** in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact
62 statement were completed for the amendments to ONGO; and
63
- 64 **WHEREAS,** a public meeting on the proposed amendments to ONGO was not held in accordance with
65 the Legislative Procedures Act due to the COVID-19 pandemic; and
66
- 67 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of*
68 *Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for
69 the Nation until April 12, 2020, which was subsequently extended by the Oneida Business
70 Committee until May 23, 2022, through the adoption of the following resolutions: BC-03-
71 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-
72 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
73 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-
74 24-21-F, BC-01-12-22-B, and BC-03-23-22-A; and
75
- 76 **WHEREAS,** on March 27, 2020, the Nation's COVID-19 Core Decision Making Team issued a
77 *Suspension of Public Meetings under the Legislative Procedures Act* declaration which
78 suspended the Legislative Procedures Act's requirement to hold a public meeting during
79 the public comment period, but allows members of the community to still participate in the
80 legislative process by submitting written comments, questions, data, or input on proposed
81 legislation to the Legislative Operating Committee via e-mail during the public comment
82 period; and
83
- 84 **WHEREAS,** on December 8, 2021, the Oneida Business Committee adopted resolution BC-12-08-21-
85 B, *Updating Public Gathering Guidelines During Public Health State of Emergency -*
86 *COVID-19*, which superseded Oneida Business Committee resolution BC-08-13-21-A,
87 *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*,
88 and provided updated guidelines on holding meetings both indoors and outdoors; and
89
- 90 **WHEREAS,** at the time the public comment period was scheduled by the Legislative Operating
91 Committee for the proposed amendments to ONGO the Nation did not yet meet the criteria
92 for holding an indoor public meeting as required by resolution BC-12-08-21-B; and
93
- 94 **WHEREAS,** although an in-person public meeting was not held for the proposed amendments to
95 ONGO, the public comment period for the submission of written comments regarding the
96 proposed amendments to ONGO was held open until April 13, 2022, in accordance with
97 the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team's
98 *Suspension of Public Meetings under the Legislative Procedures Act* declaration; and
99

WHEREAS, the Legislative Operating Committee reviewed and considered all public comments received on April 20, 2022; and

NOW THEREFORE BE IT RESOLVED, the amendments to the Oneida Nation Gaming Ordinance are hereby adopted and shall be effective on May 12, 2022.

BE IT FINALLY RESOLVED, the Oneida Business Committee shall be responsible for the supervision and oversight of the Security Department, with the Security Department reporting directly to the Oneida Business Committee per the process and schedule set by the Oneida Business Committee, until such a time that the Oneida Nation Law Enforcement Ordinance can be amended to address the supervision of the Security Department.



Statement of Effect

Amendments to the Oneida Nation Gaming Ordinance

Summary

This resolution adopts amendments to the Oneida Nation Gaming Ordinance.

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

Date: April 29, 2022

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Oneida Nation Gaming Ordinance (“ONGO”). The purpose of ONGO is to govern all Gaming Activities that occur on lands under the jurisdiction of the Nation and all individuals or entities that engage in said Gaming Activities, including those who provide goods or services to persons or entities engaged in Gaming Activities. [5 O.C. 501.1-1].

On May 12, 2021, the Oneida Business Committee adopted emergency amendments to ONGO through resolution BC-05-12-21-D to protect the Nation against potential exposure to litigation/legal claims relating to ONGO’s placement of the Gaming Security Department (“Security”) within the Nation’s organizational structure. More specifically, the emergency amendments removed an avenue for potential liability that had arisen with respect to Security being placed under the Oneida Police Department in section 501.9-1 of ONGO by temporarily reassigning Security to the Oneida Business Committee while a more appropriate permanent placement could be established and vetted, absent the risks that existed under the status quo. [5 O.C. 501.9-1]. The emergency amendments to ONGO were subsequently extended for an additional six (6) month period by the Oneidas Business Committee through the adoption of resolution BC-11-10-21-A.

The emergency amendments to ONGO are set to expire on May 12, 2022. The Legislative Operating has now developed permanent amendments to ONGO for consideration by the Oneida Business Committee. The proposed amendments to ONGO:

- Remove Security as a department under the Oneida Police Department within the Nation’s organizational structure [5 O.C. 501.9-1];
- Eliminate the Executive Director position within the Oneida Gaming Commission and instead provide that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of personnel of the Commission [5 O.C. 501.6-16]; and
- Make non-material changes to certain language within ONGO that will bring it up to date with the Nation’s current drafting practices.

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a legislative and fiscal analysis

be developed. [1 O.C. 109.6 and 109.7]. The proposed amendments to ONGO comply with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the proposed amendments to the ONGO was not held due to the COVID-19 pandemic. In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a “Declaration of Public Health State of Emergency” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until May 23, 2022, 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, 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 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 superseded Oneida Business Committee resolution BC-08-13-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*, and provided updated guidelines on holding meetings both indoors and outdoors. This resolution provided that when the following levels are met, indoor meetings of the Nation are feasible, provided that all organizers and participants should consider additional health safety measures when attending such as wearing a face mask, washing hands frequently, and social distancing:

- 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 designated ZIP Codes 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.

During the time of the development of the amendments to ONGO the requirements for holding an indoor public meeting provided for in resolution BC-12-08-21-B were not met. The Nation’s COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration, *Suspension of Public Meetings under the Legislative Procedures Act*. This declaration suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period, but still 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 amendments to ONGO was not held, the public comment period was still held open until April 13, 2022. The Legislative Operating Committee reviewed and considered all public comments received on April 20, 2022.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

This resolution provides that the amendments to the law would become effective on May 12, 2022, in accordance with the LPA. [1 O.C. 109.9-3].

Additionally, this resolution provides that the Oneida Business Committee shall be responsible for the supervision and oversight of the Security Department, with the Security Department reporting directly to the Oneida Business Committee per the process and schedule set by the Oneida Business Committee, until such a time that the Oneida Nation Law Enforcement Ordinance can be amended to address the supervision of the Security Department.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws, as it complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.



EMERGENCY AMENDMENTS TO ONEIDA NATION GAMING ORDINANCE LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ To remove the legal risks associated with the Oneida Nation Gaming Ordinance's placement of the Gaming Security Department ("Security") under the Oneida Police Department within the Nation's organizational structure; ▪ Eliminate the Executive Director position within the Oneida Gaming Commission and instead provide that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of personnel of the Commission; and ▪ To make non-material changes to certain language within the Oneida Nation Gaming Ordinance that will bring it up to date with the Nation's current drafting practices.
Purpose	<ul style="list-style-type: none"> ▪ The Oneida Nation Gaming Ordinance was established to govern: <ul style="list-style-type: none"> • all Gaming Activities that occur on lands under the jurisdiction of the Nation; • all individuals or entities that engage in said Gaming Activities; and • those who provide goods or services to such individuals or entities engaged in said Gaming Activities [5 O.C. 501.1-1].
Affected Entities	Internal Security Department; Oneida Police Department, Oneida Gaming Commission, Oneida Gaming Management, Oneida Business Committee.
Related Legislation	Legislative Procedures Act, Removal Law, Administrative Procedures Act, Internal Audit law, Vendor Licensing law.
Public Meeting	A public comment period was held open until April 13, 2022. A public meeting was not held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Expiration of Emergency Amendments	Emergency amendments to ONGO expire on May 12, 2022. [1 O.C. 109.9-5(b)].

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Oneida Nation Gaming Ordinance ("ONGO") was adopted by the Oneida General Tribal Council through resolution GTC-07-05-04-A and subsequently amended by the Oneida Business Committee through resolutions BC-10-06-04-D, BC-03-23-05-C, BC-09-23-09-D, BC-06-24-14-B and BC-09-09-15-A. [5 O.C. 501.2-1]. ONGO regulates all Gaming Activities under the jurisdiction of the Oneida Nation and is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies, including, but not limited to:
- All Gaming Activities occurring on lands under the jurisdiction of the Nation;

- All individuals or entities engaged in Gaming Activities occurring on lands under the jurisdiction of the Nation; and
- All individuals or entities providing goods or services to any individual or entity who is engaged in Gaming Activities occurring on lands under the jurisdiction of the Nation. [5 O.C. 501.1-1].

B. *Emergency Amendments Adopted through Resolution BC-05-12-21-D.* On December 2, 2020, the Legislative Operating Committee added ONGO to the Active Files List per a November 10, 2020, directive from the Oneida Business Committee that it be added to address a concern raised by the Oneida Law Office over the placement of the Gaming Security Department (“Security”) within the Nation’s organizational structure under section 501.9-2 of ONGO. More specifically, the concern is that the placement of Security under the Oneida Police Department has given rise to certain legal claims that could expose the Nation to unnecessary litigation costs, regardless of merit or prevailing party, if not disposed of in an expeditious manner. Based on this concern, the Legislative Operating Committee decided to bring forward emergency amendments to section 501.9-2 of ONGO by temporarily re-assigning Security to the Oneida Business Committee, while a more appropriate permanent placement is developed and vetted within the period of time allotted for emergency amendments to be in effect under the Nation’s Legislative Procedures Act. The emergency amendments to ONGO were adopted by the Oneida Business Committee through the adoption of resolution BC-05-12-21-D. These emergency amendments to ONGO were set to expire on November 12, 2021.

C. *Emergency Amendments Extended through Resolution BC-11-10-21-A.* On November 10, 2021, the Oneida Business Committee adopted resolution BC-11-10-21-A which extended the emergency amendments to ONGO adopted through resolution BC-05-12-21-D for an additional six (6) month period effective on November 12, 2021. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the ONGO was requested to provide additional time for the Legislative Operating Committee to process the adoption of permanent amendments to the ONGO. The emergency amendments to the ONGO will now expire on May 12, 2022.

D. The Legislative Operating Committee is now seeking the permanent adoption of this amendment to the ONGO.

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of the amendments to ONGO and this legislative analysis:

- Oneida Law Office;
- Oneida Police Department;
- Internal Security Department;
- Oneida Gaming Commission;
- Gaming Management; and
- Oneida Police Commission.

B. The following laws of the Nation and bylaws were reviewed in the drafting of this analysis:

- Oneida Nation Constitution and Bylaws;
- Legislative Procedures Act;

- Oneida Gaming Commission Bylaws; and
- Internal Audit law.

SECTION 4. PROCESS

A. The amendments to ONGO have followed the process set forth in the Legislative Procedures Act:

- On December 2, 2020, the Legislative Operating Committee added ONGO to its Active Files List.
- On May 12, 2021, the Oneida Business Committee adopted an emergency amendment to ONGO through the adoption of resolution BC-05-12-21-D to address the organization of Security.
- On November 10, 2021, the Oneida Business Committee extended the emergency amendments to the Law for an additional six (6) month period through the adoption of resolution BC-11-10-21-A.
- On March 16, 2022, the Legislative Operating Committee approved the draft of permanent amendments to ONGO and the legislative analysis, and directed that a public comment period be held open for the proposed amendments to ONGO until April 13, 2022.
- On April 13, 2022, the public comment period for the ONGO amendments closed. One (1) submission of written comments was received during the public comment period.
- On April 20, 2022, the Legislative Operating Committee accepted the public comments and the public comment review memorandum and deferred these items to a work meeting for further consideration. Later that morning the Legislative Operating Committee reviewed and considered the public comments received.
- On April 20, 2022, the Legislative Operating Committee conducted an e-poll to approve the updated public comment review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to ONGO be prepared and submitted to the LOC by May 3, 2022. This e-poll was unanimously approved.

B. The following work meetings were held by the Legislative Reference Office in the development of the emergency amendments to ONGO:

- January 7, 2021: Work meeting with Oneida Law Office.
- January 14, 2021: LOC work meeting.
- February 19, 2021: LOC work meeting with Oneida Gaming Commission, Oneida Police Department, Internal Security Department, Gaming Management, Oneida Law Office, and Oneida Police Commission.
- February 25, 2021: LOC work meeting.
- March 11, 2021: LOC work meeting with Oneida Law Office.
- April 7, 2021: LOC work meeting.
- April 29, 2021: LOC work meeting.
- May 19, 2021: LOC work meeting.
- June 20, 2021: Work meeting with Oneida Gaming Commission, Oneida Police Department, Internal Security Department, Oneida Law Office.
- September 1, 2021: LOC work meeting.
- October 6, 2021: LOC work meeting.
- October 22, 2021: Work meeting with Oneida Gaming Commission, Oneida Police Department, Oneida Police Commission.

- December 9, 2021. LOC work meeting.
- December 15, 2021: LOC work meeting.
- December 21, 2021: LOC work meeting with the Oneida Police Department and Conservation.
- January 28, 2022: Work meeting with Oneida Police Commission
- March 10, 2022: LOC work meeting.
- April 20, 2022: LOC work meeting.

C. ***COVID-19 Pandemic's Effect on the Legislative Process.*** The world is currently facing a pandemic of COVID-19. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses. A public meeting for the proposed amendments to ONGO was not held due to the COVID-19 pandemic, but a public comment period for the submission of written comments was still held open.

- *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 May 23, 2022, 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, 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.
- *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.
- *Oneida Business Committee Resolution BC-12-8-21-B, Updating Public Gathering Guidelines During Public Health State of Emergency - COVID-19.*
 - 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 superseded Oneida Business Committee resolution BC-08-13-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*, and provides updated guidelines on holding meetings both indoors and outdoors.
 - This resolution provides that when the following levels are met, indoor meetings of the Nation are feasible, provided that all organizers and participants should consider additional health safety measures when attending such as wearing a face mask, washing hands frequently, and social distancing:

- 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 designated ZIP Codes 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.
- *Conclusion.*
 - At the time the public comment period was scheduled for the proposed amendments to ONGO, the conditions for holding an indoor public gather provided for in resolution BC-12-08-21-B had not been met. Although a public meeting was not held on the proposed amendments to ONGO, a public comment period was still held open until April 13, 2022, in accordance with resolution BC-12-08-21-B and the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. Removal of Security from the Oneida Police Department.** Previously, section 501.9-1 of ONGO provided that the Gaming Security Department is a department within the Oneida Police Department. The proposed amendment to section 501-9-1 of ONGO will remove the statement that the Gaming Security Department is a department of the Oneida Police Department. [5 O.C. 501.9-1]. Although ONGO will no longer provide that the Security Department is a department within the Oneida Police Department, with respect to the Oneida Police Department, ONGO will now provide that when investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority. [5 O.C. 501.9-2(a)]. The requirement that all reports of the Gaming Security Department must be copied to the Oneida Gaming Commission previously found in section 501.9-1 was removed from ONGO due to concerns raised by the Oneida Police Department regarding confidentiality of on-going investigations. Reference to the Oneida Police Department in section 501.9-2 was also removed and replaced with the Security Director in regard to the responsibility to collaborate with the Gaming General Manager and Oneida Gaming Commission to enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under ONGO. [5 O.C. 501.9-2].
- *Effect.* The proposed amendments will remove the legal risks associated with Security's placement under the Oneida Police Department. The emergency amendments previously made to ONGO through resolutions BC-05-12-21-D and BC-11-10-21A provided that the Oneida Business Committee shall be responsible for the supervision, as well as oversight, of the Gaming Security

Department and the Gaming Security Department shall report directly to the Oneida Business Committee per the process and schedule set by the Oneida Business Committee. It is the intent of the Legislative Operating Committee that the adopting resolution for these proposed amendments will include a provision that the Oneida Business Committee remain as the body responsible for supervision and oversight of the Security Department until such a time as the Oneida Nation Law Enforcement Ordinance can be amended to expand and transition the Oneida Police Commission to a Public Safety Commission which will oversee the Security Department along with the Oneida Police Department, Conservation Wardens, and any other safety focused department in the future.

B. *Oneida Gaming Commission Personnel.* Previously, section 501.6-16 of ONGO provided that the Oneida Gaming Commission shall hire Executive Director who is responsible for hiring and managing the personnel of the Commission. The proposed amendments to ONGO remove the requirement that the Oneida Gaming Commission have an Executive Director, and instead provides that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of any personnel of the Commission. [5 O.C. 501.6-16].

- *Effect.* The proposed amendment to ONGO allows for more flexibility in evaluating the personnel needs of the Oneida Gaming Commission. The Executive Director position was furloughed in March 2020 during the Nation's initial COVID-19 shutdown. The Oneida Gaming Commission's initial request to bring back the Executive Director from furlough was denied. In the absence of the Executive Director, the Oneida Gaming Commission has since performed the Executive Director's responsibilities. The removal of the Executive Director position ONGO will allow the Oneida Gaming Commission the ability to evaluate the personnel needs of the Gaming Commission and hire as necessary, without any concerns with compliance with ONGO if an Executive Director is not hired.

C. *Minor Drafting Changes.* Additional non-material drafting and formatting changes have been made throughout the Law to update the language and drafting style in ONGO to be consistent with the Nation's current drafting practices.

SECTION 6. EXISTING LEGISLATION

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

- *Oneida Nation Law Enforcement Ordinance.* The purpose of the Oneida Nation Law Enforcement Ordinance is to regulate the conduct of the Nation's law enforcement personnel according to the highest professional standards . [3 O.C. 301.1-1].
 - The Legislative Operating Committee is currently developing amendments to the Oneida Nation Law Enforcement Ordinance to expand and transition the Oneida Police Commission to a broader Oneida Public Safety Commission. It is the intent that the Oneida Public Safety Commission would oversee the Oneida Police Department, the Security Department, the Conservation Wardens and any future safety focused departments of the Nation.

SECTION 7. OTHER CONSIDERATIONS

- 221 **A. *Deadline for Permanent Adoption of Amendments.*** The emergency amendments to ONGO will expire
222 on May 12, 2022. There is no more opportunity for an extension of these emergency amendments.
- 223 ▪ *Conclusion:* The Legislative Operating Committee will need to consider the development and
224 adoption of permanent amendments to ONGO prior to May 12, 2022.
- 225 **B. *Fiscal Impact.*** Under the Legislative Procedures Act, a fiscal impact statement is required for all
226 legislation except emergency legislation [*1 O.C. 109.6-1*]. Oneida Business Committee resolution BC-
227 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
228 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
229 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
230 completing the fiscal impact statement.
- 231 ▪ *Conclusion.* On April 20, 2022, the Legislative Operating Committee directed the Finance
232 Department to provide a fiscal impact statement for the proposed amendments to ONGO by May
233 3, 2022.

Title 5. Business - Chapter 501
ONEIDA NATION GAMING ORDINANCE

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ONEIDA NATION GAMING ORDINANCE

501.1. Purpose and Policy	501.11. Licenses, Generally
501.2. Adoption, Amendment, Repeal	501.12. Gaming Employee License
501.3. Jurisdiction <u>Definitions</u>	501.13. Gaming Services Licensing and Non-Gaming Services Permitting
501.4. <u>Definitions</u> Jurisdiction	501.14. Gaming Facility License
501.5. Oneida Business Committee: Powers and Duties	501.15. Gaming Operator License
501.6. Oneida Gaming Commission	501.16. Games
501.7. Gaming Surveillance: Powers, Duties and Limitations	501.17. Allocation of Gaming Funds
501.8. [Reserved for future use.]	501.18. Audits
501.9. Gaming Security Department	501.19. Enforcement and Penalties
501.10. Background Investigations	

501.1. Purpose and Policy

501.1-1. Purpose. -The purpose of this Ordinance is to set forth the laws of the Oneida ~~Tribe of Indians of Wisconsin~~Nation regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. -It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. -This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. -This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

501.1-2. Policy. -It is the policy of this Ordinance to ensure that the Oneida ~~Tribe~~Nation is the primary beneficiary of its Gaming Operations and has the sole proprietary interest, ~~and~~ that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly; ~~and~~ that all internal departments, enterprises, officials and employees of the ~~Oneida Tribe~~Nation work cooperatively to advance the best interests of the ~~Oneida Tribe~~Nation, to protect ~~the Tribe's~~sits gaming resources, ~~to~~ protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance, ~~and~~ to ensure fairness of all games offered to the ~~Tribe's~~Nation's gaming patrons.

501.2. Adoption, Amendment, Repeal

501.2-1. ~~Adoption.~~ -This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B ~~and~~ BC-09-09-15-A; ~~and~~ BC- - - - .

501.2-2. ~~Amendment.~~ -This Ordinance 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.

501.2-3 ~~Severability.~~ -Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

501.2-4. In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control. ~~—Provided; provided,~~ that, this Ordinance repeals the following:

- (a) BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);

- (b) ~~___~~ GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);
- (c) ~~___~~ GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) ~~___~~ GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) ~~___~~ BC-03-16-94-A; (Comprehensive Gaming Ordinance Interpretation); and
- (f) ~~___~~ BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

501.2-5. ~~___~~ This Ordinance is adopted under authority of the Constitution of the Oneida ~~Tribe of~~ ~~Indians of Wisconsin~~ Nation.

501.2-6. ~~Name. This Ordinance is to be known as the Oneida Nation Gaming Ordinance or ONGO.~~

~~501.2-7.~~ Preemptive Authority. -The Oneida Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

501.3. Definitions

~~501.3-1. Territorial Jurisdiction. This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.~~

~~501.3-2. Subject Matter Jurisdiction. This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Oneida Tribe as set forth in section 501.3-1.~~

~~501.3-3. Personal Jurisdiction. 501.3-1. This Ordinance governs:~~

- ~~(a) the Tribe;~~
- ~~(b) tribal members; and~~
- ~~(c) individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.~~

501.4. Definitions

~~501.4-1.~~ This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. -All words or phrases not defined herein shall be used in their ordinary and everyday sense.

(a) “Applicant” means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

(b) “Background Investigation” means a standard and thorough investigation conducted by the Oneida Tribe Nation in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. -Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

(c) “Class I Gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

(d) “Class II Gaming” means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) in which:

(A) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(B) The holder of the card covers such numbers or designations when

objects, similarly numbered or designated, are drawn or electronically determined.

(C) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(2) Card games that:

(A) Are explicitly authorized by the laws of the State; or

(B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. ~~Class II Gaming~~ does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

(e) “Class III Gaming” means all forms of Gaming that are not Class I or Class II Gaming.

(f) “Commission” means the Oneida Gaming Commission as established by this Ordinance.

(g) “Commissioner” means a duly elected member of the Oneida Gaming Commission.

(h) “Compact” means the 1991 Tribe-State Gaming Compact between the ~~Tribe~~Nation and the State of Wisconsin, as amended and including any future amendments or successor compact entered into by the ~~Tribe~~Nation and the State of Wisconsin and approved by the Secretary of the United States Department of Interior.

(i) “Compliance Certificate” means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.

(j) “Environmental Assessment” means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 *et seq.*, and all related ~~Federal~~federal regulations.

(k) “Fraud” means any act of trickery or deceit used to or intended to gain control or possession of the property of another.

(l) “Games, Gaming, or Gaming Activity” means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.

(m) “Gaming Employee” means any person employed by a Gaming Operation.

(n) “Gaming Facility or Gaming Facilities” means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility or Gaming Facilities does not include the site of a fair, carnival, exposition, or similar occasion.

(o) “Gaming Operation” means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.

(p) “Gaming Operator” means the ~~Tribe~~Nation, an enterprise owned by the ~~Tribe~~Nation, or such other entity of the ~~Tribe~~Nation as the ~~Tribe~~Nation may from time ~~to~~to time

designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.

(q) “Gaming Services” means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.

(r) “Indian Gaming Regulatory Act or IGRA” means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, *et seq.*, as amended.

(s) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC ~~#1-01~~-07-13-B to administer the judicial authorities and responsibilities of the TribeNation.

(t) “License” means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. ~~A License must~~shall be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.

(u) “Licensee” means a person or entity issued a valid License.

(v) “Nation” means the Oneida Nation.

(w) “NIGC” means the National Indian Gaming Commission.

~~(w-x)~~ “Oneida Business Committee” means the elected governing body of the Tribe exercising Nation that exercises the authority delegated ~~from it by~~ the Oneida General Tribal Council ~~of the Oneida Tribe of Indians of Wisconsin~~ under Article IV of the Constitution and By-laws ~~for of~~ the Oneida Tribe of Indians of Wisconsin, approved December 21, 1936 Nation, as ~~thereafter may be~~ amended from time-to-time hereafter.

~~(x-y)~~ “Oneida General Tribal Council” means the Nation’s governing body, as established by the Constitution and By-laws of the Oneida Tribe of Indians of Wisconsin as determined by the Tribe’s Constitution Nation and as may be amended from time-to-time hereafter.

~~(y-z)~~ “Ordinance or ONGO” means the Oneida Nation Gaming Ordinance, ~~as it~~ may be amended from time ~~to~~ time ~~be amended~~ hereafter.

~~(z-aa)~~ “Regulatory Incident” means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

~~(aa-bb)~~ “Remediation” means efforts taken to reduce the source and migration of environmental contaminants at a site.

~~(bb-cc)~~ “Reservation” means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(ee-dd)~~ “Senior Gaming Management” means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

~~(dd-ee)~~ “State” means the State of Wisconsin, along with its authorized officials, agents and representatives.

~~(ee)~~ Tribe means the Oneida Tribe of Indians of Wisconsin.

(ff) “Tribal Fee Land” means all land to which the TribeNation holds title in fee simple.

(gg) “Tribal Trust Land” means all land to which the United States holds title for the benefit of the TribeNation pursuant to federal law.

501.4. Jurisdiction

501.4-1. Territorial Jurisdiction. This Ordinance extends to all land within the exterior boundaries of the Reservation.

501.4-2. Subject Matter Jurisdiction. This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Nation as set forth in section 501.4-1.

501.4-3. Personal Jurisdiction. This Ordinance governs:

(a) The Nation;

(b) Members of the Nation; and

(c) Individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.

501.5. Oneida Business Committee: Powers and Duties

501.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

501.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

501.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the ~~Tribe~~Nation, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67; of the Real Property ~~Law~~law.

501.5-4. The Oneida Business Committee delegates to the Commission, ~~as set out~~ in section 501.6-14 of this Ordinance, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and the enforcement of laws and regulations, ~~as identified in this Ordinance~~.

501.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not delegated by a specific provision of this Ordinance.

501.5-6. The Chairperson of the ~~Tribe must~~Nation shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

501.6. Oneida Gaming Commission

501.6-1. Establishment and Purpose.— The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. ~~—The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution ~~without~~with-out requiring amendment of this Ordinance.~~

501.6-2. Location and Place of Business.— The Commission shall maintain its offices and principal place of business within the Reservation.

501.6-3. Duration and Attributes. —The Commission will have perpetual existence and succession in its own name, unless dissolved by ~~Tribal~~a law, ~~— of the Nation~~. Operations of the Commission ~~must~~shall be conducted on behalf of the ~~Tribe~~Nation for the sole benefit of the ~~Tribe~~Nation and its members. ~~—The TribeNation reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the TribeNation, or on behalf of the Commission,~~

whenever the TribeNation considers it necessary to protect the sovereignty, rights, and interests of the TribeNation or the Commission.

501.6-4. Sovereign Immunity of the ~~Tribe~~

~~(a)~~ Nation. All inherent sovereign rights of the TribeNation with ~~regard~~ respect to the existence and activities of the Commission are hereby expressly reserved.

~~(b)~~ a The TribeNation confers upon the Commission sovereign immunity from suit as set forth in the Tribe'sNation's Sovereign Immunity Ordinance ~~law~~.

~~(e)~~ b Nothing in this Ordinance nor any action of the Commission may be construed to be ~~a~~: (1) A waiver of ~~its~~ the sovereign immunity ~~or that~~ of the Tribe, Commission or ~~consent~~ the Nation;

(2) Consent by the Commission or the TribeNation to the jurisdiction of the Judiciary, the United States, ~~any~~ a state, or any other tribe; ~~or consent~~

(3) Consent by the TribeNation to any suit, cause of action, case or controversy; or the levy of any judgment, lien, or attachment upon any property of the Commission or the TribeNation.

501.6-5. Requirements of Commission Membership.

(a) Qualifications. Candidates for election or appointment to the Commission ~~must~~ shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment. ~~In addition, candidates~~

(1) Candidates for election to the Commission shall further meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 501.6-13 of this Ordinance:

~~(1)~~ A Be an enrolled member of the TribeNation;

~~(2)~~ B Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

~~(3)~~ C Meet all other qualifications set forth in this Ordinance.

(b) Conflict of Interest. No person may be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined ~~by~~ in the OneidaNation's Conflict of Interest Policy ~~law~~.

(c) Background Investigation. No person may be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

~~(d)~~ (1) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 501.6-5 and 501.6-6 upon being elected or appointed to office.

501.6-6. Unless pardoned for activities under subsections (a) and/or (d) by the TribeNation, or pardoned for an activity under subsectionsubsections (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsectionsubsections (a) and/or (d) by the State or Federal government, no individual may be eligible for election or appointment to, or to continue to serve on, the Commission, who:

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:¹

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of ~~chs. Chapters~~ 562 or 565, ~~Wis. Stats., of the Wisconsin Statutes,~~ any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2, or 3, during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of ~~Tribe~~the Nation's law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the ~~Tribe~~Nation to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the ~~Tribe~~Nation;

(e) Has been removed from any office pursuant to the ~~Oneida~~Nation's Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

501.6-7. Term of Office. - Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office. ~~Terms of office must be staggered.~~

(a) Terms of office shall be staggered.

501.6-8. Official Oath. - Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office. ~~Upon being administered the oath of office, a Commissioner shall assume the duties of office and must be issued a security card setting forth his or her title and term of office.~~

(a) Upon being administered the oath of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

501.6-9. Full-time~~Time~~ Status. ~~The Commission shall identify the appropriate work schedule for its members.~~ Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business, ~~and may not.~~

(a) No Commissioner shall, during his or her tenure in office, be engaged in any other profession or business activity that may impede ~~the Commissioner's~~his or her ability to perform duties on behalf of the Commission or that competes with the ~~Tribe's~~Nation's interests.

¹ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

(b) The Commission shall identify the appropriate work schedule for its members.

501.6-10. *Bylaws.* - The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

501.6-11. *Budget and Compensation.* -The Commission shall function pursuant to an annual budget.

(a) The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other Tribal budgets. Compensation of Commissioners is not subject to the Tribe's Comprehensive Policy Governing Boards, Committees, and Commissions, but must be established by the Commission in a manner consistent with the Commission's internal rules and bylaws. The Commission shall adopt internal rules consistent with the existing Tribal accounting practices to verify its budgetary expenditures.

(b) Compensation of Commissioners is not subject to the Nation's Boards, Committees and Commissions law, but shall be established by the Commission in a manner consistent with the Commission's internal rules and bylaws.

(1) The Commission shall adopt internal rules consistent with the Nation's existing accounting practices to verify its budgetary expenditures.

501.6-12. *Removal.* -Removal of Commissioners ~~must~~shall be pursuant to the ~~Oneida~~Nation's Removal Law.

501.6-13. *Vacancies.* -Any vacancy in an unexpired term of office, however caused, ~~must~~shall be filled by appointment by the Oneida Business Committee, of a person qualified ~~pursuant to~~under sections 501.6-5 and 501.6-6 ~~pursuant to~~of this Ordinance, in accordance with the ~~Comprehensive Policy Governing~~Nation's Boards, Committees and Commissions ~~law~~.

501.6-14. *Authority and Responsibilities.* - Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to, the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact.

(1) Unless otherwise indicated in this Ordinance or, Commission regulation, or authorized by majority vote of the Commission, no Commissioner may act independently of the Commission. -Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty, and fairness of the regulation and administration of Gaming.

(c) ~~To draft, and approve, subject~~ Subject to review and adoption by the Oneida Business Committee, to draft and approve regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for the enforcement of such regulations consistent with ~~Tribal law~~the laws of the Nation.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided ~~that, the~~ Rules of Play and Oneida Gaming Minimum Internal Controls require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

§ 53 (2) Comments received from Senior Gaming Management ~~must~~shall be included
354 in any submission to the Oneida Business Committee.

355 (3) Rules of Play and Oneida Gaming Minimum Internal Controls are effective
356 upon adoption by the Commission. -

357 (4) The Commission shall provide notice of adoption of the Rules of Play and/or
358 Oneida Gaming Minimum Internal Controls to the Oneida Business Committee at
359 the next available regularly scheduled Oneida Business Committee meeting
360 following such adoption. -

361 (A) If the Oneida Business Committee has any concerns and/or requested
362 revisions upon review of the Rules of Play and Oneida Gaming Minimum
363 Internal Controls, the Commission shall work with the Oneida Business
364 Committee to address such concerns and/or requested revisions.

365 (A) (i) Unless the Oneida Business Committee repeals the Rules of
366 Play and/or the Oneida Gaming Minimum Internal Controls adopted
367 by the Commission, they will remain in effect while the
368 Commission and the Oneida Business Committee jointly work to
369 amend the Rules of Play and/or the Oneida Gaming Minimum
370 Internal Controls adopted by the Commission.

371 (i) Should the Oneida Business Committee repeal the Rules of
372 Play and/or the Oneida Gaming Minimum Internal Controls adopted
373 by the Commission, the Rules of Play and/or the Oneida Gaming
374 Minimum Internal Controls that were in effect immediately previous
375 to those repealed will be automatically reinstated and effective
376 immediately upon the repeal of the Rules of Play and/or the Oneida
377 Gaming Minimum Internal Controls adopted by the Commission.

378 (B) If the Commission does not receive written notice from the Oneida
379 Business Committee of intent to repeal or amend the Rules of Play and/or
380 the Oneida Gaming Minimum Internal Controls within thirty (30) days of
381 the date the Oneida Business Committee is provided notice of the Rules of
382 Play and/or the Oneida Gaming Minimum Internal Controls adopted by the
383 Commission, they will remain in effect as adopted by the Commission.

384 (C) Should the Oneida Business Committee pursue amendments to the
385 Rules of Play and/or the Oneida Gaming Minimum Internal Controls
386 adopted by the Commission, the amendments ~~must~~shall be completed
387 through one (1) of the following actions within six (6) months from the date
388 the amendments are initiated by the Oneida Business Committee:

389 (i) if the Commission and the Oneida Business Committee reach an
390 agreement as to the content of the amendments, the Commission
391 ~~must~~shall adopt revised Rules of Play and/or the Oneida Gaming
392 Minimum Internal Controls that have been discussed with and
393 agreed upon by the Oneida Business Committee; or

394 (ii) if the Commission and the Oneida Business Committee do not
395 reach an agreement as to the content of the amendments, the Oneida
396 Business Committee may adopt revised Rules of Play and/or the
397 Oneida Gaming Minimum Internal Controls that incorporate the
398 amendments it deems necessary.

(D) If revised Rules of Play and/or Oneida Gaming Minimum Internal Controls are not adopted by either the Commission or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls originally adopted by the Commission will remain in effect.

(e) To prepare proposals, including budgetary and monetary proposals, which might enable the ~~Tribal~~Nation to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto; ~~provided, that,~~ all photocopies of documents ~~must~~shall be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

(k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.

(l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with ~~Tribal law~~the Nation's laws and practices.

(m) To arbitrate, negotiate, or settle any dispute to which it is a party, and which relates to its authorized activities.

(n) To act as the designated agent to receive all regulatory notices not included in section 501.5-6 of this Ordinance.

(o) To investigate all Regulatory Incidents.

(p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.

(q) To make determinations regarding suitability for licensing.

(r) To establish an administrative structure by regulation to carry out its authority and responsibilities.

(s) To establish, where needed, additional processes for conducting licensing hearings by regulation.

(t) To establish and collect fees for processing License applications by regulation.

(u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.

(v) To establish and impose a fine system for findings of regulatory violations by any

Gaming Services vendor or permittee by regulation.

(w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

501.6-15. ~~Reporting Requirements.~~ The Commission shall adhere to the following reporting requirements:

(a) A true, complete and accurate record of all proceedings of the Commission ~~must~~shall be kept and maintained;

(b) Complete and accurate minutes of all Commission meetings ~~must~~shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;

(c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, ~~must~~shall be submitted to the Oneida Business Committee.

501.6-16. ~~Oneida Gaming Commission Personnel.~~ The Commission, ~~or designee,~~ shall ~~hire an Executive Director who is~~ be responsible for ~~the~~ 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 fulfill~~in fulfilling its responsibilities under this Ordinance, the IGRA, ~~and the Compact,~~ and all governing regulations, including the Oneida Gaming Minimum Internal Controls. ~~The Executive Director and~~

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

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

501.7. Gaming Surveillance: Powers, Duties and Limitations

501.7-1. ~~Purpose.~~ The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance.

(a) Gaming Surveillance is a department within the Commission's administrative structure and supervision ~~must~~shall be identified within the organizational chart adopted by the Commission; ~~provided that,~~ nothing in the designation of supervisory responsibility may be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 501.7-3 ~~of this Ordinance.~~

501.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

501.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

501.7-4. Gaming Surveillance shall:

(a) Develop, implement and maintain written policies and procedures for the conduct

and integrity of the Surveillance Department.

(b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.

(c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.

(d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

501.8. [Reserved for future use.]

501.9. Gaming Security Department

501.9-1. ~~Purpose. The Gaming Security Department is a department within the Oneida Police Department.~~ Purpose. The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees ~~and report these activities to the Oneida Police Department for further review and/or investigation. Provided that, all reports of the Gaming Security Department must be copied to the Commission.~~

501.9-2. Reporting. ~~The Oneida Police Department~~ Internal Security Director, Gaming General Manager and ~~the~~ Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, ~~which describes~~ describing their responsibilities and reporting requirements under this Ordinance.

(a) When investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority.

501.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

501.9-4. Investigations. ~~This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.~~

501.10. Background Investigations

501.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

501.10-2. Background Investigations ~~must~~ shall be conducted on all persons or entities as specified under this Ordinance.

(a) All Background Investigations must shall be conducted to ensure that the Tribe Nation in its Gaming Operations may not employ or contract with persons whose prior activities,

or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming. ~~The identity of any person interviewed in order to conduct a Background Investigation must be confidential.~~

(1) The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

501.11. Licenses, Generally

501.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License.

(a) All Gaming Employees, Gaming Services vendors, and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity. ~~All Gaming Facilities must be licensed by the Oneida Business Committee.~~

(b) All Gaming Facilities shall be licensed by the Oneida Business Committee.

501.11-2. *Temporary License.* - All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant. ~~Such~~

(a) A temporary license, ~~as defined in this section,~~ permits the Licensee to engage in such activities and pursuant to any terms and conditions imposed and specified by the Commission. ~~The~~

(b) A temporary license is valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

501.11-3. *Revocable.* - A License is revocable only in accordance with the procedures set forth in this Ordinance.

(a) A Licensee has only those rights and protections regarding a License granted in this Ordinance.

501.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the ~~Tribe~~Nation and are subject to all applicable ~~Tribal~~Oneida, Federal, and State laws, regulations, and/or policies.

501.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

501.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend, or condition a License.

501.11-7. *Commission Licensing Actions.* - The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance.

(a) Authority to place conditions on a License may be exercised only upon promulgation of regulations.

501.11-8. *Noncompliance.* - The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions.

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(a) Such regulations ~~must~~shall include procedures for appeal of such notices. Regulations and may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

501.12. Gaming Employee License

501.12-1. *Scope of Section.*— This section applies only to Gaming Employee Licenses and licensing actions.

501.12-2. *License Application.*— Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which ~~must~~shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference, who ~~were~~was acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to ~~subsections~~sub-sections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). ~~The Commission is the agency that takes the fingerprints.~~

(1) The Commission is the agency that takes the fingerprints.

(n) Any other information the Commission deems relevant for a Gaming Employee

License.

(o) A statement that each Applicant has read and understands notices and ~~the~~ NIGC requirements relating to:

- (1) The Privacy Act of 1974;
- (2) Fraud and False Statements Act; and
- (3) Fair Credit Reporting Act.

501.12-3. *License Qualifications.* ~~No License may be granted if the Applicant:~~

(a) Is under the age of eighteen (18).

(b) Unless pardoned for activities under this subsection by the ~~Tribe~~Nation, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:

- (1) Any gambling-related offense;
- (2) Any offense involving Fraud or misrepresentation;
- (3) Any offense involving a violation of any provision of ~~chs. Chapters~~ 562 or 565, ~~Wis. Stats., of the Wisconsin Statutes,~~ any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming, or any rule promulgated by the Wisconsin Racing Board;
- (4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or
- (5) Any offense involving the violation of any provision of ~~Tribal~~the Nation's law ~~regulating that regulates~~ the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(c) Is determined to be a person whose prior activities, criminal record, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.

(d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the ~~Nation's~~ Conflict of Interest ~~Policy~~law.

(e) Each person licensed as a Gaming Employee has a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee.

(1) Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

501.12-4. *Initial Eligibility Determination.*

(a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:

- (1) Grant a temporary license, with or without conditions, to the Applicant; or
- (2) Deny the License application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b) below.

(b) If the Commission determines that an Applicant is ineligible for a License, the

Commission shall notify the Applicant.

(1) The Commission shall set forth regulations for an Applicant to review any information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 501.12-10. ~~The suspension or revocation hearing provisions set forth at section 501.12-9 do not apply to Initial Eligibility Determinations.~~ of this Ordinance.

(2) The suspension or revocation hearing provisions set forth at section 501.12-9 of this Ordinance do not apply to Initial Eligibility Determinations.

501.12-5. *Eligibility Determination and Notification to NIGC.* -When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) Require the Gaming Employee to submit a completed application for employment that contains the notices and information listed in section 501.12-2 of this Ordinance;

(b) Review the Background Investigation of the Gaming Employee;

(1) Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(c) Create an investigative report based on each Background Investigation performed;

(1) The investigative report ~~must~~shall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Gaming Employee begins employment at a Gaming Facility, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System. ~~The notice of results must include the following, provided that any additional or alternate information must be forwarded as directed in regulations or rules adopted by NIGC;~~ and

(1) The notice of results shall include the following, provided that any additional or alternate information shall be forwarded as directed in regulations or rules adopted by the NIGC:

(A) The Gaming Employee's name, date of birth, and ~~social security number~~ Social Security Number;

(2) (B) The date on which the Gaming Employee began employment;

(3) (C) A summary of the information presented in the investigative report, including:

(A) (i) License(s) that have previously been denied;

(B) (ii) Gaming licenses that have been revoked, even if subsequently reinstated;

(C) (iii) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application; and

(D) (iv) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.

(4) (a) (D) A copy of the eligibility determination made under section 501.12-5 (b) of this Ordinance.

(e) All applications, Background Investigations, investigative reports, suitability

determinations, findings and decisions of the Commission ~~must~~shall be retained in the Commission's files for a period of at least three (3) years from the date the Gaming Employee's employment is terminated.

501.12-6. *License Issuance.* -The Commission may issue a License to a Gaming Employee at any time after providing the NIGC with a notice of results as required under section 501.12-5(d); of this Ordinance; however, a Gaming Employee who does not have a License ninety (90) days after the start of employment ~~must~~shall have his or her employment terminated.

(a) The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

~~(a)~~(b) Any Gaming Employee License issued under this section is effective from the date of issuance and ~~must~~shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective.

(1) If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License.

(c) The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

501.12-7. *Requirement to Wear License.* -During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

501.12-8. *NIGC Review.*

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 501.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee.

(1) Such a request suspends the thirty (30) day period until the Chairman receives the additional information.

(b) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC.

(1) The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 501.12-9 of this Ordinance.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 501.12-9 of this Ordinance.

501.12-9. *Suspension or Revocation of Licenses.* -Except as provided in section 501.12-8(d) or 501.12-9(c); of this Ordinance, no License may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing Action.* -The Commission may suspend, condition, or revoke any

License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section 501.12-3 ~~of this Ordinance;~~ or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension;

(2) The Commission issues a written notice of suspension demonstrating that the Licensee:

(A) Has knowingly made a materially false or misleading statement in any application for a License, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any ~~gaming activity~~Gaming Activity operated in violation of the Compact, Tribal Oneida or federal law, and this Ordinance;

(C) Has bribed ~~or~~, attempted to bribe, or has received a bribe from, a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(D) Has falsified any books or records relating to any transaction connected with the operation of a Gaming Activity;

(E) Has refused to comply with any lawful directive of the ~~Tribe;~~ the Nation, Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) Suspension Notice. ~~The Commission's notice of suspension~~ mustshall be in writing and mustshall, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to present documents and witness testimony at that hearing, and to be represented by counsel;

(3) The specific grounds upon which the proposed licensing action is based, including citations to relevant sections of this Ordinance, the IGRA, and any applicable ~~Regulations~~regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's hearing.

(c) Immediate Suspension. ~~If, in the judgment of the Commission, the public interest, and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee, the Commission may immediately suspend a License prior to the conduct of a hearing on the matter.~~

(1) Such an immediate suspension may take effect upon service of the notice of immediate suspension.

(d) Any notice of suspension or notice of immediate suspension mustshall set forth the times and dates for when the Licensee may review his or her file and the date for a hearing on any proposed licensing action.

(e) Within fifteen (15) business days after a hearing, the Commission shall issue a final written licensing decision and decide whether to suspend, uphold an immediate suspension,

revoke, or take other action concerning a License. -

(1) If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section 501.12-8(d) or 501.12-9(a)(1), of this Ordinance, the Commission shall forward a copy of its decision to the NIGC within forty-five (45) days of receiving the NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Tribe's administrative procedures law~~ Nation's Administrative Procedures Act shall apply.

501.12-10. ~~Original Hearing Body.~~ Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Licensee may file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.12-4 or 501.12-9(a), of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing. The

(c) Those Commissioners serving on the original hearing body may not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled.

(d) The Commission may ~~determine~~decide to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration. -

(1) The Commission may also, in its sole discretion, grant oral ~~argument.~~ arguments.

(e) The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.12-11. ~~Notice to Oneida Business Committee.~~ Prior to any suspension or revocation of a License of the ~~gaming general manager~~Gaming General Manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

501.12-12. ~~Record of Proceedings.~~ The Commission shall maintain a complete and accurate record of all licensure proceedings.

501.12-13. ~~Revocation of a License is solely limited to the licensing matter.~~ Employment related processes resulting from revocation of a License are determined solely through the personnel processes and procedures of the ~~Tribe~~Nation and are not licensing matters governed by this Ordinance.

501.13. Gaming Services Licensing and Non-Gaming Services Permitting

501.13-1. ~~Scope of Section.~~ This section applies to all individuals and entities providing Gaming Services.

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§59 (a) The requirements of this Section are in addition to, and do not alter or amend any
§60 requirements imposed by the ~~Oneida Nation's~~ Vendor Licensing ~~Law~~².
§61 501.13-2. Gaming Services License or Non-Gaming Services Permit Required.
§62 (a) Gaming Services License.— Any Gaming Services vendor providing Gaming related
§63 contract goods or services as defined under Article VII(A) of the Compact to the Gaming
§64 Operation shall possess a valid Gaming Services License.
§65 (b) Non-Gaming Services Permit.— Any vendor providing non-gaming related goods or
§66 services to the Gaming Operation shall possess a valid Non-Gaming Services permit.
§67 (c) Determinations regarding the issuance of a License or permit under this section
§68 ~~must~~shall be made by the Commission which may be subject to requests for reconsideration
§69 by the Gaming Services vendor within fourteen (14) business days of receipt by the
§70 Gaming Services vendor of the notice of License or permit determination.
§71 501.13-3. Approved Gaming Services Vendor List.— The Commission shall maintain an updated
§72 and complete list of all Gaming Services vendors that possess current and valid Gaming Services
§73 Licenses or Non-Gaming Services permits from the Commission, which is known as the Approved
§74 License and Permit List.
§75 (a) Gaming Operations may only do business with vendors that possess valid and current
§76 Gaming Services Licenses or Non-Gaming Services permits and who appear on the
§77 Approved License and Permit List.
§78 501.13-4. Gaming Services License/Permit Application.— Every Applicant for a License or
§79 permit shall file with the Commission a written application in the form prescribed by the
§80 Commission, duly executed and verified, which ~~must~~shall provide and certify the following:
§81 ~~Provided that;~~ provided, Non-Gaming Services vendors with less than two thousand five hundred
§82 dollars (\$2,500.00) in services for the prior fiscal year are only required to file a notice of doing
§83 business with the Commission:
§84 (a) The Applicant's name and mailing address;
§85 (b) The names and addresses of each officer or management official of the Applicant;
§86 (c) A copy of the Applicant's articles of incorporation and ~~by laws~~ bylaws, or if not a
§87 corporation, the Applicant's organizational documents;
§88 (d) Identification of an agent of service for the Applicant;
§89 (e) The name and address of each person having a direct or indirect financial interest in
§90 the Applicant;
§91 (f) The nature of the License or permit applied for, describing the activity to be engaged
§92 in under the License or permit;
§93 (g) Explicit and detailed disclosure of any criminal record, including any delinquent
§94 taxes owed to the United States, or any state, of the Applicant, any person involved in the
§95 organization, and any person of interest whose name appears or is required to appear on
§96 the application;
§97 (h) Whether the Applicant is or has been licensed by the ~~state~~ State of Wisconsin Office
§98 of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;
§99 (i) Whether the Applicant has been licensed in the ~~state~~ State of New Jersey, Nevada, or
900 by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental
901 organization and, if so, proof of such licensure and the status of any such License;

² See also Appendix 1. Vendor Licensing/Permit.

(j) Whether the Applicant has been denied a License by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any License held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the ~~Tribe~~Nation to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on the application has or has had any business with the ~~Tribe~~Nation or any business or personal relationship with any of the ~~Tribe's~~Nation's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and ~~the~~ NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

501.13-5. Signature on Application. -Applications for Licenses or permits ~~must~~shall be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation, or ~~another~~other person to whom the authority to execute the ~~Application~~application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

501.13-6. Incomplete Applications. - Applications that do not contain all information requested, including proper signatures, will be considered incomplete. -

(a) Incomplete applications will not be considered by the Commission.

(b) The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application.

(1) If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

501.13-7. Supplemental Information. -The Commission may, in its discretion, request supplemental information from the Applicant.

(a) Supplemental information requested by the Commission ~~must~~shall be promptly submitted by the Applicant.

_____ (1) An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

501.13-8. *Continuing Duty to Provide Information.* - Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction.

_____ (a) An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to ~~the Applicant~~ him or her may constitute grounds to deny, suspend or revoke a License or permit.

501.13-9. *Background Investigations.* -Background Investigations for Gaming Services vendors ~~must~~ shall be conducted as follows:

(a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* -The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.

(b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* -The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation, and shall conduct any necessary additional Background Investigation to ensure that the ~~state~~ State background investigation is complete and current.

(c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* - The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications. ~~The random selection process must be identified by regulation of the Commission.~~

_____ (1) The random selection process shall be identified by regulation of the Commission.

501.13-10. *Licensing Action in a Foreign Jurisdiction.* -If the ~~states~~ States of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction ~~refuses~~ refuse to renew a License or permit, or conditions, suspends, or revokes the License or permit of an Applicant, permittee, or Licensee, such action may constitute grounds for similar action by the Commission.

501.13-11. *Claim of Privilege.* - At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law.

_____ (a) An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a License or permit.

501.13-12. *Withdrawal of an Application.* - An Applicant may request to withdraw an application by submitting a written request to the Commission.

_____ (a) The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal.

_____ (b) An Applicant who withdraws an application is precluded from ~~reapplying~~ re-applying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

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501.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* –Except as provided in section 501.13-13(c), of this Ordinance, no License or permit may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing or Permitting Action.* –The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

- (1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;
- (2) Knowingly promoted, played, or participated in any Gaming Activity operated in violation of the Compact, ~~or any Tribal~~ law of the Nation, or other applicable law;
- (3) Bribed or attempted to bribe a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;
- (4) Falsified any books or records relating to any transaction connected with operation of a Gaming Activity;
- (5) Refused to comply with a lawful directive of the ~~Tribal~~ Nation, the federal government, or any court of competent jurisdiction; or
- (6) Been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* –The Commission shall provide a Licensee or permittee with written notice of suspension, which ~~must~~ shall, at a minimum, notify the Licensee or permittee of the following:

- (1) The Licensee's or permittee's right to conduct a file review prior to any hearing regarding the notice of suspension, and to make copies of any documents in that file;
- (2) The Licensee's or permittee's right to present documents and witness testimony at the hearing and to be represented by counsel;
- (3) The specific grounds upon which the suspension is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or the Compact; and
- (4) The time and place set by the Commission for the Licensee's or permittee's file review and hearing.

(c) *Immediate Suspension.* –If, in the judgment of the Commission, the public interest, and effective regulation and control of others require the immediate exclusion of a Licensee or permittee, the Commission may immediately suspend a License or permit prior to a hearing on the matter. ~~Such an immediate suspension takes effect upon service of the notice of immediate suspension.~~

(1) Such an immediate suspension takes effect upon service of the notice of immediate suspension.

(d) *File Review and Hearing.* –Any notice of suspension or notice of immediate suspension ~~must~~ shall set forth the time and date for the Licensee or permittee to conduct a file review and for a hearing.

(e) *Final Written Decision.*— Within fifteen (15) business days after a hearing, the Commission shall issue a final written decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License or permit.

(f) *Default.*— If a Licensee or permittee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) *Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Oneida Nation's Administrative Procedures Act shall apply.*

501.13-14. *Original Hearing Body.*— Any person aggrieved by a licensing or permitting decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Applicant, Licensee or permittee may file such request with the Commission in writing on or before the fifteenth (15th) day following the receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.13-9 or 501. 13 -13(a), of this Ordinance, within thirty (30) days of the date of the filing ~~on~~of the request for an original hearing. ~~The~~

(1) Those Commissioners participating in the initial licensing or permitting decision may not participate in the original hearing.

(c) The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral ~~argument.~~ arguments.

(d) The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.14. Gaming Facility License

501.14-1. *The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, ~~must~~shall be conducted in a manner which adequately protects the environment and the public health and safety, and ~~must~~shall comply with requirements of the Compact and all other applicable health, safety, and environmental standards.*

501.14-2. *The Oneida Business Committee ~~must~~shall receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:*

(a) *The Gaming Facility meets all applicable ~~Federal and Tribal~~ health and safety standards of the Nation and Federal government.*

(1) *To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.*

(2) *If health and safety standards are not met, proof ~~must~~shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.*

(b) *The Gaming Facility meets applicable ~~federal and Tribal~~ environmental standards of the Nation and Federal government.*

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof ~~must~~shall be submitted by Gaming Operator that Remediation of the Gaming Facility is being actively sought which will place the Gaming Facility in compliance with the applicable standards.

501.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant.

(a) The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

501.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility.

(a) The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 501.14-2 of this Ordinance.

501.15. Gaming Operator License

501.15-1. Consent to Jurisdiction. ~~The application for License and the conduct of Gaming within the jurisdiction of the TribeNation is considered consent to the jurisdiction of the TribeNation in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other Tribal laws of the Nation.~~

501.15-2. License Required. ~~No Gaming Operator may conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.~~

501.15-3. Types of Licenses. ~~The Commission may issue each of the following types of Gaming Operator Licenses:~~

(a) Tribally-Owned or Tribally-Operated Class II. ~~This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.~~

(b) Tribally-Owned or Tribally-Operated Class III. ~~This License is required ~~for~~of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.~~

501.15-4. Gaming Operator License Qualifications. ~~The Commission shall issue a Gaming Operator License to any Gaming Operation if:~~

(a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;

(b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and

(c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

501.15-5. Provisions of General Applicability to All Gaming Operators.

(a) Site and Gaming Operator Specified. ~~Each Gaming Operator License may be applicable only to one (1) Gaming Operation and the Gaming Facility named on the~~

License.

(b) License Not Assignable. -No Gaming Operator License may be sold, lent, assigned or otherwise transferred.

(c) Regulations Posted or Available. -Each Gaming Operator ~~must~~shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

(d) Display of License. -Each Gaming Operator ~~must~~shall prominently display its License at each Gaming Facility.

501.15-6. Grandfathered Gaming Facilities. - All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

501.15-7. License Application Fees and License Taxes. -No application fees or License taxes may be required by the TribeNation for a Gaming Operator License.

501.15-8. Closure of a Gaming Operation. - If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee.

(a) The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

501.16. Games

501.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

501.16-2. Gaming Procedures. -Games operated under this Ordinance ~~must~~shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

501.16-3. Who May Not Play. -It is the policy of the TribeNation that particular Gaming Employees, employees of the Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations.

(a) At a minimum, members of the Oneida Business Committee, the Commission, the ~~gaming general manager~~Gaming General Manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

~~(a)-b)~~ The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities. ~~Such resolution must be on file with the Commission.~~

~~(b)-~~ (1) Such resolution shall be on file with the Commission.

(c) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities. ~~The standard operating procedure and the list of positions must be on file with the Commission.~~

(1) The standard operating procedure and the list of positions shall be on file with the Commission.

501.17. Allocation of Gaming Funds

501.17-1. Net Gaming revenues may only be used for the following purposes:

(a) To fund ~~Tribal~~ government operations, programs, or services ~~of the Nation;~~

(b) To provide for the general welfare of the TribeNation and its members; provided, that

per capita payments may only be made pursuant to an approved revenue allocation plan:
(c) ~~To promote Tribal economic development.~~ of the Nation;
(d) ~~To contribute to charitable organizations.~~
(e) ~~To assist in funding operations of other local governments.~~
(f) ~~To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders.~~ and
(g) ~~Any~~ For any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Oneida Nation Constitution ~~of the Tribe~~ and IGRA.

501.18. Audits

501.18-1. Annual Audit. ~~An annual audit of each Gaming Operation must~~ shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles. ~~Copies of the annual audit must be provided to the Oneida Business Committee, the Oneida Audit Committee, the Commission, and the NIGC by said certified public accounting firm.~~

~~(a)~~ (a) Copies of the annual audit shall be provided to the Oneida Business Committee, the Nation's Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(b) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section. ~~Contracts for legal services and accounting services are exempt from this requirement of the Ordinance.~~

(1) Contracts for legal services and accounting services are exempt from this requirement.

501.18-2. Other Audits. ~~All audits, other than the annual audit under section 501.18-1, must of this Ordinance, shall~~ be conducted pursuant to the Oneida Nation's Internal Audit Law ~~law~~ or any other applicable law of the Tribe Nation, and other audits authorized under the Compact.

501.18-3. Request for Audits. ~~Any audit, except the annual audit which that~~ is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Oneida Nation's Audit Committee.

501.19. Enforcement and Penalties

501.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

501.19-2. Violations/Prosecutions. ~~Violators of this Ordinance may be subject to disciplinary action and, as well as~~ civil and/or criminal prosecutions.

501.19-3. Remedies. ~~The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.~~

End.

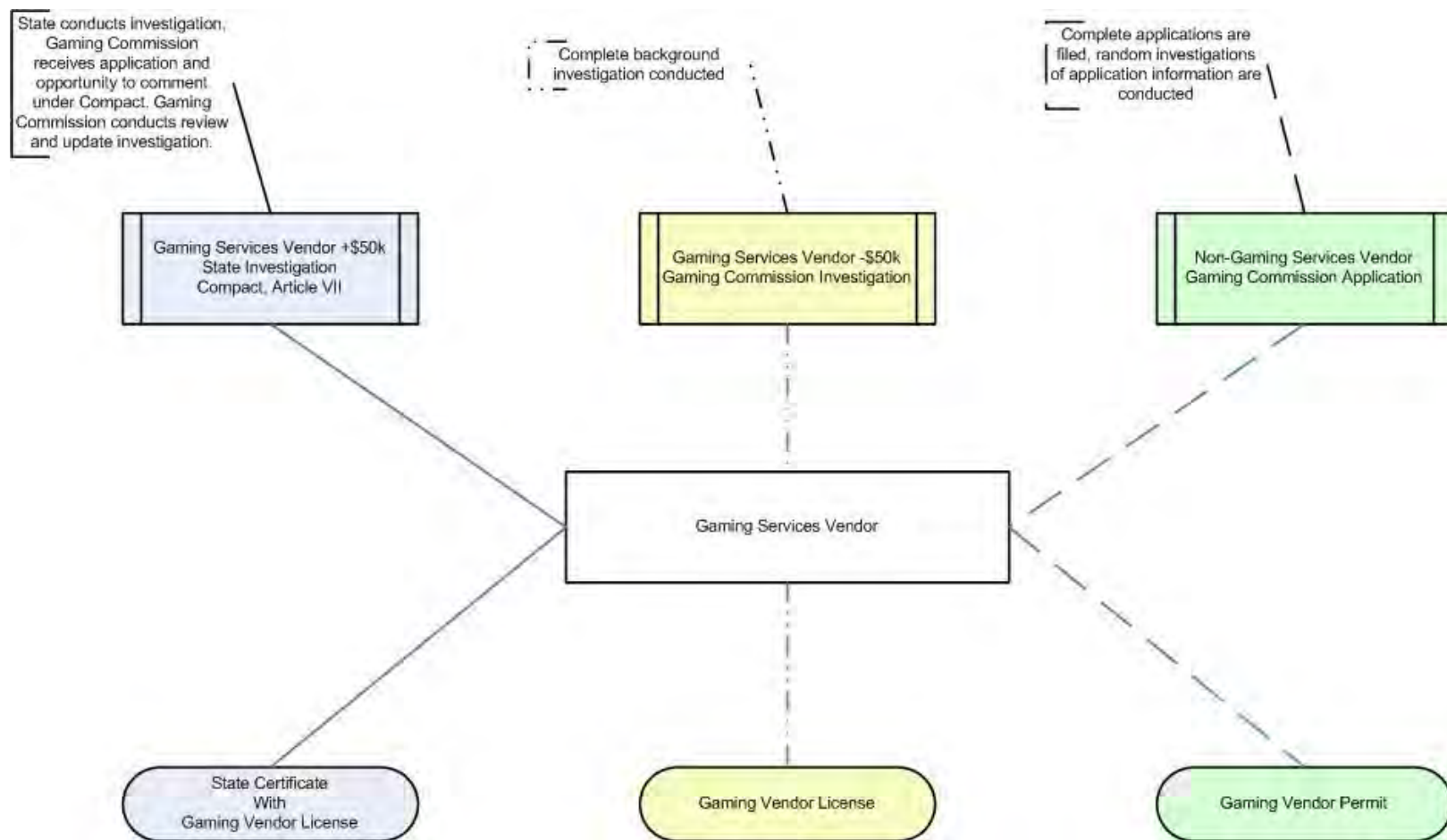
Adopted	GTC-7-05-04-A
Emergency Amended	BC-7-14-04-A
Amendment	BC-10-06-04-D
Emergency Amended	BC-11-03-04-A
Permanent Adoption	BC-3-23-05-C
Amended	BC-9-23-09-D

1227	Amended	BC-06-25-14-C (effective 11 01 2014)
1228	Emergency Amended	BC-10-08-14-C (effective 11 01 2014)
1229	Amended	BC-09-09-15-A (effective 09 09 2015)
1230	<u>Emergency Amended</u>	<u>BC-05-12-21-D</u>
1231	<u>Emergency Extended</u>	<u>BC-11-10-21-A</u>
1232	<u>Amended</u>	<u>BC- - - -</u>

Draft 2 (Redline to Last Permanent Draft BC-09-09-15-A)

2022 05 11

Appendix 1. Vendor License/Permit



Title 5. Business - Chapter 501
Thatiwi·ʔStunya·tha Olihwa·ke
Matters of interest to where they make the money
ONEIDA NATION GAMING ORDINANCE

501.1. Purpose and Policy	501.11. Licenses, Generally
501.2. Adoption, Amendment, Repeal	501.12. Gaming Employee License
501.3. Definitions	501.13. Gaming Services Licensing and Non-Gaming Services Permitting
501.4. Jurisdiction	501.14. Gaming Facility License
501.5. Oneida Business Committee: Powers and Duties	501.15. Gaming Operator License
501.6. Oneida Gaming Commission	501.16. Games
501.7. Gaming Surveillance: Powers, Duties and Limitations	501.17. Allocation of Gaming Funds
501.8. [Reserved for future use.]	501.18. Audits
501.9. Gaming Security Department	501.19. Enforcement and Penalties
501.10. Background Investigations	

501.1. Purpose and Policy

501.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Nation regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

501.1-2. *Policy.* It is the policy of this Ordinance to ensure that the Oneida Nation is the primary beneficiary of its Gaming Operations and has the sole proprietary interest; that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly; and that all internal departments, enterprises, officials and employees of the Nation work cooperatively to advance the best interests of the Nation, to protect its gaming resources, to protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance, and to ensure fairness of all games offered to the Nation's gaming patrons.

501.2. Adoption, Amendment, Repeal

501.2-1. This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B, BC-09-09-15-A and BC-__-__-__-__.

501.2-2. This Ordinance may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

501.2-3. Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

501.2-4. In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control; provided, that this Ordinance repeals the following:

- (a) BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);
- (b) GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);

- (c) GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) BC-03-16-94-A (Comprehensive Gaming Ordinance Interpretation); and
- (f) BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

501.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Nation.

501.2-6. *Preemptive Authority.* The Oneida Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

501.3. Definitions

501.3-1. This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. All words or phrases not defined herein shall be used in their ordinary and everyday sense.

(a) “Applicant” means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

(b) “Background Investigation” means a standard and thorough investigation conducted by the Nation in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

(c) “Class I Gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

(d) “Class II Gaming” means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technological aids are used in connection therewith) in which:

(A) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(B) The holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.

(C) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(2) Card games that:

(A) Are explicitly authorized by the laws of the State; or

(B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

(e) “Class III Gaming” means all forms of Gaming that are not Class I or Class II Gaming.

- (f) “Commission” means the Oneida Gaming Commission as established by this Ordinance.
- (g) “Commissioner” means a duly elected member of the Oneida Gaming Commission.
- (h) “Compact” means the 1991 Tribe-State Gaming Compact between the Nation and the State of Wisconsin, as amended and including any future amendments or successor compact entered into by the Nation and the State of Wisconsin and approved by the Secretary of the United States Department of Interior.
- (i) “Compliance Certificate” means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.
- (j) “Environmental Assessment” means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 *et seq.*, and all related federal regulations.
- (k) “Fraud” means any act of trickery or deceit used to or intended to gain control or possession of the property of another.
- (l) “Games, Gaming or Gaming Activity” means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.
- (m) “Gaming Employee” means any person employed by a Gaming Operation.
- (n) “Gaming Facility or Gaming Facilities” means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted or operated. Gaming Facility or Gaming Facilities does not include the site of a fair, carnival, exposition or similar occasion.
- (o) “Gaming Operation” means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.
- (p) “Gaming Operator” means the Nation, an enterprise owned by the Nation, or such other entity of the Nation as the Nation may from time-to-time designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.
- (q) “Gaming Services” means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.
- (r) “Indian Gaming Regulatory Act or IGRA” means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, *et seq.*, as amended.
- (s) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (t) “License” means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. A License shall be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.
- (u) “Licensee” means a person or entity issued a valid License.
- (v) “Nation” means the Oneida Nation.
- (w) “NIGC” means the National Indian Gaming Commission.

(x) “Oneida Business Committee” means the elected governing body of the Nation that exercises the authority delegated it by the Oneida General Tribal Council under Article IV of the Constitution and By-laws of the Oneida Nation, as may be amended from time-to-time hereafter.

(y) “Oneida General Tribal Council” means the Nation’s governing body, as established by the Constitution and By-laws of the Oneida Nation and as may be amended from time-to-time hereafter.

(z) “Ordinance or ONGO” means the Oneida Nation Gaming Ordinance, as may be amended from time-to-time hereafter.

(aa) “Regulatory Incident” means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

(bb) “Remediation” means efforts taken to reduce the source and migration of environmental contaminants at a site.

(cc) “Reservation” means all lands 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.

(dd) “Senior Gaming Management” means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

(ee) “State” means the State of Wisconsin, along with its authorized officials, agents and representatives.

(ff) “Tribal Fee Land” means all land to which the Nation holds title in fee simple.

(gg) “Tribal Trust Land” means all land to which the United States holds title for the benefit of the Nation pursuant to federal law.

501.4. Jurisdiction

501.4-1. *Territorial Jurisdiction.* This Ordinance extends to all land within the exterior boundaries of the Reservation.

501.4-2. *Subject Matter Jurisdiction.* This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Nation as set forth in section 501.4-1.

501.4-3. *Personal Jurisdiction.* This Ordinance governs:

(a) The Nation;

(b) Members of the Nation; and

(c) Individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.

501.5. Oneida Business Committee: Powers and Duties

501.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

501.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

501.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the Nation, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67 of the Real Property law.

501.5-4. The Oneida Business Committee delegates to the Commission, in section 501.6-14 of this Ordinance, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and the enforcement of laws and regulations.

501.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not delegated by a specific provision of this Ordinance.

501.5-6. The Chairperson of the Nation shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

501.6. Oneida Gaming Commission

501.6-1. *Establishment and Purpose.* The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution without requiring amendment of this Ordinance.

501.6-2. *Location and Place of Business.* The Commission shall maintain its offices and principal place of business within the Reservation.

501.6-3. *Duration and Attributes.* The Commission will have perpetual existence and succession in its own name, unless dissolved by a law of the Nation. Operations of the Commission shall be conducted on behalf of the Nation for the sole benefit of the Nation and its members. The Nation reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the Nation, or on behalf of the Commission, whenever the Nation considers it necessary to protect the sovereignty, rights, and interests of the Nation or the Commission.

501.6-4. *Sovereign Immunity of the Nation.* All inherent sovereign rights of the Nation with respect to the existence and activities of the Commission are hereby expressly reserved.

(a) The Nation confers upon the Commission sovereign immunity from suit as set forth in the Nation's Sovereign Immunity law.

(b) Nothing in this Ordinance nor any action of the Commission may be construed to be:

(1) A waiver of the sovereign immunity of the Commission or the Nation;

(2) Consent by the Commission or the Nation to the jurisdiction of the Judiciary, the United States, a state or any other tribe; or

(3) Consent by the Nation to any suit, cause of action, case or controversy; or the levy of any judgment, lien, or attachment upon any property of the Commission or the Nation.

501.6-5. *Requirements of Commission Membership.*

(a) *Qualifications.* Candidates for election or appointment to the Commission shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment.

(1) Candidates for election to the Commission shall further meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 501.6-13 of this Ordinance:

(A) Be an enrolled member of the Nation;

(B) Have a minimum of three (3) years of education experience,

employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

(C) Meet all other qualifications set forth in this Ordinance.

(b) *Conflict of Interest.* No person may be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined in the Nation's Conflict of Interest law.

(c) *Background Investigation.* No person may be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

(1) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 501.6-5 and 501.6-6 upon being elected or appointed to office.

501.6-6. Unless pardoned for activities under subsections (a) and/or (d) by the Nation, or pardoned for an activity under subsections (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsections (a) and/or (d) by the State or Federal government, no individual may be eligible for election or appointment to, or to continue to serve on, the Commission, who:

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:¹

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of Chapters 562 or 565 of the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2 or 3 during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of the Nation's law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the Nation to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the Nation;

(e) Has been removed from any office pursuant to the Nation's Removal Law within the

¹ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

501.6-7. *Term of Office.* Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office.

(a) Terms of office shall be staggered.

501.6-8. *Official Oath.* Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office.

(a) Upon being administered the oath of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

501.6-9. *Full-Time Status.* Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business.

(a) No Commissioner shall, during his or her tenure in office, be engaged in any other profession or business activity that may impede his or her ability to perform duties on behalf of the Commission or that competes with the Nation's interests.

(b) The Commission shall identify the appropriate work schedule for its members.

501.6-10. *Bylaws.* The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

501.6-11. *Budget and Compensation.* The Commission shall function pursuant to an annual budget.

(a) The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other budgets of the Nation.

(b) Compensation of Commissioners is not subject to the Nation's Boards, Committees and Commissions law, but shall be established by the Commission in a manner consistent with the Commission's internal rules and bylaws.

(1) The Commission shall adopt internal rules consistent with the Nation's existing accounting practices to verify its budgetary expenditures.

501.6-12. *Removal.* Removal of Commissioners shall be pursuant to the Nation's Removal Law.

501.6-13. *Vacancies.* Any vacancy in an unexpired term of office, however caused, shall be filled by appointment by the Oneida Business Committee, of a person qualified under sections 501.6-5 and 501.6-6 of this Ordinance, in accordance with the Nation's Boards, Committees and Commissions law.

501.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to, the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact.

(1) Unless otherwise indicated in this Ordinance, Commission regulation, or authorized by majority vote of the Commission, no Commissioner may act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty and fairness of the regulation and administration of Gaming.

(c) Subject to review and adoption by the Oneida Business Committee, to draft and

approve regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for the enforcement of such regulations consistent with the laws of the Nation.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided, the Rules of Play and Oneida Gaming Minimum Internal Controls require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls are effective upon adoption by the Commission.

(4) The Commission shall provide notice of adoption of the Rules of Play and/or Oneida Gaming Minimum Internal Controls to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting following such adoption.

(A) If the Oneida Business Committee has any concerns and/or requested revisions upon review of the Rules of Play and Oneida Gaming Minimum Internal Controls, the Commission shall work with the Oneida Business Committee to address such concerns and/or requested revisions.

(i) Unless the Oneida Business Committee repeals the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect while the Commission and the Oneida Business Committee jointly work to amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(ii) Should the Oneida Business Committee repeal the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls that were in effect immediately previous to those repealed will be automatically reinstated and effective immediately upon the repeal of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(B) If the Commission does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect as adopted by the Commission.

(C) Should the Oneida Business Committee pursue amendments to the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the amendments shall be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:

(i) if the Commission and the Oneida Business Committee reach an agreement as to the content of the amendments, the Commission shall adopt revised Rules of Play and/or the Oneida Gaming Minimum Internal Controls that have been discussed with and agreed upon by the Oneida Business Committee; or

(ii) if the Commission and the Oneida Business Committee do not reach an agreement as to the content of the amendments, the Oneida Business Committee may adopt revised Rules of Play and/or the Oneida Gaming Minimum Internal Controls that incorporate the amendments it deems necessary.

(D) If revised Rules of Play and/or Oneida Gaming Minimum Internal Controls are not adopted by either the Commission or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls originally adopted by the Commission will remain in effect.

(e) To prepare proposals, including budgetary and monetary proposals, which might enable the Nation to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto; provided, that all photocopies of documents shall be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

(k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.

(l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with the Nation's laws and practices.

(m) To arbitrate, negotiate, or settle any dispute to which it is a party, and which relates to its authorized activities.

(n) To act as the designated agent to receive all regulatory notices not included in section 501.5-6 of this Ordinance.

(o) To investigate all Regulatory Incidents.

(p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum

Internal Controls, Rules of Play, IGRA, or this Ordinance.

(q) To make determinations regarding suitability for licensing.

(r) To establish an administrative structure by regulation to carry out its authority and responsibilities.

(s) To establish, where needed, additional processes for conducting licensing hearings by regulation.

(t) To establish and collect fees for processing License applications by regulation.

(u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.

(v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.

(w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

501.6-15. *Reporting Requirements.* The Commission shall adhere to the following reporting requirements:

(a) A true, complete and accurate record of all proceedings of the Commission shall be kept and maintained;

(b) Complete and accurate minutes of all Commission meetings shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;

(c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, shall be submitted to the Oneida Business Committee.

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

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

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

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

501.7. Gaming Surveillance: Powers, Duties and Limitations

501.7-1. *Purpose.* The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance.

(a) Gaming Surveillance is a department within the Commission's administrative structure and supervision shall be identified within the organizational chart adopted by the Commission; provided, nothing in the designation of supervisory responsibility may be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 501.7-3 of this Ordinance.

501.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services

vendors.

501.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

501.7-4. Gaming Surveillance shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.

(b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.

(c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.

(d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

501.8. [Reserved for future use.]

501.9. Gaming Security Department

501.9-1. *Purpose.* The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees.

501.9-2. *Reporting.* The Internal Security Director, Gaming General Manager and Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under this Ordinance.

(a) When investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority.

501.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

501.9-4. *Investigations.* This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

501.10. Background Investigations

501.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

501.10-2. Background Investigations shall be conducted on all persons or entities as specified under this Ordinance.

(a) All Background Investigations shall be conducted to ensure that the Nation in its Gaming Operations may not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming.

(1) The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

501.11. Licenses, Generally

501.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License.

(a) All Gaming Employees, Gaming Services vendors and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity.

(b) All Gaming Facilities shall be licensed by the Oneida Business Committee.

501.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant.

(a) A temporary license permits the Licensee to engage in such activities pursuant to any terms and conditions imposed and specified by the Commission.

(b) A temporary license is valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

501.11-3. *Revocable.* A License is revocable only in accordance with the procedures set forth in this Ordinance.

(a) A Licensee has only those rights and protections regarding a License granted in this Ordinance.

501.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the Nation and are subject to all applicable Oneida, Federal, and State laws, regulations and/or policies.

501.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

501.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend or condition a License.

501.11-7. *Commission Licensing Actions.* The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance.

(a) Authority to place conditions on a License may be exercised only upon promulgation of regulations.

501.11-8. *Noncompliance.* The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions.

(a) Such regulations shall include procedures for appeal of such notices and may include

the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

501.12. Gaming Employee License

501.12-1. *Scope of Section.* This section applies only to Gaming Employee Licenses and licensing actions.

501.12-2. *License Application.* Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall certify:

- (a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).
- (b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).
- (c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference who was acquainted with the Applicant during each period of residence listed in subsection (b) above.
- (d) Current business and residence telephone numbers.
- (e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.
- (f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.
- (g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.
- (h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.
- (i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any.
- (j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.
- (k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.
- (l) A photograph.
- (m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h).
- (1) The Commission is the agency that takes the fingerprints.
- (n) Any other information the Commission deems relevant for a Gaming Employee License.
- (o) A statement that each Applicant has read and understands notices and the NIGC

requirements relating to:

- (1) The Privacy Act of 1974;
- (2) Fraud and False Statements Act; and
- (3) Fair Credit Reporting Act.

501.12-3. *License Qualifications.* No License may be granted if the Applicant:

- (a) Is under the age of eighteen (18).
- (b) Unless pardoned for activities under this subsection by the Nation, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:
 - (1) Any gambling-related offense;
 - (2) Any offense involving Fraud or misrepresentation;
 - (3) Any offense involving a violation of any provision of Chapters 562 or 565 of the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming, or any rule promulgated by the Wisconsin Racing Board;
 - (4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or
 - (5) Any offense involving the violation of any provision of the Nation's law that regulates the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.
- (c) Is determined to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.
- (d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Nation's Conflict of Interest law.
- (e) Each person licensed as a Gaming Employee has a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee.
 - (1) Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

501.12-4. *Initial Eligibility Determination.*

- (a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:
 - (1) Grant a temporary license, with or without conditions, to the Applicant; or
 - (2) Deny the License application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b) below.
- (b) If the Commission determines that an Applicant is ineligible for a License, the Commission shall notify the Applicant.
 - (1) The Commission shall set forth regulations for an Applicant to review any

information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 501.12-10 of this Ordinance.

(2) The suspension or revocation hearing provisions set forth at section 501.12-9 of this Ordinance do not apply to Initial Eligibility Determinations.

501.12-5. *Eligibility Determination and Notification to NIGC.* When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) Require the Gaming Employee to submit a completed application for employment that contains the notices and information listed in section 501.12-2 of this Ordinance;

(b) Review the Background Investigation of the Gaming Employee;

(1) Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(c) Create an investigative report based on each Background Investigation performed;

(1) The investigative report shall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Gaming Employee begins employment at a Gaming Facility, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System; and

(1) The notice of results shall include the following, provided that any additional or alternate information shall be forwarded as directed in regulations or rules adopted by the NIGC:

(A) The Gaming Employee's name, date of birth, and Social Security Number;

(B) The date on which the Gaming Employee began employment;

(C) A summary of the information presented in the investigative report, including:

(i) License(s) that have previously been denied;

(ii) Gaming licenses that have been revoked, even if subsequently reinstated;

(iii) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application; and

(iv) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.

(D) A copy of the eligibility determination made under section 501.12-5 (b) of this Ordinance.

(e) All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission shall be retained in the Commission's files for a period of at least three (3) years from the date the Gaming Employee's employment is terminated.

501.12-6. *License Issuance.* The Commission may issue a License to a Gaming Employee at any time after providing the NIGC with a notice of results as required under section 501.12-5(d) of this Ordinance; however, a Gaming Employee who does not have a License ninety (90) days after the

start of employment shall have his or her employment terminated.

(a) The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

(b) Any Gaming Employee License issued under this section is effective from the date of issuance and shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective.

(1) If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License.

(c) The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

501.12-7. *Requirement to Wear License.* During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

501.12-8. *NIGC Review.*

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 501.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee.

(1) Such a request suspends the thirty (30) day period until the Chairman receives the additional information.

(b) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC.

(1) The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 501.12-9 of this Ordinance.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 501.12-9 of this Ordinance.

501.12-9. *Suspension or Revocation of Licenses.* Except as provided in section 501.12-8(d) or 501.12-9(c) of this Ordinance, no License may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing Action.* The Commission may suspend, condition, or revoke any License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section 501.12-3 of this Ordinance; or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension.

- 722 (2) The Commission issues a written notice of suspension demonstrating that the
723 Licensee:
- 724 (A) Has knowingly made a materially false or misleading statement in any
725 application for a License, in any amendment thereto, or in response to a
726 request by the Commission for supplemental information or in connection
727 with any investigation of the Commission;
 - 728 (B) Has knowingly promoted, played, or participated in any Gaming
729 Activity operated in violation of the Compact, Oneida or federal law, and
730 this Ordinance;
 - 731 (C) Has bribed, attempted to bribe, or has received a bribe from a
732 Commissioner or any other person in an attempt to avoid or circumvent any
733 applicable law;
 - 734 (D) Has falsified any books or records relating to any transaction
735 connected with the operation of a Gaming Activity;
 - 736 (E) Has refused to comply with any lawful directive of the Nation, Federal
737 government, or any court of competent jurisdiction; or
 - 738 (F) Has been convicted of, or entered a plea of guilty or no contest to, a
739 crime involving the sale of illegal narcotics or controlled substances.
- 740 (b) *Suspension Notice.* The Commission's notice of suspension shall be in writing and
741 shall, at a minimum, notify the Licensee of the following:
- 742 (1) The Licensee's right to review a file prior to any hearing regarding the notice
743 of suspension, and to make copies of any documents contained in that file;
 - 744 (2) The Licensee's right to request a hearing on the proposed licensing action, to
745 present documents and witness testimony at that hearing, and to be represented by
746 counsel;
 - 747 (3) The specific grounds upon which the proposed licensing action is based,
748 including citations to relevant sections of this Ordinance, the IGRA and any
749 applicable regulations and/or the Compact; and
 - 750 (4) The time and place set by the Commission for the Licensee's hearing.
- 751 (c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest and
752 effective regulation and control of Gaming Activities requires the immediate exclusion of
753 a Licensee, the Commission may immediately suspend a License prior to the conduct of a
754 hearing on the matter.
- 755 (1) Such an immediate suspension may take effect upon service of the notice of
756 immediate suspension.
- 757 (d) Any notice of suspension or notice of immediate suspension shall set forth the times
758 and dates for when the Licensee may review his or her file and the date for a hearing on
759 any proposed licensing action.
- 760 (e) Within fifteen (15) business days after a hearing, the Commission shall issue a final
761 written licensing decision and decide whether to suspend, uphold an immediate suspension,
762 revoke, or take other action concerning a License.
- 763 (1) If the License was suspended, conditioned or revoked based on information
764 from the NIGC or other source under section 501.12-8(d) or 501.12-9(a)(1) of this
765 Ordinance, the Commission shall forward a copy of its decision to the NIGC within
766 forty-five (45) days of receiving the NIGC's or the other source's notification
767 indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Nation's Administrative Procedures Act shall apply.

501.12-10. *Original Hearing Body*. Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Licensee may file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.12-4 or 501.12-9(a) of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing.

(c) Those Commissioners serving on the original hearing body may not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled.

(d) The Commission may decide to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral arguments.

(e) The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.12-11. *Notice to Oneida Business Committee*. Prior to any suspension or revocation of a License of the Gaming General Manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

501.12-12. *Record of Proceedings*. The Commission shall maintain a complete and accurate record of all licensure proceedings.

501.12-13. Revocation of a License is solely limited to the licensing matter. Employment related processes resulting from revocation of a License are determined solely through the personnel processes and procedures of the Nation and are not licensing matters governed by this Ordinance.

501.13. Gaming Services Licensing and Non-Gaming Services Permitting

501.13-1. *Scope of Section*. This section applies to all individuals and entities providing Gaming Services.

(a) The requirements of this Section are in addition to, and do not alter or amend any requirements imposed by the Nation's Vendor Licensing law.²

501.13-2. *Gaming Services License or Non-Gaming Services Permit Required*.

(a) *Gaming Services License*. Any Gaming Services vendor providing Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation shall possess a valid Gaming Services License.

(b) *Non-Gaming Services Permit*. Any vendor providing non-gaming related goods or

² See also Appendix 1. Vendor Licensing/Permit.

services to the Gaming Operation shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section shall be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

501.13-3. *Approved Gaming Services Vendor List.* The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which is known as the Approved License and Permit List.

(a) Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

501.13-4. *Gaming Services License/Permit Application.* Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall provide and certify the following; provided, Non-Gaming Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year are only required to file a notice of doing business with the Commission:

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and bylaws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the State of Wisconsin Office of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;

(i) Whether the Applicant has been licensed in the State of New Jersey, Nevada or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such License;

(j) Whether the Applicant has been denied a License by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any License held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the Nation to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on

the application has or has had any business with the Nation or any business or personal relationship with any of the Nation's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and the NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

501.13-5. *Signature on Application.* Applications for Licenses or permits shall be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation or other person to whom the authority to execute the application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

501.13-6. *Incomplete Applications.* Applications that do not contain all information requested, including proper signatures, will be considered incomplete.

(a) Incomplete applications will not be considered by the Commission.

(b) The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application.

(1) If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

501.13-7. *Supplemental Information.* The Commission may, in its discretion, request supplemental information from the Applicant.

(a) Supplemental information requested by the Commission shall be promptly submitted by the Applicant.

(1) An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

501.13-8. *Continuing Duty to Provide Information.* Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction.

(a) An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to him or her

may constitute grounds to deny, suspend or revoke a License or permit.

501.13-9. *Background Investigations.* Background Investigations for Gaming Services vendors shall be conducted as follows:

(a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.

(b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation and shall conduct any necessary additional Background Investigation to ensure that the State background investigation is complete and current.

(c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications.

(1) The random selection process shall be identified by regulation of the Commission.

501.13-10. *Licensing Action in a Foreign Jurisdiction.* If the States of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction refuse to renew a License or permit, or conditions, suspends or revokes the License or permit of an Applicant, permittee or Licensee, such action may constitute grounds for similar action by the Commission.

501.13-11. *Claim of Privilege.* At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law.

(a) An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a License or permit.

501.13-12. *Withdrawal of an Application.* An Applicant may request to withdraw an application by submitting a written request to the Commission.

(a) The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal.

(b) An Applicant who withdraws an application is precluded from re-applying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

501.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* Except as provided in section 501.13-13(c) of this Ordinance, no License or permit may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing or Permitting Action.* The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

(1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

- 949 (2) Knowingly promoted, played or participated in any Gaming Activity operated
950 in violation of the Compact, any law of the Nation, or other applicable law;
951 (3) Bribed or attempted to bribe a Commissioner or any other person in an
952 attempt to avoid or circumvent any applicable law;
953 (4) Falsified any books or records relating to any transaction connected with
954 operation of a Gaming Activity;
955 (5) Refused to comply with a lawful directive of the Nation, the federal
956 government, or any court of competent jurisdiction; or
957 (6) Been convicted of or entered a plea of guilty or no contest to a crime involving
958 the sale of illegal narcotics or controlled substances.
- 959 (b) *Suspension Notice.* The Commission shall provide a Licensee or permittee with
960 written notice of suspension, which shall, at a minimum, notify the Licensee or permittee
961 of the following:
- 962 (1) The Licensee's or permittee's right to conduct a file review prior to any
963 hearing regarding the notice of suspension, and to make copies of any documents
964 in that file;
965 (2) The Licensee's or permittee's right to present documents and witness
966 testimony at the hearing and to be represented by counsel;
967 (3) The specific grounds upon which the suspension is based, including citations
968 to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or
969 the Compact; and
970 (4) The time and place set by the Commission for the Licensee's or permittee's
971 file review and hearing.
- 972 (c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest and
973 effective regulation and control of others require the immediate exclusion of a Licensee or
974 permittee, the Commission may immediately suspend a License or permit prior to a hearing
975 on the matter.
- 976 (1) Such an immediate suspension takes effect upon service of the notice of
977 immediate suspension.
- 978 (d) *File Review and Hearing.* Any notice of suspension or notice of immediate
979 suspension shall set forth the time and date for the Licensee or permittee to conduct a file
980 review and for a hearing.
- 981 (e) *Final Written Decision.* Within fifteen (15) business days after a hearing, the
982 Commission shall issue a final written decision and decide whether to suspend, uphold an
983 immediate suspension, revoke, or take other action concerning a License or permit.
- 984 (f) *Default.* If a Licensee or permittee fails to appear for his or her hearing before the
985 Commission, that right is deemed to have been waived and the Commission will proceed
986 on the proposed licensing action by default.
- 987 (g) Unless identified in this Ordinance or regulations of the Commission, the hearing
988 processes set forth in the Nation's Administrative Procedures Act shall apply.
- 989 501.13-14. *Original Hearing Body.* Any person aggrieved by a licensing or permitting decision
990 of the Commission may appeal the decision by filing a request for an original hearing before the
991 Commission.
- 992 (a) The Applicant, Licensee or permittee may file such request with the Commission in
993 writing on or before the fifteenth (15th) day following the receipt of the Commission's
994 decision.

(b) The Commission shall certify the record, developed in accordance with section 501.13-9 or 501.13-13(a) of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing.

(1) Those Commissioners participating in the initial licensing or permitting decision may not participate in the original hearing.

(c) The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral arguments.

(d) The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.14. Gaming Facility License

501.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, shall be conducted in a manner which adequately protects the environment and the public health and safety, and shall comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

501.14-2. The Oneida Business Committee shall receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable health and safety standards of the Nation and Federal government.

(1) To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable environmental standards of the Nation and Federal government.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof shall be submitted by Gaming Operator that Remediation of the Gaming Facility is being actively sought which will place the Gaming Facility in compliance with the applicable standards.

501.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant.

(a) The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

501.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper

authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility.

- (a) The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 501.14-2 of this Ordinance.

501.15. Gaming Operator License

501.15-1. *Consent to Jurisdiction.* The application for License and the conduct of Gaming within the jurisdiction of the Nation is considered consent to the jurisdiction of the Nation in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other laws of the Nation.

501.15-2. *License Required.* No Gaming Operator may conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.

501.15-3. *Types of Licenses.* The Commission may issue each of the following types of Gaming Operator Licenses:

- (a) *Tribally-Owned or Tribally-Operated Class II.* This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.

- (b) *Tribally-Owned or Tribally-Operated Class III.* This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.

501.15-4. *Gaming Operator License Qualifications.* The Commission shall issue a Gaming Operator License to any Gaming Operation if:

- (a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;
- (b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and
- (c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

501.15-5. *Provisions of General Applicability to All Gaming Operators.*

- (a) *Site and Gaming Operator Specified.* Each Gaming Operator License may be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.

- (b) *License Not Assignable.* No Gaming Operator License may be sold, lent, assigned or otherwise transferred.

- (c) *Regulations Posted or Available.* Each Gaming Operator shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

- (d) *Display of License.* Each Gaming Operator shall prominently display its License at each Gaming Facility.

501.15-6. *Grandfathered Gaming Facilities.* All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

501.15-7. *License Application Fees and License Taxes.* No application fees or License taxes may be required by the Nation for a Gaming Operator License.

501.15-8. *Closure of a Gaming Operation.* If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee.

- (a) The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

501.16. Games

501.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

501.16-2. *Gaming Procedures.* Games operated under this Ordinance shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

501.16-3. *Who May Not Play.* It is the policy of the Nation that particular Gaming Employees, employees of the Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations.

- (a) At a minimum, members of the Oneida Business Committee, the Commission, the Gaming General Manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

(b) The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities.

- (1) Such resolution shall be on file with the Commission.

(c) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities.

- (1) The standard operating procedure and the list of positions shall be on file with the Commission.

501.17. Allocation of Gaming Funds

501.17-1. Net Gaming revenues may only be used for the following purposes:

- (a) To fund government operations, programs, or services of the Nation;
- (b) To provide for the general welfare of the Nation and its members; provided, that per capita payments may only be made pursuant to an approved revenue allocation plan;
- (c) To promote economic development of the Nation;
- (d) To contribute to charitable organizations;
- (e) To assist in funding operations of other local governments;
- (f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders; and
- (g) For any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Oneida Nation Constitution and IGRA.

501.18. Audits

501.18-1. *Annual Audit.* An annual audit of each Gaming Operation shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles.

- (a) Copies of the annual audit shall be provided to the Oneida Business Committee, the Nation's Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(b) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section of the Ordinance.

(1) Contracts for legal services and accounting services are exempt from this requirement.

501.18-2. *Other Audits.* All audits, other than the annual audit under section 501.18-1 of this Ordinance, shall be conducted pursuant to the Nation's Internal Audit law or any other applicable law of the Nation, and other audits authorized under the Compact.

501.18-3. *Request for Audits.* Any audit, except the annual audit that is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Nation's Audit Committee.

501.19. Enforcement and Penalties

501.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

501.19-2. *Violations/Prosecutions.* Violators of this Ordinance may be subject to disciplinary action, as well as civil and/or criminal prosecutions.

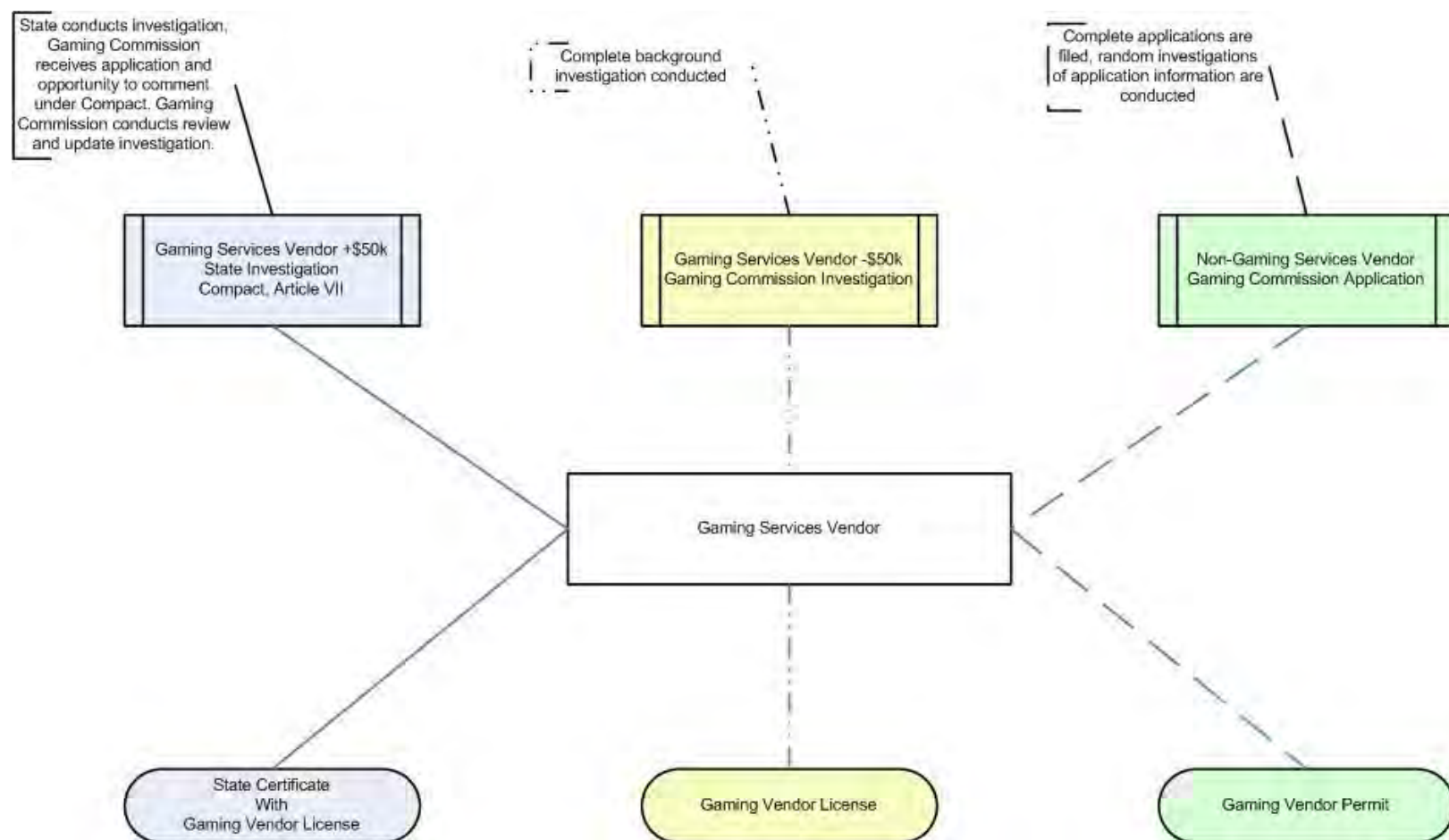
501.19-3. *Remedies.* The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.

End.

Adopted	GTC-7-05-04-A
Emergency Amended	BC-7-14-04-A
Amendment	BC-10-06-04-D
Emergency Amended	BC-11-03-04-A
Permanent Adoption	BC-3-23-05-C
Amended	BC-9-23-09-D
Amended	BC-06-25-14-C (effective 11 01 2014)
Emergency Amended	BC-10-08-14-C (effective 11 01 2014)
Amended	BC-09-09-15-A (effective 09 09 2015)
Emergency Amended	BC-05-12-21-D
Emergency Extended	BC-11-10-21-A
Amended	BC-__-__-__-__

Draft 2 for OBC Consideration
2022 05 11

Appendix 1. Vendor License/Permit



FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: April 28, 2022

RE: **Fiscal Impact of the Oneida Nation Gaming Ordinance**

I. Estimated Fiscal Impact Summary

Law: Oneida Nation Gaming Ordinance		
Implementing Agency: Internal Security, Oneida Police Department, Oneida Gaming Commission, Oneida Gaming Management, and Oneida Business Committee		
Estimated time to comply	Sixty to Ninety days	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$0	\$0

II. Background

A. Legislative History

This law was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04A and the Oneida Business Committee by resolutions BC-10-06-04D, BC-03-23-05-C, BC 09-23-09D, BC 06-24-14B and BC 09-09-15 and emergency amendments by resolution BC-05-12-21D and BC 11-10-21A.

B. Summary of Content

The amendment includes makes the following changes to the Oneida Nation Gaming Ordinance Law:

- The Law will remove the Security Department as a department of the Oneida Police Department;
- Gaming Security shall report investigations of possible criminal or quasi-criminal activity to the Oneida Police Department;

- The law removes the requirement to provide copies of all reports of the Gaming Security Department to the Oneida Gaming Commission;
- The law removes the requirement to have an Executive Director for the Oneida Gaming Commission responsible for hiring and managing personnel of the Commission;
- The law provides that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of any personnel of the Commission.

III. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office expenses, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

IV. Executive Summary of Findings

The Law removes Security as a department of the Oneida Police Department. The Internal Security Director, Gaming General Manager, and Commission shall enter into an agreement, subject to approval by the Oneida Business Committee, describing each party’s responsibilities and reporting requirements. There is no longer a requirement to hire an Executive Director for the Oneida Gaming Commission.

V. Agency

The changes in the Law recommend organizational personnel restructure and accompanying reporting changes.

VI. Financial Impact

There is no direct fiscal impact of the Law as it codifies organizational structure and reporting process.

VII. Recommendation

Finance Department does not make a recommendation in regard to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
May 4, 2021

Oneida Personnel Policies and Procedures Emergency Amendments

Submission Date: 8/18/21	Public Meeting: n/a
LOC Sponsor: Marie Summers	Emergency Enacted: 11/24/21

Summary: *This item was carried over from last term. This request for amendments to the Oneida Personnel Policies and Procedures was added to the AFL in February 2019. The purpose of the Oneida Personnel Policies and Procedures is to provide the various procedures and policies governing employee related matters including recruitment, selection, compensation and benefits, employee relations, safety and health, rules and regulations, recordkeeping, and privacy and confidentiality. The Nation's Human Resources Department requested amendments to the Oneida Personnel Policies and Procedures to address investigative enforcement. Amendments are being sought to delegate authority to investigators to put employees on investigative leave (as opposed to just the supervisor of the employee), and discipline employees. An amendment was also sought so that if terminated, an employee would be ineligible for employment with the Nation, but may request forgiveness after five (5) years. This item was added to the AFL in conjunctions with a request for amendments to the Investigative Leave Policy and the Workplace Violence law. On April 10, 2019, the Oneida Business Committee directed the LOC to complete the legislative process to remove section IV(A)(5)(n) regarding Trade Back for Cash from the Personnel Policies and Procedures. On August 18, 2021, the Legislative Operating Committee considered a request for amendments to the Oneida Personnel Policies and Procedures from the Human Resources Department to address the selection policy in an effort to update the Personnel Policies & Procedures using current interpretations, language and technology to improve minimize the time to hire employees from post to hire in a tight labor market. The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population. The Oneida Business Committee adopted emergency amendments to the Oneida Personnel Policies and Procedures to address the selection policies on November 24, 2021, through the adoption of resolution BC-11-24-21-A. The emergency amendments will expire on May 24, 2022.*

10/7/20 LOC: Motion by Jennifer Webster to add the Oneida Personnel Policies and Procedures Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

8/18/21 LOC: Motion by Marie Summers to accept the information provided in the request [*request for amendments to the Oneida Personnel Policies and Procedures to address the revision of the HRD Manager Title*] as FYI; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Marie Summers to accept for emergency LOC process [*request for amendments to the Oneida Personnel Policies and Procedures to address the selection process*] with Marie Summers as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

9/13/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Geraldine Danforth, Todd Vandenheuvel, Barbara Kolitsch, Josh Cottrell, Nic

Reynolds, Wendy Alvarez, Kristal Hill, Matt Denny, Rhiannon Metoxen, Melinda K. Danforth, Rita Reiter. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed emergency amendments to the Oneida Personnel Policies and Procedures submitted by the HRD Department.

9/15/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the proposed emergency amendments to the Oneida Personnel Policies and Procedures submitted by the HRD Department.

10/12/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Rhiannon Metoxen, Kristal Hill, Todd Vandenheuvel, Josh Cottrell, Nic Reynolds, Wendy Alvarez, Matt Denny, Melinda K. Danforth, Rita Reiter. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss with HRD the LOC's proposed emergency amendments to the Oneida Personnel Policies and Procedures.

10/18/21: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Todd Vandenheuvel, Josh Cottrell, Wendy Alvarez, Matt Denny, Rita Reiter. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue reviewing and discussing with HRD the LOC's proposed emergency amendments to the Oneida Personnel Policies and Procedures.

10/21/21: *Work Meeting.* Present: Clorissa N. Santiago, Carmen Vanlanen, Wendy Alvarez. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to work on clarifying the internal job posting section of the Personnel Policies and Procedures.

10/25/21: *Work Meeting.* Present: Daniel Guzman King, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Todd Vandenheuvel, Josh Cottrell, Wendy Alvarez, Dana Thyssen, Lucy Neville, Nic Reynolds. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review an updated draft of the proposed emergency amendments to the Oneida Personnel Policies and Procedures.

11/4/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Jennifer Webster, Marie Summers, Lisa Liggins, Brandon Yellowbird Stevens, Tehassi Hill, Cristina Danforth, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen, Todd Vandenheuvel, Lucy Neville, Nic Reynolds, Rita Reiter, and Matthew Denny. This was a work meeting held through Microsoft Teams. The purpose of this work meeting with the officers of the Oneida Business Committee and Human Resources Department was to discuss the potential for emergency amendments to the Oneida Personnel Policies and Procedures and whether the emergency legislation standard provided in the LPA has been met.

11/9/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated proposed emergency amendments.

11/17/21 LOC: Motion by Kirby Metoxen to approve Oneida Personnel Policies and Procedures emergency amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

11/24/21 OBC: Motion by Brandon Stevens to adopt resolution 11-24-21-A Emergency Amendments to the Oneida Personnel Policies and Procedures - Selection Policy, seconded by Lisa Liggins. Motion carried.

11/30/21: *Work Meeting.* Present: Clorissa N. Santiago, Todd Vandenheuvel, Matthew Denny. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss some questions HRD had on the implementation of the emergency amendments.

12/15/21: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a strategy on how to move forward the permanent adoption of amendments to this Law.

2/21/22: *Work Meeting.* Present: Clorissa N. Santiago, Todd Vandenheuvel. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to briefly discuss the purpose of next Thursday's work meeting between the LOC and HRD.

2/24/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Josh Cottrell, Wendy Alvarez. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to begin discussions on a potential plan for permanent amendments to the Oneida Personnel Policies and Procedures. The LOC and HRD discussed and began determining a ranking of potential issues to be amended in the Oneida Personnel Policies and Procedures to be addressed through phased amendments.

4/20/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a plan for bringing minor additional emergency amendments to the Oneida Personnel Policies and Procedures to the May 4, 2022, LOC meeting.

Next Steps:

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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: May 11, 2022
RE: Oneida Personnel Policies and Procedures Emergency Amendments

Please find the following attached backup documentation for your consideration of emergency amendments to the Oneida Personnel Policies and Procedures:

1. Resolution: Additional Emergency Amendments to the Oneida Personnel Policies and Procedures – Selection Policy
2. Statement of Effect: Additional Emergency Amendments to the Oneida Personnel Policies and Procedures – Selection Policy
3. Oneida Personnel Policies and Procedures Emergency Amendments Legislative Analysis
4. Oneida Personnel Policies and Procedures Emergency Amendments Draft (Redline)
5. Oneida Personnel Policies and Procedures Emergency Amendments (Clean)

Overview

Emergency amendments to the Oneida Personnel Policies and were adopted by the Oneida Business Committee on November 24, 2021, through the adoption of resolution BC-11-24-21-A to improve the Nation's hiring capacity and service delivery in the tight labor markets that have resulted from the COVID-19 pandemic. The emergency amendments to the Oneida Personnel Policies and Procedures:

- Required that all applications for employment with the Nation be submitted online;
- Eliminated the requirement that a position vacancy be posted twice with the first posting open to enrolled members of the Nation only and the second posting open to the general public;
- Required that applicants who are enrolled members of the Oneida Nation be screened and interviewed prior to any other applicants;
- Allowed for a supervisor to choose between the next two (2) ranked applicants if the first choice refuses the position offer;
- Required an employee who is transferred to continue serving in their present position until a replacement can be found, for a period up to thirty (30) days;
- Removed the requirement that an employee completes one (1) year of service to the Nation before being eligible for a transfer;
- Clarified that an employee shall be required to undergo an original probation period for three (3) months after being hired, transferred, or reassigned to a new position;
- Removed the provision that provided probationary employees be paid at five percent (5%) below the posted pay rate for the position; and
- Made other revisions throughout Section III of the Oneida Personnel Policies and Procedures to simplify and clarify language to make the hiring selection process more efficient.

When discussing the potential six (6) month extension of the emergency amendments to the Oneida Personnel Policies and Procedures the Legislative Operating Committee determined it was necessary to seek additional emergency amendments to the Oneida Personnel Policies and Procedures to clarify inconsistencies that arose as a result of the last emergency amendments. The proposed emergency amendments to the Oneida Personnel Policies and Procedures will maintain the current emergency amendments and also:

- Clarify that termination of an employee for cause during their original probationary period shall not be subject to appeal. [*OPPP Section III.D.1.c*]; and
- Clarify that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. [*OPPP Section IV.A.5.h.2*].

In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a “Declaration of Public Health State of Emergency” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until May 23, 2022, 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, 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.

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

The emergency amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the general welfare of the Reservation population. The emergency amendments simplify and clarify the Nation’s hiring selection procedures so they are more effective so that the Nation can improve its hiring capacity and service delivery during increasingly tight labor markets that have resulted from the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of these amendments would be contrary to public interest. The process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address its hiring selection procedures in the tight labor markets resulting from the COVID-19 pandemic.

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

Requested Action

Approve the Resolution: Additional Emergency Amendments to the Oneida Personnel Policies and Procedures – Selection Policy

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Additional Emergency Amendments to the Oneida Personnel Policies and Procedures – Selection Policy

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
2 recognized by the laws of the United States of America; and
3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
8
- 9 **WHEREAS,** the Oneida Personnel Policies and Procedures (“the Law”) sets forth the Nation’s various
10 employment related policies and procedures; and
11
- 12 **WHEREAS,** Section III of the Law specifically governs the hiring selection policy for employment with
13 the Nation; and
14
- 15 **WHEREAS,** on November 24, 2021, the Oneida Business Committee adopted emergency amendments
16 to the Law through the adoption of resolution BC-11-24-21-A to improve the Nation’s hiring
17 capacity and service delivery in the tight labor markets that have resulted from the COVID-
18 19 pandemic; and
19
- 20 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a “Declaration of Public Health State of
21 Emergency” regarding COVID-19 which declared a Public Health State of Emergency for
22 the Nation until April 12, 2020, which was subsequently extended by the Oneida Business
23 Committee until May 23, 2022, through the adoption of the following resolutions: BC-03-
24 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-
25 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
26 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-
27 24-21-F, BC-01-12-22-B, and BC-03-23-22-A; and
28
- 29 **WHEREAS,** the COVID-19 pandemic interrupted many business operations and had vast effects on
30 employment throughout the country; and
31
- 32 **WHEREAS,** since the emergency amendments to the Law were adopted through resolution BC-11-24-
33 21-A, it became clear that additional emergency amendments to the Oneida Personnel
34 Policies and Procedures would be necessary to clarify inconsistencies that arose as a
35 result of the last emergency amendments; and
36
- 37 **WHEREAS,** additional emergency amendments to the Law are being sought to maintain the current
38 emergency amendments, and provide additional clarifications on the appeal rights and
39 payout of accrued vacation/personal time of a terminated employee in their original
40 probation period, to improve the Nation’s hiring capacity and service delivery in the tight
41 labor markets that have resulted from the COVID-19 pandemic; and
42

WHEREAS, the emergency amendments to the Law will clarify that termination of an employee for cause during their original probationary period shall not be subject to appeal; and

WHEREAS, the emergency amendments to the Law will clarify that employees who are terminated during the original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck; and

WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act; and

WHEREAS, the emergency adoption of amendments to this Law are necessary for the preservation of the general welfare of the Reservation population in order to continue to simplify the Nation's hiring selection procedures so they are more effective so that the Nation can improve its hiring capacity and service delivery during increasingly tight labor markets that have resulted from the COVID-19 pandemic; and

WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address its hiring selection procedures in the tight labor markets resulting from the COVID-19 pandemic; and

WHEREAS, adoption of emergency amendments to this Law would remain in effect for a period of six (6) months, renewable by the Oneida Business Committee for an additional six (6) month term; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee hereby adopts the emergency amendments to the Oneida Personnel Policies and Procedures effective immediately.



Statement of Effect
*Additional Emergency Amendments to the
Oneida Personnel Policies and Procedures – Selection Policy*

Summary

This resolution adopts additional emergency amendments to the Oneida Personnel Policies and Procedures.

*Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office
Date: April 29, 2022*

Analysis by the Legislative Reference Office

This resolution adopts additional emergency amendments to the Oneida Personnel Policies and Procedures (“the Law”). The Law sets forth the Nation’s various employment related policies and procedures, with Section III specifically governing the hiring selection policy or employment with the Nation. Additional emergency amendments to the Law are being sought to maintain the current emergency amendments, and provide additional clarifications on the appeal rights and payout of accrued vacation/personal time of a terminated employee in their original probation period, to improve the Nation’s hiring capacity and service delivery in the tight labor markets that have resulted from the COVID-19 pandemic by:

- Clarifying that termination of an employee for cause during their original probationary period shall not be subject to appeal. *[OPPP Section III.D.1.c];* and
- Clarifying that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. *[OPPP Section IV.A.5.h.2].*

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. *[1 O.C. 109.1-1]*. The LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. *[1 O.C. 109.9-5]*. A public meeting and fiscal impact statement are not required for emergency legislation. *[1 O.C. 109.8-1(b) and 109.9-5(a)]*.

In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a “Declaration of Public Health State of Emergency” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. *[3 O.C. 302.8-1]*. The Public Health State of Emergency for the Nation has since been extended until May 23, 2022, 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, 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. The COVID-19 pandemic interrupted many business operations and had vast effects on employment throughout the country.

The resolution provides that the emergency amendments to this Law are necessary for the preservation of the general welfare of the Reservation population in order to simplify and clarify the Nation's hiring selection procedures so they are more effective so that the Nation can improve its hiring capacity and service delivery during increasingly tight labor markets that have resulted from the COVID-19 pandemic.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest and the process and requirements of the LPA cannot be completed in time to allow the Nation the ability to adequately address its hiring selection procedures in the tight labor markets resulting from the COVID-19 pandemic.

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

Conclusion

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



EMERGENCY AMENDMENTS TO ONEIDA PERSONNEL POLICIES AND PROCEDURES LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ Provide additional clarification to eliminate inconsistencies that arose as a result of the last emergency amendments through resolution BC-11-24-21-A. <ul style="list-style-type: none"> ▪ Clarify that termination of an employee for cause during their original probationary period shall not be subject to appeal; and ▪ Clarify that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. ▪ Maintain the current emergency amendments which: <ul style="list-style-type: none"> ▪ Update the Nation's Personnel Policies and Procedures using current interpretations, language, and technology to minimize the time to hire employees from post to hire in a tight labor market; ▪ Remove language stating that knowledge of Oneida culture can be attained only by membership (or eligibility for membership) in the Oneida Nation; ▪ Add language to state that the Personnel Commission is directed to comply with the Oneida Personnel Commission Bylaws; ▪ Update the applications policy to require all applications for employment vacancies to be submitted online; ▪ Change the guidelines for advertising position vacancies to require one posting for position vacancies open to both enrolled Oneida members and the general public; ▪ Add guidelines for screening to require applicants who are enrolled members of the Oneida Nation to be screened and interviewed prior to any other applicants; ▪ Include a definition for "conflict of interest"; ▪ Add language to clarify that no applicant interview shall take place without an HRD Representative present; ▪ Revise the selection policy to provide the supervisor with the next two (2) ranked candidates should the supervisor's first choice refuse the offer; ▪ Revise the selection policy to remove requirement of offering chosen candidates the position within five (5) days; ▪ Remove the section regarding bidding for internal job postings; and ▪ Remove the wage deduction for probationary employees.
Purpose	To provide for the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping.

Affected Entities	Oneida Nation employees
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Oneida Personnel Policies and Procedures provides the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping.
- B. Emergency Amendments through BC-11-24-21-A.** On August 18, 2021, the Legislative Operating Committee considered a request for amendments to the Oneida Personnel Policies and Procedures from the Human Resources Department to address the selection policy in an effort to update the Oneida Personnel Policies & Procedures using current interpretations, language and technology to improve minimize the time to hire employees from post to hire in a tight labor market. The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population. The Oneidas Business Committee adopted emergency amendments to the Oneida Personnel Policies and Procedures through the adoption of resolution BC-11-24-21-A to improve the Nation's hiring capacity and service delivery in the tight labor markets that have resulted from the COVID-19 pandemic. These emergency amendments are set to expire on May 24, 2022.
- C. Additional Emergency Amendments Sought.** When discussing the potential six (6) month extension of the emergency amendments to the Oneida Personnel Policies and Procedures the Legislative Operating Committee determined it was necessary to seek additional emergency amendments to the Oneida Personnel Policies and Procedures to clarify inconsistencies that arose as a result of the last emergency amendments.

SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
 - Human Resources Department.
- The Legislative Operating Committee has held the following work meetings specific to the proposed additional emergency amendments to this Law:
 - 11/30/21: Work meeting with HRD.
 - 12/15/21: LOC Work Session.
 - 4/20/22: LOC Work Session.

SECTION 4. PROCESS

- A.** These amendments are being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of

public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

- The emergency adoption of amendments to this Law are necessary for the preservation of the general welfare of the Reservation population in order to simplify the Nation's hiring selection procedures so they are more effective so that the Nation can improve its hiring capacity and service delivery during increasingly tight labor markets that have resulted from the COVID-19 pandemic.
- Observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow the Nation the ability to adequately address its hiring selection procedures in the tight labor markets resulting from the COVID-19 pandemic.

B. The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].

C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The proposed emergency amendments provide additional clarification to eliminate inconsistencies that arose as a result of the last emergency amendments through resolution BC-11-24-21-A.

- ***Appeal Rights of a Terminated Probationary Employee.*** The proposed emergency amendments to the Law clarify that the termination of an employee for cause during their original probationary period shall not be subject to appeal. [Section III.D.1.c]. Prior to the emergency amendments made through resolution BC-11-24-21-A, the Oneida Personnel Policies and Procedures provided that the termination of a probationary employee for cause was subject to appeal. The emergency amendments to the Oneida Personnel Policies and Procedures made through resolution BC-11-24-21-A eliminated the provision which stated that the termination of a probationary employee for cause was subject to appeal.

- ***Effect.*** When the emergency amendments made through resolution BC-11-24-21-A eliminated the provision which stated that the termination of a probationary employee for cause was subject to appeal, the intent was that these terminations would no longer be subject to appeal. This emergency amendment created confusion that needed clarification because Section V of the Law still discussed the appeal rights of *all* employees, so it was not clear that probationary employees terminated for cause did not have appeal rights. The proposed emergency amendment to the Law provides the necessary clarification that states the termination of an employee for cause during their original probationary period shall not be subject to appeal.

- ***Non-Payment of Accrued Personal and Vacation Time.*** The proposed emergency amendments to the Oneida Personnel Policies and Procedures clarify that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. [Section IV.A.5.h.2]. Prior to the emergency amendments made through resolution BC-11-24-21-A, the Oneida Personnel Policies and Procedures provided that employees who are terminated during the probationary period will receive credit for accrued vacation/personal days in their final paycheck. The emergency amendments to the Oneida Personnel Policies and Procedures made through resolution BC-11-24-21-A eliminated the provision which stated that

employees who are terminated during the probationary period will receive credit for accrued vacation/personal days in their final paycheck.

- *Effect.* Although the emergency amendments made through resolution BC-11-24-21-A eliminated the provision which stated that employees who are terminated during the probationary period will receive credit for accrued vacation/personal days in their final paycheck, with the intent that employees who are terminated during the probationary period would no longer receive credit for accrued vacation/personal days in their final pay check, an inconsistency with Section IV.A.5.h was erroneously created. Section IV.A.5.h of the Oneida Personnel Policies and Procedures stated that upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days. This provision was inconsistent with the intent of the emergency amendments. The proposed additional emergency amendments to the Oneida Personnel Policies and Procedures clarifies that employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck. [Section IV.A.5.h.2].

B. The proposed emergency amendments maintain the current emergency amendments which were adopted through resolution BC-11-24-21-A and included the following revisions:

- ***Oneida Preference and Indian Preference Statement of Policy.*** The proposed amendments alter the language of the Oneida Preference and Indian Preference Statement of Policy to state that a highly desirable employment characteristic is knowledge of Oneida culture [Section III(A)]. Previously, this section stated that knowledge of Oneida culture can be attained only by membership (or eligibility for membership) in the Oneida Nation [Section III(A)].
- *Effect:* Language stating that knowledge of Oneida culture can only be attained by membership (or eligibility for membership) is removed due to the belief that knowledge of the Oneida culture may be attained in other ways.
- ***Hiring Guidelines.*** The proposed emergency amendments add language to state that the Personnel Commission is directed to comply with the Oneida Personnel Commission Bylaws [Section III(B)(2)(b)(1)(a)(iii)].
- *Effect:* The Personnel Commission will comply with the Oneida Personnel Commission Bylaws to represent the Oneida Community-at-large in the selection of employees of the Nation.
- ***Applications.*** The proposed emergency amendments update the policy for applications to require all applications to be submitted online [Section III(B)(3)(d)(2)]. Previously, hand-delivered applications were accepted at the HRD Office until 4:30 p.m. on the deadline date [Section III(B)(3)(d)(2)].
- *Effect:* Applications for employment vacancies will only be accepted online in order to minimize the time to hire employees from post to hire in a tight labor market.
- ***Advertising.*** The proposed emergency amendments change the guidelines for advertising position vacancies so that there is one posting for position vacancies open to both enrolled Oneida members and the general public [Section III(B)(2)(e)(2)]. Previously, there were two separate postings; the first post was limited to enrolled Oneida members and was required to be posted for a minimum of seven (7) calendar days, and the second post was open to the general public and was required to be posted for a minimum of ten (10) days [Section III(B)(2)(e)].
- *Effect.* Only one (1) posting for tribal members and the general public will be required for position vacancies, unless the position is required to be filled by an enrolled member of the

Oneida Nation. This will reduce the time that position vacancies are required to be posted, thus minimizing the time to hire employees from post to hire in a tight labor market. Position vacancies will now be posted for a minimum of seven (7) calendar days to the general public, rather than seven (7) calendar days for enrolled Oneida members and an additional ten (10) calendar days for the general public.

- **Screening.** The proposed emergency amendments add guidelines for screening so that applicants who are enrolled members of the Oneida Nation shall be screened and interviewed prior to any other applicants. If the screening and interviewing of the applicants who are enrolled members of the Oneida Nation did not result in the position vacancy being filled, then all other applicants may be screened and interviewed [Section III(B)(2)(f)(1)].
 - **Effect.** Applicants who are enrolled members of the Oneida Nation will be given priority over the general public to be screened and interviewed for vacant positions.
- **Definition for “Conflict of Interest”.** The proposed emergency amendments include a definition for “conflict of interest”, as defined in the Conflict of Interest law. Conflict of interest is defined as: a) Any interest, real or apparent, whether it be personal, financial, political, or otherwise, held by an elected official, officer, political appointee, employee, consultant, or appointed or elected member. b) Immediate family members, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information. c) Any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. d) This is not an all-inclusive list [Section III(B)(2)(f)(3)].
 - **Effect.** The definition for “conflict of interest” is added, as defined in the Conflict of Interest Law.
- **Applicant Interviews.** The proposed emergency amendments add language to state that no interview shall take place without an HRD Representative present [Section III(B)(2)(g)(2)].
 - **Effect.** Interviews will not take place without an HRD Representative present to ensure all procedures are followed.
- **Selection.** The proposed emergency amendments change the language of the selection policy to state that the HRD Office will notify and offer the position to the selected candidate, and should the supervisor’s first choice refuse the offer, the HRD Office will provide the supervisor with the next two ranked candidates to choose from [Section III(B)(h)(1)(c)]. The proposed emergency amendments also remove the requirement to list all newly hired employees in the HR newsletter. Previously, the policy stated that the HRD Office will notify the selected candidate and offer the candidate the job within five (5) working days of the selection decision by the supervisor, and should the supervisor’s first choice refuse the office, the HRD Office will offer the job to the second ranked candidate [Section III(B)(h)(1)(c)]. All newly hired employees were listed in the HR newsletter [Section III(B)(h)(4)].
 - **Effect.** The HRD Office will not be required to offer the chosen candidate the job within five (5) working days of the selection decision by the supervisor. Should the supervisor’s first choice refuse the offer, the HRD Office will provide the supervisor with the next two ranked candidates rather than automatically offering the job to the second ranked candidate.
- **Bidding.** The proposed emergency amendments remove the section regarding bidding for internal job postings. Previously, Oneida Nation employees could bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office [Section III(C)(a)(3)].

- *Effect.* Employees will not be able to bid for transfers.
- **Interim Position Reassignments.** The proposed emergency amendments add a section regarding interim position reassignments. Interim position reassignments may be processed to fill a position in which the previous employee is in the appeals process, on a leave of absence, or for a vacant position [Section III(C)(2)(c)(1)].
 - *Effect:* Supervisors may fill vacant positions through interim position reassignments.
- **Status as a Probationary Employee.** The proposed emergency amendments eliminate the wage deduction for probationary employees. The proposed amendments also eliminate the section stating that employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck. Previously, employees were paid at five percent (5%) below the posted pay rate for the position during their probationary period [Section III(D)(b)(a)]. New employees hired under a negotiated salary received a salary one step below the agreed upon salary during the probationary period [Section III(D)(b)(a)(1)]. Employees who were terminated during their probationary period received credit for accrued vacation/personal days during their final paycheck [Section III(D)(3)(b)].
 - *Effect.* Employees will receive their full wage during their probationary period. Employees that are terminated during their probationary period will not receive credit for accrued vacation/personal days in their final paycheck.
- **Minor Drafting Changes.** Minor drafting and formatting changes have been made throughout the Personnel Policies and Procedures including the following:
 - References to “American Indian Nation” were changed to “federally recognized tribe”;
 - The section on conflict of interest and nepotism was moved to later in the document;
 - Some references to the “HRD Manager” were changed to “HR Representative”;
 - Internal HR information that was not needed for an employee manual was removed;
 - Some references to “will” were changed to “shall”;
 - A reference to “tribal employees” were changed to “employees of the Nation”;
 - Inquiries to job applications were updated so that they would be responded to with an application and/or resume rather than an application form;
 - The section on advertising was reformatted;
 - Some references to “candidates” were changed to “applicants”; and
 - References to “transferred or promoted” were changed to “job reassigned”.

SECTION 6. EXISTING LEGISLATION

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

- **Legislative Procedures Act.** The Legislative Procedures Act was adopted by the General Tribal Council on January 7, 2013, for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
 - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

- The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
- The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
- Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
- Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Adoption of these proposed emergency amendments would conform with the requirements of the Legislative Procedures Act.

SECTION 7. OTHER CONSIDERATIONS

- A. *Deadline for Permanent Adoption of Legislation.*** The adoption of emergency amendments to the Oneida Personnel Policies and Procedures will expire six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.
- *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these amendments is necessary on a permanent basis, and if so, develop the permanent amendments to the Oneida Personnel Policies and Procedures within the next six (6) to twelve (12) months.
- B. *Fiscal Impact.*** A fiscal impact statement is not required for emergency legislation.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].



ONEIDA NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

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SECTION I – INTRODUCTION

Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of individuals dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this "Employee Manual" is to provide you with a ready source of information about employee related Oneida Nation policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Oneida Nation departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department's procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida Nation shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target, as the first priority, applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida Nation shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Nation.
 - 1) The Applicant Pool will consist of files containing:
 - a) An Oneida Nation Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the Nation's Indian Preference Policy.

B. LABOR POOLS

1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Nation's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** [\(HR Interpretation 11-13-12\)](#) Applicants who were previously employed by the Oneida Nation and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.
4. The HRD will keep an updated list of qualified applicants for each job position.
5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the

immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. [\(HR Interpretation 7-11-13\)](#)

6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

C. EMERGENCY/TEMPORARY POSITIONS

1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
 - a. Emergency/Temp
 - b. Limited Term
 - c. Seasonal
 - d. Substitute/Relief
 - e. Youth Worker
 - f. Student/Intern
2. Creation of Positions
 - a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
 - b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida Nation.
 - c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.
3. Recruitment/Selection
 - a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
 - b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
 - c. The HRD will contact the selected candidate and offer the position, following the proper procedures to put the incumbent on payroll.
 - d. The selected candidate will sign a statement accepting conditions of temporary employment, and length of employment where applicable.
 - e. Temporary employees will be paid within the Grade in which the job is classified and salary will be negotiated within the first three (3) steps of respective grade.
 - 1) Any negotiated salary beyond step three will require written justification and approval from the respective General Manager. [\(H.R. Interpretation, 12-8-16\)](#)
 - f. Temporary employees are welcome to apply for any regular position within the Nation that becomes available during the term of their employment.
 - g. Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.

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- h. All temporary employees are subject to lay-off based upon department job needs and budgets. [\(HR Interpretation – 11-25-13\)](#)
 - i. Supervisors are required to do proficient planning within their respective span of control; as such they must also enforce separation dates and will be monitored by HRD for compliance.
 - j. Supervisors must select the most appropriate category of classification for the job.
 - 1) Moving from one classification to another is prohibited.
4. Benefits
- a. The following employee classifications will be eligible for benefits as defined in the section of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual, holiday pay, premium pay.
 - 1) Limited Term
 - 2) Seasonal
 - b. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
 - 1) Emergency/Temporary
 - 2) Substitute/Relief
 - 3) Seasonal Worker (only during their first season)
 - c. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits.
 - 1) Youth Worker
 - 2) Student/Intern

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. [\(GTC Resolution – 5-23-11-A\)](#)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Nations.

As an employer, the Nation seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Nation.

As a sovereign Indian Nation and a unique cultural group, the Oneida Nation has determined that a highly desirable employment characteristic is knowledge of Oneida culture ~~that can be attained only by membership (or eligibility for membership) in the Oneida Nation.~~ Further, the Nation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member ~~of an American Indian Nation, or descendant of a federally recognized tribe.~~ At a minimum, the Nation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Nation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. ~~This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.~~

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. [\(HR Interpretation 5-19-14\)](#)
~~However, the~~ The Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled members of the Oneida Nation ~~Members~~ where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD in a standard operating procedure, shall be held by enrolled ~~Tribal~~ members of the Oneida Nation. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled members of the Oneida ~~Tribal member~~ Nation;
- 2 ~~Oneida Indians~~ Individuals eligible for enrollment in the Oneida Nation;
- 3 Documented first generation descendants of the Oneida ~~descendant~~ Nation;
- ~~4 Other Native American Indian;~~
- 4 Members or descendants of a federally recognized tribe;
- 5 Other (non-Indian). [\(HR Interpretation – 6-24-11\)](#)

This policy ~~will~~shall apply in decisions where the basic requirements for employment are met.

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).

2. ~~The members~~Hiring Guidelines

~~d. All Supervisors~~ of the ~~Personnel Commission and all~~ Oneida Nation ~~employees who supervise other Oneida Nation employees~~ shall undergo periodic training in EEO and ~~Tribal~~ laws, rules, and regulations. —

~~1) Training will be knowledge and skills based~~

~~2) All Personnel Commission members and Tribal supervisors will undergo periodic re-training in EEO and Tribal laws, rules and regulations~~

~~e.a. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: (HR~~

~~Interpretation 08-13-12)~~ Nation.

~~a) Father i) Father in-law~~

~~b) Mother j) Mother in-law~~

~~c) Husband k) Brother in-law~~

~~d) Wife l) Sister in-law~~

~~e) Brother m) Son in-law~~

~~f) Sister n) Daughter in-law~~

~~g) Son o) Grandparent~~

~~h) Daughter p) Grandchild~~

3. ~~Hiring Procedures~~

~~a. HRD Office Responsibilities~~

~~1) Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees.~~

b. Personnel Commission Role

1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of ~~tribal~~ employees of the Nation.

a) The Personnel Commission is directed to:

i. Seek out the best-matched applicants for each available position;

- 306 ii. Consider only job-related factors (such as education, experience, past job
 307 performance, skills and abilities, and compatibility with the position and
 308 potential co-workers) when selecting candidates; and
 309 iii. Comply with the Oneida Personnel Commission Bylaws.
- 310 c. Identification of Vacancies and Development of JobPosition Descriptions (Work Standard,
 311 11-16-11)
- 312 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are
 313 identified.
- 314 2) For new and existing positions, the HRD Manager (or designate), Representative,
 315 the supervisor and the Area Manager (at his/her/their option) will/shall review the
 316 jobposition description to ensure compliance with:
 317 a) The Nation's jobemployment structure; and
 318 b) The needs and requirements of the job.
- 319 3) For new positions, the HRD Manager, the appropriate Area Manager, and the
 320 supervisor shall develop the job description. (HR Interpretation, 12-8-16)
 321 a) The new job description shall conform to the Oneida Nation job structure.
 322 b) The new job description will be reviewed by the General Managerposition.
- 323 4) All jobposition descriptions shall containfollow the following information:
 324 a) Job title, division/department, location, supervisor's title;
 325 b) Posting date, application deadline, preferred starting date, date of job,
 326 description review;
 327 c) Pay level (grade, step, hourly rate);
 328 d) A brief job summary;
 329 e) Duties and responsibilities;
 330 f) Qualifications;
 331 g) Inquiry address;
- 332 h) 3) Statement of compliance with EEO and Indian Preference policiesoutlined
 333 structure.
- 334 d. Applications
- 335 1) All inquiries for jobposition vacancies will/shall be responded to with an Oneida
 336 Nation Application Form which will consist of: application.
 337 a) Job vacancy title;
 338 b) Applicant biographical data;
 339 c) A request for a resume (where applicable).
- 340 2) The Application Form shall be accompanied by a Statement of Policy regarding
 341 Oneida Preference and Indian Preference.
- 342 2) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on
 343 the deadline date; mailedAll applications shall be submitted online.
- 344 3) All applications must be postmarked on or before the deadline date.
- 345 4) 3) All applications will/shall be acknowledged.
- 346 e. Advertising
- 347 1) Position vacancies will/shall be advertised as widely as possible including.
 348 Advertising efforts may include, but not be limited to the following:

- 349 a) The Kalihwisaks;
350 b) The Oneida Nation website;
351 c) Oneida Nation social media platforms;
352 d) Electronic communications or alerts;
353 e) Mailings;
354 ~~b)f)~~ Statewide, through print and electronic media and public employment
355 agencies;
356 ~~e)g)~~ Through targeted recruiting efforts including:
357 ~~i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)~~
358 ~~ii.~~ The Bureau of Indian Affairs;
359 ~~iii.~~ ii. The Oneida Higher Education Office.
360 ~~d)h)~~ Other postings targeted toward special recruiting categories (such as
361 professions) shall be carried out at the discretion of ~~the~~ HRD ~~Office~~ with the
362 advice and consent of the affected department.
363 ~~2) Unless otherwise prohibited by external grant source or federal law, the first~~
364 ~~posting for a~~ A position vacancy shall be ~~limited to enrolled Oneida members~~
365 ~~and shall be~~ posted for a minimum of seven (7) calendar days.
366 ~~3)2) The second posting for a position vacancy shall be posted for a minimum of ten~~
367 ~~(10) calendar days~~ and shall be open to the general public, unless the position
368 ~~must~~ is required to be filled by an enrolled Oneida Nation member. ~~—(HR~~
369 ~~Interpretation 8-9-11)~~
370 ~~4)3)~~ All vacancies requiring re-posting shall be referred back to B-2.c (Identification of
371 Vacancies and Development of Job Position description) to begin the re-posting
372 process.
373 f. Screening ~~of Applicants~~ ~~(HR Interpretation 11-16-12)~~ ~~(HR Interpretation 10-22-12)~~
374 1) Applicants who are enrolled members of the Oneida Nation shall be screened
375 and interviewed prior to any other applicants. If the screening and interviewing
376 of the applicants who are enrolled members of the Oneida Nation did not result
377 in the position vacancy being filled, then all other applicants may be screened
378 and interviewed.
379 ~~1)2)~~ 2) A Screening Committee consisting of the HRD ~~Manager (or~~
380 ~~designate), Representative,~~ the position supervisor, the Area Manager (at
381 ~~his/her~~ their option), and a member of the Personnel Commission shall be
382 convened to conduct the screening of applicants. The Screening process ~~will~~ shall
383 begin as soon as practical following the closing of the position. ~~This~~ The
384 Screening Committee ~~will~~ shall:
385 a) Verify that all applications ~~are complete, are accurate and~~ were submitted on
386 time.
387 ~~i.b)~~ Applications that are incomplete, ~~inaccurate,~~ or were not submitted on or
388 before the posted deadline date may be screened out.
389 ~~b)c)~~ Analyze the job position description to establish screening criteria. These
390 criteria ~~will~~ shall include qualifications listed on the job position description

determined by the supervisor and ~~Area Manager~~HRD Representative to be essential to the ~~job~~position. (T.O.E. WS - 5-6-13)

~~c) Screen verified applications~~

d) ~~Recommend~~and identify a list of applicants to be interviewed.

~~2) The HRD Office shall notify screened out~~Ensure there are no applicants ~~within five (5) working days after the initial screening and reserve these applications in the general recruiting pool.~~

~~3) The HRD Office will arrange~~ineligible for ~~interviews~~employment with the ~~listed~~candidates.

~~g. Candidate Interviews~~

~~1) e) An Interview Committee will be convened and will consist of the members of the Screening Committee except that the HRD Manager will be replaced~~Nation due to termination or resignation in accordance with a second member of the Personnel Commission. The Interview Committee will: the applicable standard operating procedure developed by HRD.

~~3) Construct~~No person shall be recommended for a position if nepotism is created. Nepotism is created by the following relationships that are created by birth, marriage, or through another legally recognized means:

~~a) Spouse;~~

~~b) Child;~~

~~c) Parent;~~

~~d) Sibling;~~

~~e) Grandparent;~~

~~f) Great-grandparent;~~

~~g) Grandchild; and~~

~~h) Guardian.~~

~~4) No person shall be recommended for a position if a conflict of interest is created. Conflict of interest is defined as:~~

~~a) any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation.~~

~~b) any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party~~

~~4) 5) The HRD Representative and supervisor shall construct~~ an interview format consisting of:

~~i) a) A set of questions related to the screening criteria qualifications; and~~

433 ~~ii.b)~~ An interview rating scale designed to objectively evaluate each
434 ~~candidate's~~applicant's qualifications.

435 6) The HRD Office shall arrange for interviews with the listed applicants.

436 g. Applicant Interviews

437 ~~b)1)~~ An Interview ~~candidates~~Committee shall be convened consisting of the
438 members of the Screening Committee and a second member of the Personnel
439 Commission. The Interview Committee shall interview applicants and evaluate
440 each individually.

441 2) No interview shall take place without an HRD Representative present.

442 ~~2)3)~~ The HRD ~~Manager (or designee) will~~Representative shall total the
443 evaluation rating scale to rank order of the ~~candidates~~applicants.

444 h. Selection (HR Interpretation - Disqualification of Applicant 10-24-13)

445 1) The supervisor shall select one of the top two (2) ~~candidates~~applicants as ranked
446 through the rating scale. (HR Interpretation - 10-17-12)

447 a) The supervisor may conduct an additional ~~personal~~follow-up interview with
448 the top two (2) ~~candidates~~applicants.

449 b) The selection decision shall be governed by the Oneida Preference and
450 Indian Preference Policy. (HR Interpretation - 6-6-11)

451 c) The HRD Office ~~will~~shall notify ~~the selected candidate~~ and offer the
452 ~~candidate the job within five (5) working days of the selection decision by~~
453 ~~the supervisor.~~position to the selected applicant.

454 i. Should the supervisor's first choice refuse the offer, the HRD Office ~~will~~
455 ~~offer~~shall provide the ~~job to supervisor with~~ the ~~second~~next two (2)
456 ranked ~~candidate~~applicants to choose from.

457 ~~2)ii.~~ Should ~~both of the top two ranked candidates~~(2) chosen applicants
458 refuse the ~~job~~position offer, the supervisor may:

459 ~~1.)~~ Repeat the hiring selection process outlined in B.2.h.1. above with
460 the remaining candidates; or

461 ~~2.)~~ Re-post the position.

462 ~~3)2)~~ The HRD Office ~~will~~shall notify those ~~candidates~~applicants interviewed but not
463 selected of the decision ~~to hire the best qualified candidate.~~

464 ~~4)~~ All newly hired employees will be listed in the HR newsletter.

466 TRANSFERS AND PROMOTIONS POLICY

467 C. INTERNAL POSITION POSTING - The Oneida Nation encourages ~~transfers and~~
468 ~~promotions~~movement within and among units in order to make the best possible use of
469 human resources to meet ~~the~~ Oneida ~~Nation~~Nation's goals and objectives. Supervisors and
470 employees are encouraged to work together to create an environment in which employees
471 constantly strive to improve their skills and abilities and ~~mangers~~managers constantly seek
472 to provide challenging and rewarding work experiences.

473 1. Procedure

474 a. Internal Position Posting ~~and Bidding~~

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- 1) Open positions as determined by a supervisor and ~~his/her~~their Area Manager ~~will~~may be posted internally for a position transfer for a minimum of five (5) working days. ~~This internal posting will be concurrent with the external (public) posting of positions.~~
- ~~a) Positions will be posted in prominent locations in each Oneida Nation building~~
- ~~2) Oneida Nation employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office.~~
- ~~a) The HRD Manager will inform all affected Area Managers of each transfer bid.~~
- ~~3) 2) At the end of the five (5) day minimum internal posting period, the HRD Manager will Representative shall schedule a conference~~screening~~ with the open position's supervisor and the Area Manager. (at their option).~~
- ~~a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:~~
- ~~i. Establish selection criteria; and~~
- ~~ii. Review each bid.~~
- ~~b) The Committee may select the best qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.~~
- ~~c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening and interview steps.~~
- ~~i. Any decision will be governed by the Indian Preference Policy.~~
- ~~4) 3) Employees who are transferred or promoted will shall not lose any benefits; however:~~
- ~~a) An employee may be required to continue serving in ~~his/her~~their present position until a replacement can be found; for a period up to thirty (30) days.~~
- ~~b) An employee who is transferred to a position lower on the Oneida Nation Job~~Position~~ Structure will~~shall~~ be paid at the grade level corresponding to the new position;.~~
- ~~c) An employee must have completed one year of service to the Nation before being eligible for a promotion or transfer (requestsRequests for transfers for documented medical conditions will be handled on a case-by-case basis and only when in the best interests of both the employee and the Nation);.~~
- ~~d) The newly transferred or promoted employee shall be required to complete a three (3) month probation period ~~fall~~. All conditions of the Nation's Original Probation Policy shall apply;.~~
- ~~b. Applicant Pool Process~~
- ~~1) New and vacant positions will be advertised through the Tribal Applicant Pool.~~
- ~~2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.~~

- 517 a) ~~The Tribal Applicant Pool will consist of open (unspecified) applications from~~
 518 ~~Tribal members who wish to be considered for employment by the Nation.~~
 519 b) ~~d) Advertising through the Tribal Applicant Pool will follow the format and~~
 520 ~~time conditions set forth in the Hiring Policy during that period.~~

521 2. Reassignments

522 a. Title Reassignments

- 523 1) Title Reassignments may be made by supervisors to:
 524 a) More accurately describe or define an existing job position; or
 525 b) Make minor adjustments in jobs positions within a unit or operating division.
 526 2) Title Reassignments may be made at any time with the approval of the Area
 527 Manager and HRD ~~Manager~~ Representative.

528 b. Job Position Reassignments

- 529 1) Job Position Reassignments may be made by supervisors to make more efficient
 530 and effective use of human resources.
 531 2) Job Position Reassignments may be supervisor-initiated or employee-initiated but
 532 must be made in the best interests of the operating unit.
 533 3) Job Position Reassignments may be made at any time with the approval of the
 534 Area Manager and ~~after a review of each affected job by the Personnel~~
 535 ~~Evaluation Committee~~ HRD Manager.

536 c. ~~Interim Job Reassignments~~ (Work Standard 7-11-13)

538 c. Interim Position Reassignments.

- 539 1) Interim position reassignments may be processed to fill a position in which the
 540 previous employee is in the appeals process, on a leave of absence, or for a
 541 vacant position.

542 D. ORIGINAL PROBATION

- 543 ~~1.~~ The first three (3) months after an employee's starting date after being hired,
 544 transferred, or reassigned shall be considered a period of probation. At the end of six
 545 (6) weeks, the employee's performance shall be reviewed with him/her/them by the
 546 supervisor by completing an employee evaluation.
 547 ~~a.~~ At the end of the three-month probation period, a second performance evaluation
 548 ~~will~~ shall be conducted. This evaluation ~~will~~ shall recommend the end of probation and regular
 549 status for the employee, an extension of probation, or termination for cause.

552 ~~2.~~ 1. Status as a Probationary Employee

- 553 ~~a.~~ Probationary employees ~~will be paid at five percent (5%) below the posted pay rate~~
 554 ~~for the position.~~
 555 ~~1) New employees hired under a negotiated salary will receive a salary one step~~
 556 ~~below the agreed upon salary during the probationary period.~~
 557 ~~b.a.~~ Probationary employees ~~will~~ shall accrue vacation ~~and~~ and personal days during the
 558 probation period and ~~will~~ shall receive holiday pay.

- b. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.
- c. Termination of an employee for cause during their original probationary period shall not be subject to appeal ~~This termination is subject to appeal. (BC Action 3-20-92)~~

~~3. Completion of Probation Period~~

- ~~a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.~~
- ~~b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.~~
- ~~c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.~~

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. Oneida Nation Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

2. Workday [\(Work Standard, 10-17-12\)](#)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. [\(W.S. Closures Multiple/Individual Depts.7-28-2017\)](#)
[\(W.S. Closures Non-Critical Departments/Divisions 7-28-2017\)](#)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
 - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.

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- 642 d. Overtime will be approved only for hours worked in excess of forty (40) hours per
643 week. Personal/vacation days and holidays will not count toward the forty (40) hour
644 requirements.
- 645 e. Tribal employees are expected to work overtime if required. Time and one-half will
646 be paid for this overtime.
- 647 f. Exempt employees are not eligible for overtime.
- 648 1) The HRD Office will maintain a list of exempt employees.
- 649 4. Holidays ([Work Standard, 11-7-14](#))
- 650 a. Tribal holidays consist of the following:
- 651 1) One-half Day Christmas Eve
- 652 2) Christmas Day
- 653 3) New Year's Day
- 654 4) Memorial Day
- 655 5) Veteran's Day
- 656 6) Independence Day
- 657 7) Labor Day
- 658 8) Thanksgiving Day
- 659 9) Indian Day (day after Thanksgiving)
- 660 10) One-half day Good Friday
- 661 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
- 662 ([BC Resolution – 12-11-13A](#))
- 663 b. To be eligible for a paid holiday, employees must work the preceding and following
664 scheduled work days (except for employees who are on a prescheduled work leave
665 or an approved extended sick leave.) Employees who are granted a sick day directly
666 prior to a holiday must certify that they were capable of working the holiday in order
667 to qualify for a paid holiday.
- 668 c. All regular employees will be given holiday pay for the maximum pay of eight (8)
669 hours per day.
- 670 d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling
671 on a Sunday will be observed on the following Monday. ([2019 Holiday Observance Calendar](#))
672 ([2018 Holiday Observance Calendar](#))
- 673 e. The Oneida Nation acknowledges its responsibility to make a reasonable
674 accommodation to employees who wish time off to observe religious holidays.
675 Requests for such time off will be granted where possible, based on the scheduling
676 and staffing needs of affected departments. Employees wishing to take time off work
677 for religious observances should inform their supervisor as early as possible.
678 Employees may use personal time for such requests if eligible; otherwise the time off
679 will be treated as unpaid leave.
- 680 5. Vacation/Personal Days
- 681 a. Every Oneida Nation employee, except temporary employees, shall be allowed
682 personal and vacation days with pay to the extent that personal days and vacation
683 are accumulated.

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- b. The amount of personal and vacations days shall be determined by continuous service for the Nation. A "lay-off" from Oneida Nation employment shall not be considered an interruption in continuous service where the lay-off is in accordance with the Nation's Layoff Policy, nor shall a preapproved leave of absence. [\(HR Interpretation, 3-6-12\)](#)
- c. Except as provided for in section g, the accrual of personal days shall be as follows: [\(BC Resolution – 4-11-13-F\)](#)
- 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.
- e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
- f. Service is defined as working for Programs/Enterprises which are contracted by the Nation or specifically sponsored by the Nation.
- g. Vacation and personal days shall be capped at 280 hrs. An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time. [\(GTC Resolution, 7-2-12A\)](#)
- 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. [\(GTC Resolution, 5-23-11-B\)](#)
- h. Upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.
- 1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.
- 2) Employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.
- i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).
- 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
 - 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.
- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
- 1) Three (3) to five (5) days - one (1) week advance notification

- 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
- 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
- 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
- l. The burden shall be on the supervisor to show that a denial of a personal day or a vacation day is based upon interference with the business of the Nation.
- m. Personal or Vacation Days can be taken when an employee is on probation. [\(GTC Resolution 5-23-11-B, HR Interpretation 5-8-17\)](#)
- n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.
- 1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (i) and/or (ii) applies: [\(See Revision\)](#)
- i. All employees will have the opportunity to trade-back hours one time that year.
1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
2. Employees will receive their trade back on or before September 30 of that year.
- ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the HRD Manager or designee, will have the opportunity to trade back hours on a quarterly basis.
1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
- 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
- i. Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.
- ii. Employees may not trade for cash more than eighty (80) hours in one year. [\(GTC Resolution, 5-23-11-B\)](#)
- o. Additional Duties Compensation
- p. Travel Time Compensation [\(Work Standard , 3-20-13\)](#)
- B. INSURANCES [\(see separate publication\)](#) for information on Oneida Nation Insurance plans.
- C. RETIREMENT PLAN [\(See separate publication for information on Tribal Retirement Plan\)](#). [\(Separating Employees WS 5-6-13\)](#)
- D. LEAVES

770 1. Meeting Attendance

- 771 a. Approval for attending any meetings inside normal working hours must be approved
772 in advance by the employee's immediate supervisor. [\(BC Action, 5-16-89\)](#)
773 b. Employees who receive stipends or honoraria in excess of \$50.00 for attending
774 meetings during working hours will forfeit the amount in excess of \$50.00 from their
775 regular paycheck. Stipends for travel or per diem will not be deducted if
776 accompanied by receipts for such expenses.
777 c. Stipends or honoraria for intra-tribal meetings during normal working hours will
778 results in the employee's paycheck being reduced by the full amount of the stipend.

779 2. Funeral Leave [\(Work Standard, 8-2-11\)](#)

- 780 a. All regular employees will be given a three (3) day leave without loss of pay for
781 funeral services for immediate family. Immediate family includes:
782 Husband Mother Brother Great-grandparent
783 Wife Father Sister Great-grandchildren
784 Mother-in-law Son Grandparent Spouse's great-grandparents
785 Father-in-law Daughter Grandchild Spouse's grandparents
786 Daughter-in-law Sister-in-law Brother-in-law
787 b. Three (3) day leave for other persons will be given only if the employee is responsible
788 for making funeral arrangements, subject to prior approval of supervisor.
789 c. All other funeral leave will be limited to no more than one (1) day with pay subject to
790 the notification and approval of the immediate supervisor. [\(Mgmt Directive, 12-17-2009\)](#)

791 3. Leave of Absence [\(Work Standard, 6-10-14\)](#)

- 792 a. A leave of absence without pay may be granted to employees for a justifiable reason
793 (including caring for a child, spouse or parent with a serious health condition) and
794 when in the best interest of the Nation.
795 1) Leaves of absence will not exceed three (3) months.
796 i. All leaves of absence must be approved by the Supervisor, Area Manager,
797 HRD Manager and General Manager. [\(HR Interpretation, 12-8-16\)](#)
798 ii. Requests must be documented and submitted to the supervisor with as much
799 advance notice as possible.
800 iii. Disposition of requests will be made on the basis of staffing requirements.
801 2) Upon returning, the employee will be reinstated in the former position with full
802 status and benefits. Holiday, vacation, and sick leave will not be accrued during
803 the leave of absence.
804 3) No later than fifteen (15) working days prior to the expiration of the leave period
805 the employee must give notice in writing of his/her intent to return to the
806 position. Notice must be presented to the supervisor.
807 i. Failure to provide written notice will be interpreted to mean that the
808 employee does not intend to return following the leave. The position will be
809 posted and filled through the selection process. [\(HR Interpretation, 11-21-11\)](#)

810 4. Maternity Leave

- 811 a. Maternity leave will be granted for a period of six (6) weeks without pay.
812 1) An employee may elect to cover any portion of this time by using accumulated
813 sick days.

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- 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.
5. Military Leave
- a. In addition to the following provisions, the Nation's Military Service Protection Act shall govern Military Leave.
- b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any accumulated benefits prior to leave will be maintained for the employee.
- c. Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the Nation for any hours work that the employee was required to miss due to reservist training.
- 1) Any pay received for performing any of the above duties shall be deducted from the employee's pay. [\(GTC Resolution, 1-26-08A\)](#)
6. Jury Duty
- a. During a period of jury duty, an employee will receive pay from the Nation for any hours of work missed due to jury duty.
- 1) Jury duty pay will be deducted from the employee's paycheck when determining the amount of pay
- 2) No overtime will be allowed in determining employee pay while serving on jury duty.
7. Educational Leave [\(BC Action, 5-4-90\)](#)
- a. A leave of absence for education purposes will not exceed one (1) year.
8. Parent Policy Leave [\(BC Action, 3-2-94A\)](#) [\(Parental Leave Policy, 11-3-17\)](#)
- a. Employees who are parents, guardians, or those individuals specifically referred to as "immediate family" as defined in Section IV, page 6 of these Personnel Policies and Procedures which includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandparent and grandchild may request to participate in their child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per month
- 1) These four (4) hours shall not accumulate.
- b. Approval to utilize the four (4) hours must be obtained from the supervisor.
- 1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.
- 2) The Supervisor may request verification of
- i. Guardianship of the child(ren) and/or
- ii. The attendance of the employee at their child(ren)'s educationally sanctioned event.
- c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the Nation.
- d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.

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- e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal Workers during their first season, and Substitute Reliefs are eligible to participate in this benefit.

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida Nation reflects the unique culture and character of our Nation. The Oneida Nation recognizes that this may present special problems and difficulties for a new employee. The Nation therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline
 - a. Overview
 - b. Tribal Government and Procedures
 - c. Key Policies and Procedures
 - d. Benefits
 - e. Safety, Health and Security
 - f. Departmental Orientation
2. Responsibilities
 - a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
 - b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
 - c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
 - 1) Evaluate the effectiveness of each Program,
 - 2) Modify programs as necessary.
 - 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
 - i. The Departmental Orientation will be completed within the first week of the starting date.
 - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Nation-wide skills assessment inventory and a management succession plan.

903 B. EVALUATIONS

- 904 1. Evaluation reports will be used in determining all promotions, transfers and salary
905 adjustments.
- 906 2. Annual evaluation reports for each employee will be submitted to the HRD Office by
907 August 1 of each year. [\(Work Standard, 6-23-15\)](#)
- 908 a. Evaluation reports will be retained in each employee's personnel file.
- 909 3. All Oneida Nation employees will be evaluated at least once a year.
- 910 a. Employee performance evaluations will be conducted by each employee's immediate
911 supervisor. The Business Committee will conduct the performance evaluation of the
912 General Manager. [\(HR Interpretation, 12-8-16\)](#)
- 913 b. The supervisor will discuss the evaluation with each employee. The evaluation will
914 then be signed by the employee and the supervisor and forwarded to the HRD
915 Office.
- 916 4. Satisfactory evaluations may result in the employee receiving an increase in pay within
917 their grade level provided that the employee has not attained the highest step within the
918 grade.
- 919 a. Unsatisfactory evaluations will result in probation status for the employee. The
920 supervisor shall provide documentation to the Area Manager and to the employee
921 detailing the deficiency(s). A repeat evaluation will be conducted three (3) months
922 after the unsatisfactory evaluation. This second evaluation will result in the
923 employee:
- 924 1) Being removed from probation and receiving a salary increase if the second
925 evaluation results in an overall satisfactory rating; or
- 926 2) Receiving appropriate disciplinary actions if the second evaluation also results in
927 an unsatisfactory rating.
- 928 b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD
929 Manager will consult with the supervisor and the employee to negotiate an
930 appropriate resolution [\(Work Standard, 12-8-16\)](#)
- 931

932 C. CAREER DEVELOPMENT

- 933 1. Oneida Nation employees are encouraged to develop their skills and abilities by
934 pursuing education at a local educational institution. [\(BC Action, 9-9-92\)](#)
- 935 a. Oneida Nation employees must provide a general Career Development Plan to the
936 supervisor listing the goals and objectives of the training and education to be
937 undertaken.
- 938 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester.
939 The employee must attempt to arrange to take the class outside his/her normal working
940 hours.
- 941 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal
942 unit take precedence; however, the supervisor shall attempt to accommodate the
943 employee's request.
- 944 b. In no case shall the accommodation exceed actual class hours plus reasonable travel
945 time.
- 946 c. Employees must obtain the approval of their immediate supervisor to take a course
947 on work time.
- 948 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the
949 Area Manager and the General Manager. [\(HR Interpretation, 12-8-16\)](#)
- 950 4. The cost of the books, tuition and fees for the course shall be paid by the Nation through
951 funds budgeted in programs or through the Higher Education program.

- a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).
- b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process for handling problem employees. Disciplinary procedures serve to correct unacceptable behavior and to protect the Nation. Grievance procedures provide a systematic process for hearing and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

[\(HR Interpretation, 2-4-13\)](#) [\(HR Interpretation, 1-29-14\)](#)

1. Complaints

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

2. Disciplinary Actions

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
 - 1) Understands the reason for the disciplinary action;
 - 2) Understands the expected work performance in light of the disciplinary action;
 - 3) Understands the consequences of continued unacceptable behavior.
- b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.
- c. The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):

1) Work Performance

- a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
- b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
- c) Unauthorized disclosure of confidential information or records. (S/T)
- d) Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
- e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)
- f) Failure to comply with health, safety and sanitation requirements, rules and regulations. (W/S/T)
- g) Negligence in the performance of assigned duties. (W/S/T)

2) Attendance and Punctuality

- 1002 a) Failure to report promptly and observe work schedules (such as starting time,
1003 quitting time, rest and meal breaks) without the specific approval of the
1004 supervisor. (W/S/T)
- 1005 b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
- 1006 3) Use of Property
- 1007 a) Unauthorized or improper use of Oneida Nation property or equipment (for
1008 example, Oneida Nation vehicles, telephone, mail services, etc.) (W/S/T)
- 1009 b) Unauthorized possession, removal or willful destruction of Oneida Nation or
1010 another employee's property (including improper use of possession of
1011 uniforms, identification cards, badges, permits or weapons). (Willful
1012 destruction of property may subject the violator to applicable liability laws.)
1013 (T)
- 1014 c) Unauthorized use, lending, borrowing or duplicating of Oneida Nation keys.
1015 (T)
- 1016 d) Unauthorized entry of Oneida Nation property, including unauthorized entry
1017 outside of assigned hours of work or entry into restricted areas without prior
1018 supervisory approval. (S/T)
- 1019 e) Theft or property shall include theft, embezzlement, cheating, defrauding,
1020 pilfering, robbery, extortion, racketeering, swindling or any of these actions,
1021 or conspiracy to commit such actions with Oneida Nation employees or other
1022 persons against the Nation, its guests, employee, members, customers and/or
1023 clients while on or about Tribal premises. (S/T) [\(BC Action, 12-2-88\)](#)
- 1024 4) Personal Actions and Appearance
- 1025 a) Threatening, attempting, or doing bodily harm to another person. (T)
- 1026 b) Intimidating, interfering with or using abusive language toward customers,
1027 clients, co-workers or others. (S/T)
- 1028 c) Making false or malicious statements concerning other employees,
1029 supervisors or program heads. (W/S/T)
- 1030 d) Use of alcohol or illegal controlled substances during work hours. (S/T)
1031 [\(GTC Resolution, 01-05-09A\)](#)
- 1032 e) Reporting for work under the influence of alcohol or illegal controlled
1033 substances. (S/T) [\(GTC Resolution, 01-05-09A\)](#)
- 1034 f) Failure to immediately report any work-related injuries to the immediate
1035 supervisor. (W/S)
- 1036 g) Direct involvement in political campaigning during scheduled work hours.
1037 Violations include:
- 1038 i. Use of Oneida Nation employment title in Oneida Nation campaign
1039 activities. (W/S/T)
- 1040 1. Political materials include: leaflets, brochures, etc. which solicit support
1041 for candidates for office.
- 1042 2. Resolutions or petitions which propose that a political action be
1043 initiated.
- 1044 3. Leaflets, newsletters, or other written materials the purpose of which
1045 is to espouse political views or opinions.
- 1046 h) The acceptance of gifts or gratuities for personal gain in the course of official
1047 duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco
1048 Enterprise workers, and Museum Workers.) (W/S/T)
- 1049 i) Inappropriate dress or personal hygiene which adversely affects the proper
1050 performance of duties or constitutes a health or safety hazard. (W/S)
- 1051 j) Failure to exercise proper judgment. (W/S/T)

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- k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
- l) Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Nation. (S/T) [\(BC Action, 12-2-88\)](#)
- m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about Oneida Nation premises. (S/T) [\(BC Action, 12-2-88\)](#)
- n) Any violation of duly adopted Oneida Nation ordinances. (W/S/T) [\(BC Action, 12-2-88\)](#)

5) Sexual Harassment Policy

It is the Oneida Nation's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Nation considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Nation has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

a) Sexual Harassment (W/S/T)

i. Procedure

- a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.
- b. The Human Resources Department is obligated to investigate the complaint which is to be held in the strictest confidence. This investigation shall be done within five (5) working days from receiving the formal written complaint.
- c. After investigating the complaint and the Human Resources Department finds cause to take disciplinary action due to sexual harassment violation, the employee will be disciplined accordingly by their supervisor. This disciplinary action shall be initiated within five (5) working days from the date the supervisor receives the report from the Human Resource Department. [\(BC Actions, 7-16-93\)](#)

- 3. Accumulated Disciplinary Actions Warranting Termination [\(HR Interpretation, 1-29-14\)](#) (Provided that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination for drug and alcohol related violations.) [\(GTC Resolution, 01-05-09A\)](#)

- 1100 a. The accumulation of three (3) upheld warning notices within any twelve (12) month
 1101 period. (T)
 1102 b. The accumulation of two (2) upheld suspensions within any twelve (12) month
 1103 period. (T)
 1104 c. The accumulation of three (3) of any combination of upheld warning notices and/or
 1105 upheld suspensions within any twelve (12) month period. (T)
 1106 4. Substance Abuse Disciplinary Procedure - Section was deleted. ([GTC Resolution, 01-05-09-A](#))
 1107 [Click here](#) for Drug and Alcohol Free Workplace Policy.
 1108 5. Disciplinary Procedure ([Disciplinary Flowchart](#))
 1109 The following procedure shall be adhered to whenever disciplinary action is taken.
 1110 a. Supervisor becomes aware of unsatisfactory work performance or violation.
 1111 1) Supervisor investigates through a meeting with the employees and determines
 1112 whether disciplinary action is warranted.
 1113 b. If disciplinary action is warranted, within five (5) working days the supervisor will fill
 1114 out the five (5) part disciplinary action form stating the behavior for which the action
 1115 is being taken, the time and date of its occurrence, and the specific policy section
 1116 under which action is being taken.
 1117 c. The form will be discussed with the employee and a corrective action will be
 1118 identified.
 1119 d. The employee being disciplined will sign the form.
 1120 1) Should an employee being disciplined refuse to discuss the action with his/her
 1121 supervisor, the supervisor shall so note this, with date of refusal, on the form and
 1122 distribute as in 5.e.
 1123 e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area
 1124 Manager and General Manager within twenty-four (24) hours of the conference with
 1125 the employee. ([HR Interpretation, 12-8-16](#))
 1126 f. Should a disciplinary action result in the suspension or termination of an employee,
 1127 the following guidelines shall apply:
 1128 1) The supervisor shall consult with the HRD Manager to mutually determine the
 1129 length of the suspension.
 1130 a) Suspensions will be limited to a maximum of three (3) weeks.
 1131 b) Suspension/terminations that are overturned in the appeal process shall
 1132 result in the employee receiving back pay for the days he/she was
 1133 suspended/terminated.
 1134 6. Grievance ([Grievance Flowchart](#))
 1135 An employee who receives a disciplinary action which he/she believes is unfair may
 1136 grieve the action. The Grievance process (including appeals of disciplinary action) shall
 1137 be conducted with utmost consideration for due process (within the time limits set forth
 1138 herein) but will allow and account for recognized Tribal holidays and unforeseen
 1139 circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The
 1140 HRD office will make every attempt to ensure that grievance procedures are concluded
 1141 within forty-five (45) working days; however, extensions granted for reasonable
 1142 unforeseen circumstances (as determined by the HRD Manager) may extend the process
 1143 The Grievance process will be governed by the following guidelines: ([HR Interpretation, 8-19-](#)
 1144 [2011](#)) ([HR Interpretation, 1-29-2014](#))
 1145 a. For all disciplinary actions, regardless of severity:
 1146 1) The employee (petitioner) must file an appeal in writing.

- 1147 a) The employee may seek the assistance of a spokesperson or advocate at any
 1148 time after the disciplinary action has been issued in order to aid in the
 1149 resolution of the grievance process.
 1150 b) The appeal must be filed with the Area Manager and the HRD Manager (or
 1151 designee) within ten (10) working days from the day the employee receives
 1152 the disciplinary action.
 1153 2) The Area Manager, for all disciplinary action investigations, will have ten (10)
 1154 working days from the receipt of the employee's appeal to complete the
 1155 investigation. One extension of no more than five (5) working days may be
 1156 requested of and granted by the HRD Manager (or designee) at his or her
 1157 discretion.
 1158 3) The Area Manager will do one of the following:
 1159 a) Uphold the disciplinary action; or
 1160 b) Modify the disciplinary action; or
 1161 c) Overturn the disciplinary action. If a suspension or termination is overturned,
 1162 the employee (petitioner) shall be reinstated with full back pay.
 1163 4) The Area Manager will file a decision with the employee and the HRD Manager
 1164 (or designee) and will include a reason for the decision, an explanation of the
 1165 decision and the action to be taken as a result of it.
 1166 b. Filing a Complaint [\(BC Resolution, 3-18-19\)](#)
 1167 1) An employee may appeal the Area Manager's decision to the Oneida Personnel
 1168 Commission by filing a complaint with the Human Resources Department on
 1169 behalf of the Oneida Personnel Commission.
 1170 a) The employee shall file the appeal within ten (10) working days from the
 1171 employee's receipt of the Area Manager's decision
 1172 2) The Human Resources Department shall notify the Human Resources
 1173 Department Manager of receipt of the appeal within one (1) business day of
 1174 receipt of the appeal.
 1175 c. Collection of Information
 1176 1) The Human Resources Department shall collect all information the Area Manager
 1177 used in making the decision to uphold the disciplinary action.
 1178 d. Review of the Complaint
 1179 1) The Human Resources Department shall provide the information obtained to the
 1180 Oneida Personnel Commission members selected to serve as the hearing body
 1181 for the complaint, and the Oneida Personnel Commissioners shall review all the
 1182 information submitted by the Petitioner and the Human Resources Department
 1183 to determine if one or both conditions exist;
 1184 a) The decision of the Area Manager is clearly against the weight of the
 1185 evidence; and/or
 1186 b) Procedural irregularities were exhibited during the appeal process that were
 1187 harmful to one of the parties to the grievance.
 1188 2) If Oneida Personnel Commission members selected to serve as the hearing body
 1189 for the complaint find one or both conditions exist, the Human Resources
 1190 Department shall convene the Oneida Personnel Commission to hear the
 1191 grievance.
 1192 3) If the Oneida Personnel Commission members find that neither condition exists,
 1193 the Oneida Personnel Commission will deny the appeal for a hearing and affirm
 1194 the decision of the Area Manager.
 1195 e. Convening a Hearing

- 1) The Human Resources Department shall schedule a time and location for the grievance hearing and shall confirm the participation of the Oneida Personnel Commission members selected to serve as the hearing body for the complaint.
 - 2) The Human Resources Department shall send notice of the hearing to the petitioner, respondent, and Oneida Personnel Commission members at least five (5) working days prior to the hearing date.
 - 3) The Human Resources Department shall provide copies of all information on the subject case upon which the disciplinary action was upheld to the members of the Oneida Personnel Commission at least two (2) working days prior to the appeal date.
 - 4) The Human Resources Department shall allow the petitioner and respondent access to this information in the Human Resources Department Office at least two (2) days prior to the appeal date.
- f. Hearing Procedure
- 1) The order of presentation for the hearing shall be:
 - a) Petitioner's opening statement;
 - b) Respondent's opening statement;
 - c) The Petitioner's case;
 - d) The Respondent's case;
 - e) Petitioner's closing statement
 - f) Respondent's closing statement
 - 2) The petitioner shall have the right to be represented by an advocate, at his or her own expense. The respondent and/or area manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or area manager shall have access to the professional legal representation.
 - a) Should the petitioner and his or her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld, and the grievance dismissed.
 - b) Should the respondent and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.
 - 3) If new evidence which was previously unavailable is introduced at any point during the hearing process, the Oneida Personnel Commission hearing shall be suspended, and the case will be remanded to the Area Manager for reconsideration.
 - a) The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within three (3) working days.
 - b) This procedure may be invoked only once.
 - c) Thereafter, the appeal process shall continue to a conclusion based on the information originally presented and the newly introduced evidence.
 - i. If the Area Manager overturns his or her decision, the case would not come back for a hearing.
 - ii. If the Area Manager affirms his or her decision, then the case will come back to the Oneida Personnel Commission to complete the hearing.
 - 4) The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.
 - 5) The Oneida Personnel Commission may:

- 1246 a) Uphold the disciplinary action; or
1247 b) Overturn the disciplinary action and:
1248 i. Reinstatement the employee (petitioner) with full back pay for any lost time; or
1249 ii. Reinstatement the employee (petitioner) without back pay.
1250 6) The Oneida Personnel Commission shall provide notification of the final decision
1251 within five (5) working days following the hearing. Notification of the final
1252 decision shall include;
1253 a) The final decision;
1254 b) The reason(s) for the final decision; and
1255 c) The action to be taken as a result of the final decision.
1256 7) The Human Resources Department shall keep records of the hearing, and
1257 provide copies of administrative advocacy rules, procedural rules, and time line
1258 rules to interested parties.

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SECTION VI – SAFETY AND HEALTH

A. POLICY

The personal safety and health of each employee, customer and client of the Oneida Nation is of primary importance. The prevention of injuries and illnesses is of such importance that it will take precedence over operating productivity whenever necessary.

The Oneida Nation will maintain a safety and health program conforming to the best practices available. To be successful, this program will work to develop the proper attitudes toward on-the-job injury and illness prevention on the part of supervisors and employees. This program will strive to develop a high level of cooperation in all safety and health matters between supervisors and employees and among employees.

The objective of this program is a safe and healthy environment that will reduce the number of job-related injuries and illnesses to an absolute minimum. The Nation's goal is zero accidents and illnesses.

B. PROCEDURES

The Oneida Nation Safety Committee will adopt and enforce through the Personnel Department procedures related to the education of the Nation's work force in matters of safety and health. These procedures will include all education and prevention activities, assessments and evaluations, and reporting.

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SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS

- A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Oneida Nation Personnel Policies and Procedures.
1. In no case will these internal rules and/or regulations conflict with or take the place of Oneida Nation Personnel Policies and Procedures.
 2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.

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1379 **SECTION VIII – RECORDKEEPING**
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1381 **A. PERSONNEL OFFICE**

- 1382 1. Basic records to be retained include:
1383 a. Reference Data
1384 b. Job Descriptions
1385 c. Resumes and Applications
1386 d. Interview notes/selection information
1387 e. Resignations
1388 f. Employee tax exemption claims
1389 g. Disciplinary action information
1390 h. Performance evaluations
1391 i. Insurance coverage/changes
1392 j. Transfers
1393 2. The Personnel Office shall keep and maintain a complete record of each employee
1394 throughout his/her term of employment.
1395 a. Oneida Nation employees shall have access to their employment file.
1396 b. Employment files kept by the Personnel Office shall be considered confidential
1397 information. Release of any information to a third party must have the consent
1398 of the employee in writing.

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1400 **B. ACCOUNTING DEPARTMENT**

- 1401 1. Basic records to be retained include:
1402 a. Attendance records
1403 b. Employee Time Sheets
1404 c. Earnings - in the form of computer printouts
1405 d. Travel - in the form of complete travel authorization forms.
1406 1) Time sheets and travel reports shall be filled out by every employee for pay
1407 period, collected by the program head, and forwarded to the Department.
1408 2. The Accounting Department shall retain all records for a period of seven (7)
1409 years. [\(BC Action, 10-14-09B\)](#)

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SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS

The Human Resources Department of the Oneida Nation collects information from employees in order to make decisions regarding personnel actions including hiring, transfers and promotions, training, compensation and benefits, disciplinary actions and other job opportunities. This information is maintained by the Human Resources Department in individual files for as long as the person is an employee of the Oneida Nation.

A. STATEMENT OF POLICY

As a general rule, the Oneida Nation considers all information contained in these files to be private and confidential. No information of any type shall be released to any person or agent of any organization without the written consent of the employee except under the conditions outlined herein.

B. EMPLOYEE ACCESS

In addition, the Oneida Nation recognizes that the information contained in each employee's file is personal and that the lives of its employees are subject to changes. Therefore, the Oneida Nation provides for employee access to his/her personnel file. Employees are allowed to review their file and submit a statement of amendment should their review uncover any inaccurate, obsolete or irrelevant information. Should any information come into dispute, an employee's statement of dispute will be accessed into the file.

C. RELEASE OF INFORMATION TO THIRD PARTIES

The Oneida Nation is obligated by law to release certain information to outside parties. Such parties include the State of Wisconsin's Unemployment Compensation Department and its Workers Compensation Division and the United States Social Security Administration. Any additional information released to a third party by the Human Resources Department related to employee records shall consist of summary information and will not include any identifying personal information. (Such information may be total numbers of males and females in the workforce, mean, median and average age of the workforce, etc.)

The Oneida Nation will release personal information on employees when a request is accompanied by a written release signed by the employee. The Human Resources Department will make every effort to validate this request by contacting the employee. In no case shall the Oneida Nation release personal information from an employee's file without this consent.



ONEIDA NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

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37 **SECTION I – INTRODUCTION**

38 Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of
39 individuals dedicated to providing quality service that enhances the quality of life of the Oneida
40 community. The role you play in your position is important to the overall effort required by your
41 department to meet the goals and objectives of the Oneida Nation. We encourage you to take
42 advantage of the opportunities presented to you, as an employee, to grow and develop both
43 personally and professionally.

44 The purpose of this "Employee Manual" is to provide you with a ready source of information about
45 employee related Oneida Nation policies and procedures. Although we have tried to make this
46 manual as comprehensive as possible; it does not, and cannot, include policies which address
47 every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or
48 cancel existing policies and procedures or adopt new procedures and policies at any time.

49 The policies and procedures set forth in this manual apply to all employees. As an employee of the
50 Oneida Nation, you are required to know and abide by these policies and procedures. Oneida
51 Nation departments may have specific and additional procedures enhancing the general policies
52 stated in this manual. Each employee is expected to learn his/her department's procedures and
53 comply with them. In the event of any conflict between policies in this manual and departmental
54 procedure, the policies in this manual supersede. Each employee is also expected to conform to
55 the professional standards of his/her occupation. Questions regarding this manual, or any
56 employee related policies, should be directed to your supervisor, department head, or to the
57 Human Resources Department at (920) 496-7900.

58 The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and
59 successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida Nation shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target, as the first priority, applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida Nation shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Nation.
 - 1) The Applicant Pool will consist of files containing:
 - a) An Oneida Nation Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the Nation's Indian Preference Policy.

B. LABOR POOLS

- 1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
- 2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
- 3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Nation's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** [\(HR Interpretation 11-13-12\)](#) Applicants who were previously employed by the Oneida Nation and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.
- 4. The HRD will keep an updated list of qualified applicants for each job position.
- 5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the

124 immediate supervisor. The top three applicants shall be based first on the Oneida and
 125 Indian Preference Policy and, second, the date an application was received. The
 126 immediate supervisor will notify the HRD of their selection and the HRD will then offer
 127 the position to the applicant. After the position is filled, all ranked candidates will move
 128 up on the list. [\(HR Interpretation 7-11-13\)](#)

- 129 6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant
 130 until the position is filled.
- 131 7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he
 132 or she declines to withdraw from the Labor Pool, the date of refusal will be considered
 133 the date the application was received and the applicant will be placed in the Labor Pool
 134 list according to B.3.
- 135 8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

136 137 C. EMERGENCY/TEMPORARY POSITIONS

- 138 1. The HRD will periodically recruit individuals who are interested in filling temporary
 139 positions which consist of the following classifications:
 140 a. Emergency/Temp
 141 b. Limited Term
 142 c. Seasonal
 143 d. Substitute/Relief
 144 e. Youth Worker
 145 f. Student/Intern
- 146 2. Creation of Positions
 147 a. Creation of positions in the above Temporary Employee Classifications will require
 148 that these positions be budgeted for the current fiscal year, or proof through
 149 documentation that the budget is adequate to incorporate these positions.
 150 b. The positions must be developed in conjunction with the HRD; assuring that all
 151 Policies and Procedures are adhered to. Creation of temporary classification requires
 152 the approval of the Director, Area Manager, and HRD Manager, or elected official of
 153 the Oneida Nation.
 154 c. All newly created temporary positions must be processed through the Wage and
 155 Salary system before a position can be filled with a temporary employee.
- 156 3. Recruitment/Selection
 157 a. Recruitment/selection of applicants for all temporary positions requires a completed
 158 Temporary Personnel Requisition form with an updated job description attached.
 159 b. The HRD will provide a list of qualified candidates according to the job descriptions
 160 to the immediate supervisor. The immediate supervisor will select from the approved
 161 list adhering to Indian Preference.
 162 c. The HRD will contact the selected candidate and offer the position, following the
 163 proper procedures to put the incumbent on payroll.
 164 d. The selected candidate will sign a statement accepting conditions of temporary
 165 employment, and length of employment where applicable.
 166 e. Temporary employees will be paid within the Grade in which the job is classified and
 167 salary will be negotiated within the first three (3) steps of respective grade.
 168 1) Any negotiated salary beyond step three will require written justification and
 169 approval from the respective General Manager. [\(H.R. Interpretation, 12-8-16\)](#)
 170 f. Temporary employees are welcome to apply for any regular position within the
 171 Nation that becomes available during the term of their employment.
 172 g. Temporary employees that are terminated due to documented cause will have the
 173 right to the appeal process as outlined in the Personnel Policies and Procedures.

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- h. All temporary employees are subject to lay-off based upon department job needs and budgets. [\(HR Interpretation – 11-25-13\)](#)
 - i. Supervisors are required to do proficient planning within their respective span of control; as such they must also enforce separation dates and will be monitored by HRD for compliance.
 - j. Supervisors must select the most appropriate category of classification for the job.
 - 1) Moving from one classification to another is prohibited.
4. Benefits
- a. The following employee classifications will be eligible for benefits as defined in the section of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual, holiday pay, premium pay.
 - 1) Limited Term
 - 2) Seasonal
 - b. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
 - 1) Emergency/Temporary
 - 2) Substitute/Relief
 - 3) Seasonal Worker (only during their first season)
 - c. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits.
 - 1) Youth Worker
 - 2) Student/Intern

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. ([GTC Resolution – 5-23-11-A](#))

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Nations.

As an employer, the Nation seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Nation.

As a sovereign Indian Nation and a unique cultural group, the Oneida Nation has determined that a highly desirable employment characteristic is knowledge of Oneida culture. Further, the Nation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member or descendant of a federally recognized tribe. At a minimum, the Nation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Nation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Nation is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. ([HR Interpretation 5-19-14](#)) The Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled members of the Oneida Nation where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD in a standard operating procedure, shall be held by enrolled members of the Oneida Nation. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled members of the Oneida Nation;
- 2 Individuals eligible for enrollment in the Oneida Nation;
- 3 Documented first generation descendants of the Oneida Nation;
- 4 Members or descendants of a federally recognized tribe;
- 5 Other (non-Indian). ([HR Interpretation – 6-24-11](#))

This policy shall apply in decisions where the basic requirements for employment are met.

B. HIRING PROCEDURE



1 Statement of Policy

- a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).

2. Hiring Guidelines

- a. All Supervisors of the Oneida Nation shall undergo periodic training in EEO and laws, rules, and regulations of the Nation.
- b. Personnel Commission Role
 - 1) The Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of employees of the Nation.
 - a) The Personnel Commission is directed to:
 - i. Seek out the best-matched applicants for each available position;
 - ii. Consider only job-related factors (such as education, experience, past performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates; and
 - iii. Comply with the Oneida Personnel Commission Bylaws.
 - c. Identification of Vacancies and Development of Position Descriptions ([Work Standard, 11-16-11](#))
 - 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.
 - 2) For new and existing positions, the HRD Representative, the supervisor and the Area Manager (at their option) shall review the position description to ensure compliance with:
 - a) The Nation's employment structure; and
 - b) The needs and requirements of the position.
 - 3) All position descriptions shall follow the outlined structure.
- d. Applications
 - 1) All inquiries for position vacancies shall be responded to with an application.
 - 2) All applications shall be submitted online.
 - 3) All applications shall be acknowledged.
- e. Advertising
 - 1) Position vacancies shall be advertised as widely as possible. Advertising efforts may include, but not be limited to the following:
 - a) The Kalihwisaks;
 - b) The Oneida Nation website;
 - c) Oneida Nation social media platforms;
 - d) Electronic communications or alerts;
 - e) Mailings;

- 310 f) Statewide, through print and electronic media and public employment
311 agencies;
312 g) Through targeted recruiting efforts including:
313 i. The Bureau of Indian Affairs;
314 ii. The Oneida Higher Education Office.
315 h) Other postings targeted toward special recruiting categories (such as
316 professions) shall be carried out at the discretion of HRD with the advice and
317 consent of the affected department.
- 318 2) A position vacancy shall be posted for a minimum of seven (7) calendar days and
319 shall be open to the general public, unless the position is required to be filled by
320 an enrolled Oneida Nation member.
- 321 3) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of
322 Vacancies and Development of Position description) to begin the re-posting
323 process.
- 324 f. Screening ([HR Interpretation 11-16-12](#)) ([HR Interpretation 10-22-12](#))
- 325 1) Applicants who are enrolled members of the Oneida Nation shall be screened
326 and interviewed prior to any other applicants. If the screening and interviewing
327 of the applicants who are enrolled members of the Oneida Nation did not result
328 in the position vacancy being filled, then all other applicants may be screened
329 and interviewed.
- 330 2) A Screening Committee consisting of the HRD Representative, the position
331 supervisor, the Area Manager (at their option), and a member of the Personnel
332 Commission shall be convened to conduct the screening of applicants. The
333 Screening process shall begin as soon as practical following the closing of the
334 position. The Screening Committee shall:
- 335 a) Verify that all applications were submitted on time.
336 b) Applications that are incomplete or were not submitted on or before the
337 posted deadline date may be screened out.
338 c) Analyze the position description to establish screening criteria. These criteria
339 shall include qualifications listed on the position description determined by
340 the supervisor and HRD Representative to be essential to the position. ([T.O.E.
WS-5-6-13](#))
341
342 d) Screen and identify a list of applicants to be interviewed.
343 e) Ensure there are no applicants ineligible for employment with the Nation
344 due to termination or resignation in accordance with the applicable
345 standard operating procedure developed by HRD.
- 346 3) No person shall be recommended for a position if nepotism is created. Nepotism
347 is created by the following relationships that are created by birth, marriage, or
348 through another legally recognized means:
- 349 a) Spouse;
350 b) Child;
351 c) Parent;
352 d) Sibling;

- 353 e) Grandparent;
354 f) Great-grandparent;
355 g) Grandchild; and
356 h) Guardian.
- 357 4) No person shall be recommended for a position if a conflict of interest is created.
358 Conflict of interest is defined as:
359 a) any interest, real or apparent, whether it be personal, financial, political, or
360 otherwise, in which an elected official, officer, political appointee, employee,
361 contractor, or appointed or elected member, or their immediate family
362 members, friends or associates, or any other person with whom they have
363 contact, have that conflicts with any right of the Nation to property,
364 information, or any other right to own and operate activities free from
365 undisclosed competition or other violation of such rights of the Nation.
366 b) any financial or familial interest an elected official, officer, political appointee,
367 employee, contractor, or appointed or elected member or their immediate
368 family members may have in any transaction between the Nation and an
369 outside party
- 370 5) The HRD Representative and supervisor shall construct an interview format
371 consisting of:
372 a) A set of questions related to the screening criteria qualifications; and
373 b) An interview rating scale designed to objectively evaluate each applicant's
374 qualifications.
- 375 6) The HRD Office shall arrange for interviews with the listed applicants.
- 376 g. Applicant Interviews
377 1) An Interview Committee shall be convened consisting of the members of the
378 Screening Committee and a second member of the Personnel Commission. The
379 Interview Committee shall interview applicants and evaluate each individually.
380 2) No interview shall take place without an HRD Representative present.
381 3) The HRD Representative shall total the evaluation rating scale to rank order of the
382 applicants.
- 383 h. Selection [\(HR Interpretation - Disqualification of Applicant 10-24-13\)](#)
384 1) The supervisor shall select one of the top two (2) applicants as ranked through
385 the rating scale. [\(HR Interpretation - 10-17-12\)](#)
386 a) The supervisor may conduct an additional follow-up interview with the top
387 two (2) applicants.
388 b) The selection decision shall be governed by the Oneida Preference and
389 Indian Preference Policy. [\(HR Interpretation - 6-6-11\)](#)
390 c) The HRD Office shall notify and offer the position to the selected applicant.
391 i. Should the supervisor's first choice refuse the offer, the HRD Office shall
392 provide the supervisor with the next two (2) ranked applicants to choose
393 from.
394 ii. Should the top two (2) chosen applicants refuse the position offer, the
395 supervisor may:

- 396 1. Repeat the hiring selection process outlined in B.2.h.1. above with
397 the remaining candidates; or
398 2. Re-post the position.
- 399 2) The HRD Office shall notify those applicants interviewed but not selected of the
400 decision.
- 401
- 402 C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and
403 among units in order to make the best possible use of human resources to meet the Oneida
404 Nation's goals and objectives. Supervisors and employees are encouraged to work
405 together to create an environment in which employees constantly strive to improve their
406 skills and abilities and managers constantly seek to provide challenging and rewarding
407 work experiences.
- 408 1. Procedure
- 409 a. Internal Position Posting
- 410 1) Open positions as determined by a supervisor and their Area Manager may be
411 posted internally for a position transfer for a minimum of five (5) working days.
- 412 2) At the end of the five (5) day minimum internal posting period, the HRD
413 Representative shall schedule a screening with the open position's supervisor
414 and the Area Manager (at their option).
- 415 3) Employees who are transferred shall not lose any benefits; however:
- 416 a) An employee may be required to continue serving in their present position
417 until a replacement can be found, for a period up to thirty (30) days.
- 418 b) An employee who is transferred to a position lower on the Oneida Nation
419 Position Structure shall be paid at the grade level corresponding to the new
420 position.
- 421 c) Requests for transfers for documented medical conditions will be handled on
422 a case-by-case basis and only when in the best interests of both the
423 employee and the Nation.
- 424 d) The newly transferred employee shall be required to complete a three (3)
425 month probation period. All conditions of the Nation's Original Probation
426 Policy shall apply during that period.
- 427 2. Reassignments
- 428 a. Title Reassignments
- 429 1) Title Reassignments may be made by supervisors to:
- 430 a) More accurately describe or define an existing position; or
431 b) Make minor adjustments in positions within a unit or operating division.
- 432 2) Title Reassignments may be made at any time with the approval of the Area
433 Manager and HRD Representative.
- 434 b. Position Reassignments
- 435 1) Position Reassignments may be made by supervisors to make more efficient and
436 effective use of human resources.
- 437 2) Position Reassignments may be supervisor-initiated or employee-initiated but
438 must be made in the best interests of the operating unit.

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3) Position Reassignments may be made at any time with the approval of the Area Manager and HRD Manager.

c. Interim Position Reassignments.

1) Interim position reassignments may be processed to fill a position in which the previous employee is in the appeals process, on a leave of absence, or for a vacant position.

D. ORIGINAL PROBATION

The first three (3) months after an employee's starting date after being hired, transferred, or reassigned shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with them by the supervisor by completing an employee evaluation. At the end of the three-month probation period, a second performance evaluation shall be conducted. This evaluation shall recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

1. Status as a Probationary Employee

a. Probationary employees shall accrue vacation and personal days during the probation period and shall receive holiday pay.

b. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position.

c. Termination of an employee for cause during their original probationary period shall not be subject to appeal.

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. Oneida Nation Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

2. Workday [\(Work Standard, 10-17-12\)](#)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. [\(W.S. Closures Multiple/Individual Depts.7-28-2017\)](#)
[\(W.S. Closures Non-Critical Departments/Divisions 7-28-2017\)](#)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- 522 a. Any and all overtime will be kept to a minimum and must be approved by the
523 Supervisor and Area Manager.
- 524 1) In the case of potential overtime that may occur at night, on holidays or on
525 weekends, supervisors will delegate this authority to a specific employee and
526 outline specific situations and actions that warrant overtime.
- 527 b. All overtime must be reported to the supervisor for evaluation.
- 528 c. Overtime will be approved only if the program or enterprise budget is capable of
529 paying it.
- 530 d. Overtime will be approved only for hours worked in excess of forty (40) hours per
531 week. Personal/vacation days and holidays will not count toward the forty (40) hour
532 requirements.
- 533 e. Tribal employees are expected to work overtime if required. Time and one-half will
534 be paid for this overtime.
- 535 f. Exempt employees are not eligible for overtime.
- 536 1) The HRD Office will maintain a list of exempt employees.
- 537 4. Holidays ([Work Standard, 11-7-14](#))
- 538 a. Tribal holidays consist of the following:
- 539 1) One-half Day Christmas Eve
540 2) Christmas Day
541 3) New Year's Day
542 4) Memorial Day
543 5) Veteran's Day
544 6) Independence Day
545 7) Labor Day
546 8) Thanksgiving Day
547 9) Indian Day (day after Thanksgiving)
548 10) One-half day Good Friday
549 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
550 ([BC Resolution – 12-11-13A](#))
- 551 b. To be eligible for a paid holiday, employees must work the preceding and following
552 scheduled work days (except for employees who are on a prescheduled work leave
553 or an approved extended sick leave.) Employees who are granted a sick day directly
554 prior to a holiday must certify that they were capable of working the holiday in order
555 to qualify for a paid holiday.
- 556 c. All regular employees will be given holiday pay for the maximum pay of eight (8)
557 hours per day.
- 558 d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling
559 on a Sunday will be observed on the following Monday. ([2019 Holiday Observance Calendar](#))
560 ([2018 Holiday Observance Calendar](#))
- 561 e. The Oneida Nation acknowledges its responsibility to make a reasonable
562 accommodation to employees who wish time off to observe religious holidays.
563 Requests for such time off will be granted where possible, based on the scheduling
564 and staffing needs of affected departments. Employees wishing to take time off work

- for religious observances should inform their supervisor as early as possible.
Employees may use personal time for such requests if eligible; otherwise the time off will be treated as unpaid leave.
5. Vacation/Personal Days
- a. Every Oneida Nation employee, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated.
 - b. The amount of personal and vacations days shall be determined by continuous service for the Nation. A "lay-off" from Oneida Nation employment shall not be considered an interruption in continuous service where the lay-off is in accordance with the Nation's Layoff Policy, nor shall a preapproved leave of absence. [\(HR Interpretation, 3-6-12\)](#)
 - c. Except as provided for in section g, the accrual of personal days shall be as follows: [\(BC Resolution – 4-11-13-F\)](#)
 - 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
 - d. Except as provided for in section g, the accrual of vacation days shall be as follows:
 - 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.
 - e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
 - f. Service is defined as working for Programs/Enterprises which are contracted by the Nation or specifically sponsored by the Nation.
 - g. Vacation and personal days shall be capped at 280 hrs. An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time. [\(GTC Resolution, 7-2-12A\)](#)
 - 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. [\(GTC Resolution, 5-23-11-B\)](#)
 - h. Upon termination from Oneida Nation employment, employees will be paid for any unused personal and/or vacation days.
 - 1) Employees who have used the Oneida Nation-sponsored loan program will be required to honor the terms of the loan agreement.
 - 2) Employees who are terminated during their original probation period shall not be paid for any unused accrued vacation or personal days in their final paycheck.
 - i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).

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- 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
- 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.
- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
 - 1) Three (3) to five (5) days - one (1) week advance notification
 - 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
 - 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 - 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
- l. The burden shall be on the supervisor to show that a denial of a personal day or a vacation day is based upon interference with the business of the Nation.
- m. Personal or Vacation Days can be taken when an employee is on probation. [\(GTC Resolution 5-23-11-B, HR Interpretation 5-8-17\)](#)
- n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year.
 - 1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (i) and/or (ii) applies: [\[See Revision\]](#)
 - i. All employees will have the opportunity to trade-back hours one time that year.
 1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
 2. Employees will receive their trade back on or before September 30 of that year.
 - ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the HRD Manager or designee, will have the opportunity to trade back hours on a quarterly basis.
 1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
 - 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year. [\(GTC Resolution, 5-23-11-B\)](#)
- o. Additional Duties Compensation

p. Travel Time Compensation ([Work Standard , 3-20-13](#))

B. INSURANCES ([see separate publication](#)) for information on Oneida Nation Insurance plans.

C. RETIREMENT PLAN ([See separate publication for information on Tribal Retirement Plan](#)).
([Separating Employees WS 5-6-13](#))

D. LEAVES

1. Meeting Attendance

a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. ([BC Action, 5-16-89](#))

b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.

c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend.

2. Funeral Leave ([Work Standard, 8-2-11](#))

a. All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	Great-grandparent
Wife	Father	Sister	Great-grandchildren
Mother-in-law	Son	Grandparent	Spouse's great-grandparents
Father-in-law	Daughter	Grandchild	Spouse's grandparents
Daughter-in-law	Sister-in-law	Brother-in-law	

b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.

c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. ([Mgmt Directive, 12-17-2009](#))

3. Leave of Absence ([Work Standard, 6-10-14](#))

a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.

1) Leaves of absence will not exceed three (3) months.

i. All leaves of absence must be approved by the Supervisor, Area Manager, HRD Manager and General Manager. ([HR Interpretation, 12-8-16](#))

ii. Requests must be documented and submitted to the supervisor with as much advance notice as possible.

iii. Disposition of requests will be made on the basis of staffing requirements.

2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.

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- 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
- i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. [\(HR Interpretation, 11-21-11\)](#)
4. Maternity Leave
- a. Maternity leave will be granted for a period of six (6) weeks without pay.
- 1) An employee may elect to cover any portion of this time by using accumulated sick days.
- 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.
5. Military Leave
- a. In addition to the following provisions, the Nation's Military Service Protection Act shall govern Military Leave.
- b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any accumulated benefits prior to leave will be maintained for the employee.
- c. Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the Nation for any hours work that the employee was required to miss due to reservist training.
- 1) Any pay received for performing any of the above duties shall be deducted from the employee's pay. [\(GTC Resolution, 1-26-08A\)](#)
6. Jury Duty
- a. During a period of jury duty, an employee will receive pay from the Nation for any hours of work missed due to jury duty.
- 1) Jury duty pay will be deducted from the employee's paycheck when determining the amount of pay
- 2) No overtime will be allowed in determining employee pay while serving on jury duty.
7. Educational Leave [\(BC Action, 5-4-90\)](#)
- a. A leave of absence for education purposes will not exceed one (1) year.
8. Parent Policy Leave [\(BC Action, 3-2-94A\)](#) [\(Parental Leave Policy, 11-3-17\)](#)
- a. Employees who are parents, guardians, or those individuals specifically referred to as "immediate family" as defined in Section IV, page 6 of these Personnel Policies and Procedures which includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandparent and grandchild may request to participate in their child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per month
- 1) These four (4) hours shall not accumulate.
- b. Approval to utilize the four (4) hours must be obtained from the supervisor.

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- 1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.
- 2) The Supervisor may request verification of
 - i. Guardianship of the child(ren) and/or
 - ii. The attendance of the employee at their child(ren)'s educationally sanctioned event.
- c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the Nation.
- d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.
- e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal Workers during their first season, and Substitute Reliefs are eligible to participate in this benefit.

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida Nation reflects the unique culture and character of our Nation. The Oneida Nation recognizes that this may present special problems and difficulties for a new employee. The Nation therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline
 - a. Overview
 - b. Tribal Government and Procedures
 - c. Key Policies and Procedures
 - d. Benefits
 - e. Safety, Health and Security
 - f. Departmental Orientation
2. Responsibilities
 - a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
 - b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
 - c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:

- 1) Evaluate the effectiveness of each Program,
- 2) Modify programs as necessary.
- 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
 - i. The Departmental Orientation will be completed within the first week of the starting date.
 - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Nation-wide skills assessment inventory and a management succession plan.

B. EVALUATIONS

1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. [\(Work Standard, 6-23-15\)](#)
 - a. Evaluation reports will be retained in each employee's personnel file.
3. All Oneida Nation employees will be evaluated at least once a year.
 - a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. [\(HR Interpretation, 12-8-16\)](#)
 - b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.
4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.
 - a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:
 - 1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or
 - 2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.
 - b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution [\(Work Standard, 12-8-16\)](#)

C. CAREER DEVELOPMENT

1. Oneida Nation employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. [\(BC Action, 9-9-92\)](#)
 - a. Oneida Nation employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.

2. Oneida Nation employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.
 - a. Where a class conflicts with the employee's work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.
 - b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.
 - c. Employees must obtain the approval of their immediate supervisor to take a course on work time.
3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. [\(HR Interpretation, 12-8-16\)](#)
4. The cost of the books, tuition and fees for the course shall be paid by the Nation through funds budgeted in programs or through the Higher Education program.
 - a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).
 - b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process for handling problem employees. Disciplinary procedures serve to correct unacceptable behavior and to protect the Nation. Grievance procedures provide a systematic process for hearing and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

[\(HR Interpretation, 2-4-13\)](#) [\(HR Interpretation, 1-29-14\)](#)

1. Complaints

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

2. Disciplinary Actions

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
 - 1) Understands the reason for the disciplinary action;
 - 2) Understands the expected work performance in light of the disciplinary action;
 - 3) Understands the consequences of continued unacceptable behavior.
- b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.
- c. The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are

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guidelines for a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):

1) Work Performance

- a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
- b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
- c) Unauthorized disclosure of confidential information or records. (S/T)
- d) Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
- e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)
- f) Failure to comply with health, safety and sanitation requirements, rules and regulations. (W/S/T)
- g) Negligence in the performance of assigned duties. (W/S/T)

2) Attendance and Punctuality

- a) Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor. (W/S/T)
- b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)

3) Use of Property

- a) Unauthorized or improper use of Oneida Nation property or equipment (for example, Oneida Nation vehicles, telephone, mail services, etc.) (W/S/T)
- b) Unauthorized possession, removal or willful destruction of Oneida Nation or another employee's property (including improper use of possession of uniforms, identification cards, badges, permits or weapons). (Willful destruction of property may subject the violator to applicable liability laws.) (T)
- c) Unauthorized use, lending, borrowing or duplicating of Oneida Nation keys. (T)
- d) Unauthorized entry of Oneida Nation property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval. (S/T)
- e) Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to commit such actions with Oneida Nation employees or other persons against the Nation, its guests, employee, members, customers and/or clients while on or about Tribal premises. (S/T) [\(BC Action, 12-2-88\)](#)

4) Personal Actions and Appearance

- a) Threatening, attempting, or doing bodily harm to another person. (T)
- b) Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T)
- c) Making false or malicious statements concerning other employees, supervisors or program heads. (W/S/T)
- d) Use of alcohol or illegal controlled substances during work hours. (S/T) [\(GTC Resolution, 01-05-09A\)](#)
- e) Reporting for work under the influence of alcohol or illegal controlled substances. (S/T) [\(GTC Resolution, 01-05-09A\)](#)
- f) Failure to immediately report any work-related injuries to the immediate supervisor. (W/S)

- g) Direct involvement in political campaigning during scheduled work hours.
Violations include:
- i. Use of Oneida Nation employment title in Oneida Nation campaign activities. (W/S/T)
 - 1. Political materials include: leaflets, brochures, etc. which solicit support for candidates for office.
 - 2. Resolutions or petitions which propose that a political action be initiated.
 - 3. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.
 - h) The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers, and Museum Workers.) (W/S/T)
 - i) Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)
 - j) Failure to exercise proper judgment. (W/S/T)
 - k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
 - l) Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Nation. (S/T) [\(BC Action, 12-2-88\)](#)
 - m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about Oneida Nation premises. (S/T) [\(BC Action, 12-2-88\)](#)
 - n) Any violation of duly adopted Oneida Nation ordinances. (W/S/T) [\(BC Action, 12-2-88\)](#)
- 5) Sexual Harassment Policy
- It is the Oneida Nation's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Nation considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Nation has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).
- Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
- a) Sexual Harassment (W/S/T)
 - i. Procedure

- 972 a. Should an employee have a complaint, he/she should file a formal
 973 (written) complaint with the Human Resources Department.
 974 b. The Human Resources Department is obligated to investigate the
 975 complaint which is to be held in the strictest confidence. This
 976 investigation shall be done within five (5) working days from
 977 receiving the formal written complaint.
 978 c. After investigating the complaint and the Human Resources
 979 Department finds cause to take disciplinary action due to sexual
 980 harassment violation, the employee will be disciplined accordingly
 981 by their supervisor. This disciplinary action shall be initiated within
 982 five (5) working days from the date the supervisor receives the
 983 report from the Human Resource Department. [\(BC Actions, 7-16-93\)](#)
 984 3. Accumulated Disciplinary Actions Warranting Termination [\(HR Interpretation, 1-29-14\)](#) (Provided
 985 that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions
 986 warranting termination for drug and alcohol related violations.) [\(GTC Resolution, 01-05-09A\)](#)
 987 a. The accumulation of three (3) upheld warning notices within any twelve (12) month
 988 period. (T)
 989 b. The accumulation of two (2) upheld suspensions within any twelve (12) month
 990 period. (T)
 991 c. The accumulation of three (3) of any combination of upheld warning notices and/or
 992 upheld suspensions within any twelve (12) month period. (T)
 993 4. Substance Abuse Disciplinary Procedure - Section was deleted. [\(GTC Resolution, 01-05-09-A\)](#)
 994 [Click here](#) for Drug and Alcohol Free Workplace Policy.
 995 5. Disciplinary Procedure [\(Disciplinary Flowchart\)](#)
 996 The following procedure shall be adhered to whenever disciplinary action is taken.
 997 a. Supervisor becomes aware of unsatisfactory work performance or violation.
 998 1) Supervisor investigates through a meeting with the employees and determines
 999 whether disciplinary action is warranted.
 1000 b. If disciplinary action is warranted, within five (5) working days the supervisor will fill
 1001 out the five (5) part disciplinary action form stating the behavior for which the action
 1002 is being taken, the time and date of its occurrence, and the specific policy section
 1003 under which action is being taken.
 1004 c. The form will be discussed with the employee and a corrective action will be
 1005 identified.
 1006 d. The employee being disciplined will sign the form.
 1007 1) Should an employee being disciplined refuse to discuss the action with his/her
 1008 supervisor, the supervisor shall so note this, with date of refusal, on the form and
 1009 distribute as in 5.e.
 1010 e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area
 1011 Manager and General Manager within twenty-four (24) hours of the conference with
 1012 the employee. [\(HR Interpretation, 12-8-16\)](#)
 1013 f. Should a disciplinary action result in the suspension or termination of an employee,
 1014 the following guidelines shall apply:
 1015 1) The supervisor shall consult with the HRD Manager to mutually determine the
 1016 length of the suspension.
 1017 a) Suspensions will be limited to a maximum of three (3) weeks.
 1018 b) Suspension/terminations that are overturned in the appeal process shall
 1019 result in the employee receiving back pay for the days he/she was
 1020 suspended/terminated.

6. Grievance ([Grievance Flowchart](#))

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) working days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process. The Grievance process will be governed by the following guidelines: ([HR Interpretation, 8-19-2011](#)) ([HR Interpretation, 1-29-2014](#))

a. For all disciplinary actions, regardless of severity:

- 1) The employee (petitioner) must file an appeal in writing.
 - a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
 - b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.
- 2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.
- 3) The Area Manager will do one of the following:
 - a) Uphold the disciplinary action; or
 - b) Modify the disciplinary action; or
 - c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.
- 4) The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.

b. Filing a Complaint ([BC Resolution, 3-18-19](#))

- 1) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaint with the Human Resources Department on behalf of the Oneida Personnel Commission.
 - a) The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision
- 2) The Human Resources Department shall notify the Human Resources Department Manager of receipt of the appeal within one (1) business day of receipt of the appeal.

c. Collection of Information

- 1) The Human Resources Department shall collect all information the Area Manager used in making the decision to uphold the disciplinary action.

d. Review of the Complaint

- 1) The Human Resources Department shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the complaint, and the Oneida Personnel Commissioners shall review all the information submitted by the Petitioner and the Human Resources Department to determine if one or both conditions exist;

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- 1071 a) The decision of the Area Manager is clearly against the weight of the
1072 evidence; and/or
1073 b) Procedural irregularities were exhibited during the appeal process that were
1074 harmful to one of the parties to the grievance.
- 1075 2) If Oneida Personnel Commission members selected to serve as the hearing body
1076 for the complaint find one or both conditions exist, the Human Resources
1077 Department shall convene the Oneida Personnel Commission to hear the
1078 grievance.
- 1079 3) If the Oneida Personnel Commission members find that neither condition exists,
1080 the Oneida Personnel Commission will deny the appeal for a hearing and affirm
1081 the decision of the Area Manager.
- 1082 e. Convening a Hearing
- 1083 1) The Human Resources Department shall schedule a time and location for the
1084 grievance hearing and shall confirm the participation of the Oneida Personnel
1085 Commission members selected to serve as the hearing body for the complaint.
- 1086 2) The Human Resources Department shall send notice of the hearing to the
1087 petitioner, respondent, and Oneida Personnel Commission members at least five
1088 (5) working days prior to the hearing date.
- 1089 3) The Human Resources Department shall provide copies of all information on the
1090 subject case upon which the disciplinary action was upheld to the members of
1091 the Oneida Personnel Commission at least two (2) working days prior to the
1092 appeal date.
- 1093 4) The Human Resources Department shall allow the petitioner and respondent
1094 access to this information in the Human Resources Department Office at least
1095 two (2) days prior to the appeal date.
- 1096 f. Hearing Procedure
- 1097 1) The order of presentation for the hearing shall be:
- 1098 a) Petitioner's opening statement;
1099 b) Respondent's opening statement;
1100 c) The Petitioner's case;
1101 d) The Respondent's case;
1102 e) Petitioner's closing statement
1103 f) Respondent's closing statement
- 1104 2) The petitioner shall have the right to be represented by an advocate, at his or her
1105 own expense. The respondent and/or area manager who is party to the
1106 grievance action shall have access to an advocate for consultation and/or
1107 representation. Should the petitioner engage outside professional legal
1108 representation, the respondent and/or area manager shall have access to the
1109 professional legal representation.
- 1110 a) Should the petitioner and his or her representative both fail to appear for any
1111 scheduled hearing without justifiable cause, the decision of the Area
1112 Manager shall be upheld, and the grievance dismissed.
- 1113 b) Should the respondent and his/her representative both fail to appear for any
1114 scheduled hearing without justifiable cause, the decision of the Area
1115 Manager shall be overturned.
- 1116 3) If new evidence which was previously unavailable is introduced at any point
1117 during the hearing process, the Oneida Personnel Commission hearing shall be
1118 suspended, and the case will be remanded to the Area Manager for
1119 reconsideration.

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- a) The Area Manager shall reconsider the decision in light of the new evidence and issue a decision within three (3) working days.
- b) This procedure may be invoked only once.
- c) Thereafter, the appeal process shall continue to a conclusion based on the information originally presented and the newly introduced evidence.
 - i. If the Area Manager overturns his or her decision, the case would not come back for a hearing.
 - ii. If the Area Manager affirms his or her decision, then the case will come back to the Oneida Personnel Commission to complete the hearing.
- 4) The Oneida Personnel Commission's decision shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings, and any new evidence if introduced appropriately.
- 5) The Oneida Personnel Commission may:
 - a) Uphold the disciplinary action; or
 - b) Overturn the disciplinary action and:
 - i. Reinstatement of the employee (petitioner) with full back pay for any lost time; or
 - ii. Reinstatement of the employee (petitioner) without back pay.
- 6) The Oneida Personnel Commission shall provide notification of the final decision within five (5) working days following the hearing. Notification of the final decision shall include:
 - a) The final decision;
 - b) The reason(s) for the final decision; and
 - c) The action to be taken as a result of the final decision.
- 7) The Human Resources Department shall keep records of the hearing, and provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.

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SECTION VI – SAFETY AND HEALTH

A. POLICY

The personal safety and health of each employee, customer and client of the Oneida Nation is of primary importance. The prevention of injuries and illnesses is of such importance that it will take precedence over operating productivity whenever necessary.

The Oneida Nation will maintain a safety and health program conforming to the best practices available. To be successful, this program will work to develop the proper attitudes toward on-the-job injury and illness prevention on the part of supervisors and employees. This program will strive to develop a high level of cooperation in all safety and health matters between supervisors and employees and among employees.

The objective of this program is a safe and healthy environment that will reduce the number of job-related injuries and illnesses to an absolute minimum. The Nation's goal is zero accidents and illnesses.

B. PROCEDURES

The Oneida Nation Safety Committee will adopt and enforce through the Personnel Department procedures related to the education of the Nation's work force in matters of safety and health. These procedures will include all education and prevention activities, assessments and evaluations, and reporting.

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SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS

- A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Oneida Nation Personnel Policies and Procedures.
1. In no case will these internal rules and/or regulations conflict with or take the place of Oneida Nation Personnel Policies and Procedures.
 2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.

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1266 **SECTION VIII – RECORDKEEPING**
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1268 A. PERSONNEL OFFICE

- 1269 1. Basic records to be retained include:
1270 a. Reference Data
1271 b. Job Descriptions
1272 c. Resumes and Applications
1273 d. Interview notes/selection information
1274 e. Resignations
1275 f. Employee tax exemption claims
1276 g. Disciplinary action information
1277 h. Performance evaluations
1278 i. Insurance coverage/changes
1279 j. Transfers
1280 2. The Personnel Office shall keep and maintain a complete record of each employee
1281 throughout his/her term of employment.
1282 a. Oneida Nation employees shall have access to their employment file.
1283 b. Employment files kept by the Personnel Office shall be considered confidential
1284 information. Release of any information to a third party must have the consent
1285 of the employee in writing.

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1287 B. ACCOUNTING DEPARTMENT

- 1288 1. Basic records to be retained include:
1289 a. Attendance records
1290 b. Employee Time Sheets
1291 c. Earnings - in the form of computer printouts

- 1292 d. Travel - in the form of complete travel authorization forms.
1293 1) Time sheets and travel reports shall be filled out by every employee for pay
1294 period, collected by the program head, and forwarded to the Department.
1295 2. The Accounting Department shall retain all records for a period of seven (7)
1296 years. [\(BC Action, 10-14-09B\)](#)

SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS

1308 The Human Resources Department of the Oneida Nation collects information from employees in
1309 order to make decisions regarding personnel actions including hiring, transfers and promotions,
1310 training, compensation and benefits, disciplinary actions and other job opportunities. This
1311 information is maintained by the Human Resources Department in individual files for as long as
1312 the person is an employee of the Oneida Nation.

A. STATEMENT OF POLICY

1314 As a general rule, the Oneida Nation considers all information contained in these files to be
1315 private and confidential. No information of any type shall be released to any person or agent of
1316 any organization without the written consent of the employee except under the conditions
1317 outlined herein.

B. EMPLOYEE ACCESS

1319 In addition, the Oneida Nation recognizes that the information contained in each employee's
1320 file is personal and that the lives of its employees are subject to changes. Therefore, the Oneida
1321 Nation provides for employee access to his/her personnel file. Employees are allowed to review
1322 their file and submit a statement of amendment should their review uncover any inaccurate,
1323 obsolete or irrelevant information. Should any information come into dispute, an employee's
1324 statement of dispute will be accessed into the file.

C. RELEASE OF INFORMATION TO THIRD PARTIES

1326 The Oneida Nation is obligated by law to release certain information to outside parties. Such
1327 parties include the State of Wisconsin's Unemployment Compensation Department and its
1328 Workers Compensation Division and the United States Social Security Administration. Any
1329 additional information released to a third party by the Human Resources Department related to
1330 employee records shall consist of summary information and will not include any identifying

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1331 personal information. (Such information may be total numbers of males and females in the
1332 workforce, mean, median and average age of the workforce, etc.)

1333 The Oneida Nation will release personal information on employees when a request is
1334 accompanied by a written release signed by the employee. The Human Resources Department
1335 will make every effort to validate this request by contacting the employee. In no case shall the
1336 Oneida Nation release personal information from an employee's file without this consent.

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Legislative Operating Committee
May 4, 2022

Children's Code Amendments

Submission Date: 10/7/20	Public Meeting: N/A
LOC Sponsor: David P. Jordan	Emergency Enacted: N/A

Summary: *This item was carried over from last term. On August 25, 2020, the Oneida Law Office and Indian Child Welfare Department requested that emergency amendments be made to the Children's Code to address customary adoption. The departments were seeking that customary adoption be changed to a suspension of rights rather than a termination of rights in order to allow for the adopting family to be eligible for Adoption Assistance with the State. On August 28, 2020, the LOC considered this request and determined that it did not meet the standard for emergency amendments provided by the Legislative Procedures Act, but that the LOC would add this item to the AFL for amendments to be made via the normal legislative process.*

10/7/20 LOC: Motion by Kirby Metoxen to add the Children's Code Amendments to the Active Files List with David Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

10/13/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Tina Jorgenson, Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, Peggy Schneider, Rhiannon Metoxen, Kristal Hill. This work meeting was held over Microsoft Teams. On July 22, 2020, the OBC was asked to consider amending resolution BC-07-26-17-J to permanently adopt the policy set forth by the March 20, 2020, COVID-19 Core Decision Making Team's "Suspension of Transfer of Cases in Resolution# BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy" declaration. The OBC adopted a motion to accept the request as information and send to the LOC for processing. The purpose of this work meeting was to allow the ICW Department and Law Office an opportunity to provide the LOC with more information on why this change should be made on a permanent basis beyond the Public Health State of Emergency. The LOC decided to pursue this change, and directed the LRO Attorney to draft a resolution which amends the policy on the transfer of cases.

3/3/21 LOC: Motion by Jennifer Webster to deny the request for emergency amendments due to the fact that it does not meet the standard for emergency legislation provided by the Legislative Procedures Act which is that it is necessary for the immediate preservation of the public health, safety, and general welfare of the Reservation population, and move this item from a medium priority to a high priority with direction that this be worked on as expeditiously as possible; seconded by Daniel Guzman King. Motion carried unanimously.

4/12/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Hon. Robert Collins, Kristina Denny, Patricia DeGrand, Rhiannon Metoxen. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the Family Court to provide a "Children's Code 101" and then for the workgroup to begin reviewing the Children's Code line-by-line and discussing potential amendments to the law.

- 4/12/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Jennifer Berg-Hargrove, Alebra Cornelius, Heather Lee, Michael Hoeft, Peggy Schneider, Lydia Witte, Kristal Hill, Rhiannon Metoxen. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the Indian Child Welfare (ICW) Department to provide a “Children’s Code 101” and then for the workgroup to begin reviewing the Children’s Code line-by-line and discussing potential amendments to the law.
- 4/26/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Hon. Robert Collins, Hon. Marcus Zielinski, Kristina Denny, Patricia DeGrand, Rhiannon Metoxen, Kristal Hill. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the workgroup to continue reviewing the Children’s Code line-by-line and discussing potential amendments to the law.
- 6/4/21:** *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Berg-Hargrove, Alebra Cornelius, Heather Lee, Michael Hoeft, Peggy Schneider, Lydia Witte, Kristal Hill. This work meeting was held over Microsoft Teams. The purpose of this work meeting was to review and discuss potential amendments to the law.
- 2/16/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Lydia Witte. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to allow Attorney Lydia Witte to introduce herself to the LOC and provide some background on the amendments the ICW Department is requesting.
- 4/12/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Lydia Witte, Peggy Van Gheem, Jennifer Berg-Hargrove, Heather Lee, Alebra Metoxen, Michael Hoeft, Hon. Robert Collins II, Hon. Rodney Dequaine, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the initial draft of proposed amendments to the Children’s Code.
- 4/20/22 LOC:** Motion by Marie Summers to approve the draft of the Children’s Code amendments and direct that a legislative analysis be developed; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Approve the updated draft and the legislative analysis for Children’s Code amendments.

Title 7. Children, Elders and Family - Chapter 708
Latiksa'shúha Laotilihwa'ke
the children – their issues
CHILDREN'S CODE

708.1.	Purpose and Policy	708.26.	Revision of Dispositional Orders
708.2.	Adoption, Amendment, Repeal	708.27.	Extension of Dispositional Orders
708.3.	Definitions	708.28.	Continuation of Dispositional Orders
708.4.	Scope	708.29.	Guardianship for Certain Children in Need of Protection or Services
708.5.	Jurisdiction	708.30.	Revisions of Guardianship Order
708.6.	Nation's Child Welfare Attorney	708.31.	Termination of Guardianship
708.7.	Indian Child Welfare Department Duties and Responsibilities	708.32.	Suspension or Termination of Parental Rights
708.8.	Guardian ad litem	708.33.	Voluntary Suspension or Termination of Parental Rights
708.9.	Advocate	708.34.	Grounds for Involuntary Suspension or Termination of Parental Rights
708.10.	Cultural Wellness Facilitator and Healer	708.35.	Petition for Suspension or Termination of Parental Rights
708.11.	Order of Placement Preferences	708.36.	Initial Hearing on the Suspension or Termination of Parental Rights Petition
708.12.	Notice of Petition	708.37.	Fact Finding Hearing for a Suspension or Termination of Parental Rights
708.13.	Hearings (General)	708.38.	Department's Suspension or Termination of Parental Rights Report
708.14.	Discovery and Records	708.39.	Standards and Factors
708.15.	Taking a Child into Custody	708.40.	Dispositional Hearings for Suspension or Termination of Parental Rights
708.16.	Emergency Custody Hearing	708.41.	Adoption
708.17.	Petition for a Child in Need of Protection or Services	708.42.	Adoption Criteria and Eligibility
708.18.	Consent Decree	708.43.	Adoption Procedure
708.19.	Plea Hearing for a Child in Need of Protection or Services	708.44.	Non-Compliance with a Residual Rights Agreement
708.20.	Fact-finding Hearing for a Child in Need of Protection or Services	708.45.	Peacemaking and Mediation
708.21.	Department's Disposition Report for a Child in Need of Protection or Services	708.46.	Appeals
708.22.	Dispositional Hearing for a Child in Need of Protection or Services	708.47.	Liability
708.23.	Permanency Plans		
708.24.	Change in Placement		
708.25.	Trial Reunification		

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2 **708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of
4 Oneida children through the preservation of the family unit, while recognizing that in some
5 circumstances it may be in the child's best interest to not be reunited with his or her family.
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities
7 as well as facilitating the return of Oneida children to the jurisdiction of the Nation and
8 acknowledging the customs and traditions of the Nation when raising an Oneida child.

9 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting
10 judicial proceedings and other procedures in which children and all other interested parties are
11 provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while
12 protecting the public safety.

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14 **708.2. Adoption, Amendment, Repeal**

15 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J,
16 and amended by resolution BC-__-__-__.

17 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida
18 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. 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.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. 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) “Abuse” means any of the following:
 - (1) Physical injury inflicted on a child by other than accidental means;
 - (2) Sexual assault;
 - (3) Sexual exploitation of a child;
 - (4) Prostitution or trafficking of a child;
 - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
 - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
 - (7) Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) “Advocate” means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) “Alcohol and other drug abuse impairment” means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted.
- (d) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) “Best interest of the child” means the interest of a child to:
 - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
 - (2) Be free from physical, sexual and emotional abuse;
 - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;
 - (4) Receive appropriate medical care;
 - (5) Receive appropriate education;

- 64 (6) Be raised in conditions which maximize the chances of the child becoming a
65 contributing member of society; and
66 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
67 and heritage(s).
- 68 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
69 holidays recognized by the Nation.
- 70 (g) "Child" means a person who is less than eighteen (18) years of age.
- 71 (h) "Clear and convincing evidence" means that a particular fact is substantially more
72 likely than not to be true.
- 73 (i) "Counsel" means an attorney or advocate presented to the Court as the representative
74 or advisor to a party.
- 75 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida
76 Nation Judiciary that has the designated responsibility to oversee family matters.
- 77 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and
78 authority to do a certain act or hear a certain dispute.
- 79 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 80 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 81 (n) "Dispositional hearing" means a hearing for the Court to make its final determination
82 of a case or issue.
- 83 (o) "Emotional damage" means harm to a child's psychological or intellectual
84 functioning evidenced by one (1) or more of the following characteristics exhibited to a
85 severe degree:
- 86 (1) anxiety;
87 (2) depression;
88 (3) withdrawal;
89 (4) outward aggressive behavior; and/or
90 (5) a substantial and observable change in behavior, emotional response, or
91 cognition that is not within the normal range for the child's age and stage of
92 development.
- 93 (p) "Expert" means a person with special training, experience, or expertise in a field
94 beyond the knowledge of an ordinary person.
- 95 (q) "Extended family" means a person who has reached the age of eighteen (18) and who
96 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
97 nephew, first, second, third or fourth cousin, or stepparent.
- 98 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
99 a petition under this law are proved by clear and convincing evidence.
- 100 (s) "Fictive kin" means any person or persons who, to the biological parents of the child
101 at issue, have an emotional tie to that parent wherein they are like family.
- 102 (t) "Foster home" means any home which is licensed by the Department or applicable
103 licensing agency and maintained by any individual(s) suitable for placement of children
104 when taken into custody or pending court matters.
- 105 (u) "Good cause" means adequate or substantial grounds or reason to take a certain action,
106 or to fail to take an action.
- 107 (v) "Group home" means any facility operated by a person required to be licensed by the
108 Department and/or applicable licensing agency for the care and maintenance of five (5) to
109 eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “Imminent danger” means a risk of harm or injury that will occur immediately.

(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law.

(bb) “Informal disposition” means a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child.

(cc) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(dd) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

(ee) “Nation” means the Oneida Nation.

(ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(gg) “Parent” means the biological or adoptive parent of a child.

(hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who is the subject of the proceedings; the Department, in cases where they are the petitioner; a guardian ad litem, if one has been appointed by the Court; and anyone else permitted to file a petition under this law.

(ii) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

(jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(kk) “Physical injury” includes, but is not limited to, any of the following:

- (1) lacerations;
- (2) fractured bones;
- (3) burns;
- (4) internal injuries;
- (5) severe or frequent bruising;
- (6) bodily injury which creates a substantial risk of death;
- (7) bodily injury which causes serious permanent disfigurement;
- (8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or
- (9) any other serious bodily injury.

(ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a petition filed under this law.

(mm) “Probable cause” means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

(nn) “Protective plan” means an immediate short-term action that protects a child from present danger threats in order to allow for completion of the initial assessment ~~and~~, investigation and, if needed, the implementation of a safety plan.

(oo) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

(pp) “Relative” means any person connected with a child by blood, marriage or adoption.

(qq) “Reservation” means all the 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.

(rr) “Shelter care facility” means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

(ss) “Social history” means the social, economic, cultural and familial aspects of a person and how those aspects affect the person’s functioning and situation in life.

(tt) “Special treatment or care” means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

(uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a biological parent of the child.

(vv) “Stipulation” means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.

(ww) “Substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

(xx) “Service plan” means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.

(yy) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child’s parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation’s laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent, guardian, or legal custodian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian or legal custodian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation’s laws or state law;

- (i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (l) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;
- (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and all requirements of this law have been met the Court may:

- (a) terminate or suspend parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

- (a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of ~~child~~ a child until the Children's Code or other child welfare orders are dismissed.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

- (a) An attorney from the Oneida Law Office;
- (b) An attorney contracted by the Oneida Law Office; or

(c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. Indian Child Welfare Worker. The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions or protective plans with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child; and
- (t) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. Department. In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;
- (b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;
- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;

- (d) Adhere to the placement preference order stated in section 708.11;
- (e) Enter into memorandums of understanding or agreement with the Oneida Trust Enrollment Committee or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law; and
- (f) Share information with other social service agencies, law enforcement agencies, and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- (a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;
- (b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate or suspend parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;
- (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and
- (d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

- (a) A guardian ad litem shall be an adult who:
 - (1) is at least twenty one (21) years of age;
 - (2) is currently certified as a guardian ad litem and in good standing;
 - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who:
 - (1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;
 - (2) appears as counsel or an advocate in the proceeding on behalf of any party; or
 - (3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
 - (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
 - (2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;

- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. *Qualifications.*

- (a) An advocate shall be an adult who:
 - (1) is at least twenty one (21) years of age;
 - (2) is admitted to practice before the Oneida Judiciary;
 - (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar position, throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) any other service that may be necessary.

708.11. Order of Placement Preferences

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

- (a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

- (b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

708.12. Notice; General Terms

708.12-1. Service of documents and notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.

708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

- (a) *Exception.* In circumstances where a hearing is ~~required by law to be scheduled in less than~~ and it is not possible to provide notice at least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties of the hearing.

708.12-3. When the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure.

708.12-4. In all proceedings under this law, the Department may withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else. A parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information.

708.13. Hearings (General)

708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.13-3. If an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. ~~The~~If the Court ~~may also enter such an order that, then~~ the Department ~~is able to~~may sign documents required by the Oneida Nation Child Support Agency on behalf of the ~~child~~family for the limited purpose of initiating a paternity action. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child Support Agency.

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-6. The Department may make an ex parte request to the Court to ~~prevent conduct an in camera review to determine what information should and should not be released to the parties and their counsel. In making that determination, the Court shall balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. After the Court conducts the in camera review, the decision regarding the~~ release of records ~~regarding the child if the Department believes the release of the records may result in a risk of harm to the child. The Court shall then review the records in camera in order to decide whether to order the records released~~ shall be provided to the parties in writing.

708.15. Taking a Child into Custody

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

- (a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;
- (b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or
- (c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

- (a) The child will cause injury to himself or herself or be subject to injury by others;
- (b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;
- (c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

(d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or

(e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;

(b) A licensed foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

(e) A licensed private or public shelter care facility;

(f) A hospital or other medical or mental health facility; or

(g) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

(a) the date, time and place of the emergency custody hearing;

(b) the nature and possible outcomes of the hearing;

(c) the right to present and cross-examine witnesses; and

(d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.16. Emergency Custody Hearing

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by the Court as soon as possible but no later than seventy-two (72) hours after the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed unless the Department seeks and receives an extension pursuant to section 708.16-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody. For any parties not present at the hearing, the Department shall serve the petition on those parties by certified mail, return receipt requested.

708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-5. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-6. All orders to hold a child in custody shall be in writing.

- (a) All orders to hold a child in custody shall include all of the following:
 - (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
 - (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;
 - (3) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
 - (4) The Department made reasonable efforts to make it possible for the child to return safely home; and

(5) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(b) An order to hold a child in custody may include the following:

(1) an ~~award~~transfer of the legal custody of the child ~~and the ability to make medical, including decisions on behalf of the child to the Department about health care and education.~~

708.16-7. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-8. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.17. Petition for a Child in Need of Protection or Services

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. Upon filing with the Court, the Department shall provide a copy of the petition to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.17-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. Upon filing with the Court, the Department shall provide a copy of the amended petition to the parties by certified mail with return receipt requested.

708.18. Consent Decree

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

(a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;

(b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;

(c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and

(d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six (6) months in the absence of objection to the extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

708.19. Plea Hearing for a Child in Need of Protection or Services

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.19-5. At the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties prior to the hearing in substantial compliance with section 708.15-9. In the request for placement of the child outside of the child's home the Department shall present as evidence specific information showing all of the following: as outlined in 708.16-6(a)(1)-(5).

~~(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;~~

~~(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;~~

~~(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out of home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and~~

~~(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.~~

708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing and shall contain: the information required by section 708.16-6(a)(1)-(5).

~~(a) Where the child will be placed;~~

~~(1) If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian.~~

~~(b) A finding that continued placement of the child in his or her home would be contrary to the welfare of the child;~~

~~(c) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;~~

~~(d) If the child is placed outside the home has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.~~

708.20. Fact finding Hearing for a Child in Need of Protection or Services

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.21. Department's Disposition Report for a Child in Need of Protection or Services

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family;

(b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;

(c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and

(d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

(a) The location of the placement and where it fits within the placement preferences.

(b) A recommendation as to whether the Court should establish a child support obligation for the parents;

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

~~708.21-3. The Department may withhold the placement provider's identifying information from the child's parent, guardian or legal custodian in the dispositional report if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.~~

708.22. Dispositional Hearing for a Child in Need of Protection or Services

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the service plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this subsection on a case-by-case basis based on circumstances specific to the child;

(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(g) A statement of the conditions with which the parties are required to comply; and

(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.22-5. *Service plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or service plan determined by the Court to be necessary for the child's welfare.

(a) The service plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a service plan does not guarantee the return of a child and that completion of a service plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A service plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

(5) Parent training and education;

(6) Cultural wellness treatment and training; and/or

(7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the

Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action.

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for ~~suspension or~~ termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.23. Permanency Plans

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services.

(a) The permanency plan shall include all of the following:

(1) The name, birth date, address, and tribal affiliation of the child;

(2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);

(3) The date on which the child was removed from the home;

(4) A statement as to the availability of a safe and appropriate placement with an extended family member;

(5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;

(6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;

(7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;

(8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;

(9) Information about the child's education; and

(10) Any other appropriate information as deemed necessary by the Court or the Department.

~~(b) The Department may withhold the placement provider's identifying information from the child's parent, guardian or legal custodian in the permanency plan if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.~~

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least seven (7) days before the date of the hearing, the Department shall file the updated permanency plan with the Court and provide a copy to the parties by first-class mail.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

708.24. Change in Placement

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a change in placement to the parties by first-class mail.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. The Department shall notify the parties of the emergency change in placement by personal service as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

(a) The date on which the child reaches eighteen (18) years of age;

(b) The date that is one (1) year after the date on which the change-in-placement order is granted; or

(c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.24-9. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

708.25. Trial Reunification

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for

a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court. Upon filing with the Court and at least seven (7) days before the date of reunification, the Department shall provide the parent, guardian, legal custodian, and any other party written notice of the proposed reunification by first-class mail. The notice shall contain the information that is required to be included in the request under section 708.25-2.

708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

(a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.

(b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

(2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

(a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than seven (7) days

prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his or her out-of-home placement the Department shall provide the parties with written notice of the following by first-class mail:

(1) the date of the return of the child to the out-of-home placement; and

(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.24 to place the child in a new out-of-home placement; or

(c) Request a change in placement under section 708.24 to place the child in the trial reunification home.

708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial reunification is no longer in the best interests of the child and revoke the trial reunification before the specified trial reunification period ends.

(a) *Revocation Request.* If the Department determines that the trial reunification is no longer in the best interests of the child, the Department, without prior order by the Court, may remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or place the child in a new out-of-home placement.

(1) If the Department places the child in the child's previous out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall submit a request for revocation of the trial reunification to the Court and shall provide notice of the request to all parties by first-class mail. The request shall contain the following information:

(A) the date on which the child was removed from the trial reunification home;

(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and

(C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.24, including all notice procedures, apply to a change in placement requested under this subsection, except that the request shall include the date on which the child was removed from the trial reunification home in addition to the information required in 708.24-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

(1) If no objection is filed, the Court may issue a revocation order.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.26. Revision of Dispositional Orders

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided to the parties by first-class mail.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.27. Extension of Dispositional Orders

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties by first-class mail.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan if applicable.

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.28. Continuation of Dispositional Orders

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.29. Guardianship for Certain Children in Need of Protection or Services

708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

- (a) The child;
- (b) The child's guardian ad litem;
- (c) The child's parent;
- (d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;
- (e) The Department; or
- (f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and
- (d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

- (a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;
- (b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and
- (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the hearing, the Department shall provide the parent, guardian, legal custodian, proposed guardian, and any other parties a written copy of the report by first-class mail.

708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

- (a) Whether the person would be a suitable guardian of the child;
- (b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and
- (c) The wishes of the child, if the child has the capacity to express their wishes.

708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure:

- (a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or
- (b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.29-~~12~~12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.30. Revisions of Guardianship Order

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of

the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing, a written copy shall be provided to all parties by first-class mail.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.31. Termination of Guardianship

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
(b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
(c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.31-3. Any person authorized to file a petition for guardianship may request that an appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

708.32. Suspension or Termination of Parental Rights

708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.

708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be suspended or terminated only as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights.

708.32-3. *Suspension of Parental Rights*. The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.

708.32-4. *Termination of Parental Rights*. The termination of parental rights means that all rights, powers, privileges, immunities, duties and obligations existing between biological parent and child are permanently severed.

708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary basis.

708.32-6. An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child.

708.32-7. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

708.33. Voluntary Suspension or Termination of Parental Rights

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to suspension or termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the suspension or termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of suspension or termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the suspension or termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings

without prejudice. That dismissal shall not preclude an involuntary suspension or termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order suspending or terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend peacemaking to establish an agreement regarding post-voluntary suspension or termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary suspension or termination contact agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary suspension or termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a suspension or termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary suspension or termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.34. Grounds for Involuntary Suspension or Termination of Parental Rights

708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

(a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services*. Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-8;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home.

(d) *Continuing Parental Disability*. Continuing parental disability shall be established by proving that:

(1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;

(2) The condition of the parent is likely to continue indefinitely; and

(3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation*. Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

(1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.22-8, Wis. Stat. 48.356(2), or Wis. Stat. 938.356 (2); and

(2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse*. Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

(1) That the parent has caused death or injury to a child resulting in a felony conviction; or

(2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

(A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;

(B) Whether the person has neglected or refused to provide care or support for the child; and

(C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a suspension or termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the suspension or termination of the other parent's parental rights.

1647 (k) *Commission of a Felony Against a Child.*

1648 (1) Commission of a serious felony against the child, shall be established by
1649 proving that the child was the victim of a serious felony and parent was convicted
1650 of that serious felony.

1651 (2) In this subsection, “serious felony” means any of the following:

1652 (A) The commission of, the aiding or abetting of, or the solicitation,
1653 conspiracy or attempt to commit, a violation of any of the following:

1654 (i) First degree intentional homicide [under Wis. Stat. 940.01];

1655 (ii) First degree reckless homicide [under Wis. Stat. 940.02];

1656 (iii) Felony murder [under Wis. Stat. 940.03];

1657 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

1658 (v) A violation of the law of any other state or federal law, if that
1659 violation would be a violation of the above-mentioned felonies if
1660 committed in Wisconsin.

1661 (B) The commission of a violation of any of the following:

1662 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.
1663 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

1664 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

1665 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

1666 (iv) Engaging in repeated acts of sexual assault of the same child [under
1667 Wis. Stat. 948.025];

1668 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),
1669 or (5) (a) 1., 2., or 3.];

1670 (vi) Sexual exploitation of a child [under Wis. Stat. 948.05];

1671 (vii) Trafficking of a child [under Wis. Stat. 948.051];

1672 (viii) Incest with a child [under Wis. Stat. 948.06];

1673 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

1674 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.
1675 940.302 (2) (a) 1. b. applies]; or

1676 (xi) A violation of the law of any other state or federal law, if that
1677 violation would be a violation listed under the above listed felonies if
1678 committed in Wisconsin.

1679 (C) The commission of a violation of neglecting a child under Wis. Stat.
1680 948.21 or a violation of the law of any other state or federal law, if that
1681 violation would be a violation of Wis. Stat. 948.21 if committed in this state,
1682 that resulted in the death of the victim.

1683 (l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*

1684 Prior involuntary suspension or termination of parental rights to another child shall be
1685 established by proving all of the following:

1686 (1) That the child who is the subject of the petition is in need of protection or
1687 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of
1688 the petition was born after the filing of a petition under this subsection whose
1689 subject is a sibling of the child; and

1690 (2) That, within three (3) years prior to the date the Court determined the child to
1691 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the
1692 case of a child born after the filing of a petition as specified in section 708.34-1 (l)

(1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

708.35. Petition for Suspension or Termination of Parental Rights

708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition for the suspension or termination of parental rights shall be filed by the:

- (a) Nation's Child Welfare attorney;
- (b) Department; or
- (c) child's parent in the case of a step-parent adoption.

708.35-2. A petition for the suspension or termination of parental rights ~~may~~shall be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months or if grounds exist for suspension or termination of parental rights unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that suspension or termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home or did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the permanency plan; or
- (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

708.35-3. A petition for the suspension or termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:
 - (1) A statement that consent will be given to voluntary suspension or termination of parental rights as provided in section 708.33; or
 - (2) A statement of the grounds for involuntary suspension or termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension

or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall serve the summons and petition upon the following persons by personal service or, if personal service is not possible, by certified mail, return receipt requested:

(a) The parent(s) of the child, including an alleged father if paternity has not been established; and

(b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail.

708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.38. Department's Suspension or Termination of Parental Rights Report

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for suspension or termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.39. Standards and Factors

708.39-1. In making a decision about the appropriate disposition for suspension or termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all suspension and termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

(a) The likelihood of the child's adoption after suspension or termination;

(b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);

(c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;

(d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;

(e) The wishes of the child, if the child has the capacity to express their wishes;

(f) The duration of the separation of the parent from the child; and

(g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.40. Dispositional Hearings for Suspension or Termination of Parental Rights

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

(a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

(a) The Court may dismiss the petition if it finds the evidence does not warrant the suspension or termination of parental rights or if the Court finds that a parent is attempting to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order suspending or terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

(1) A tribal or county department authorized to accept guardianship;

(2) A child welfare agency licensed to accept guardianship;

(3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.40-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the suspension or termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the suspension or termination of parental rights is in the best interests of the child.

(c) If the disposition is for the suspension or termination of parental rights, the order may contain all of the following:

(1) A termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties ~~or the~~

~~order may allow for a residual rights agreement agreed upon by the parties to be ordered by the Court;~~

(2) Order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child, ~~or by an agreement;~~

(3) Order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and

(4) Order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated; and.

~~(5) Order that the parent shall have no standing to appear at any future legal proceedings involving the child, notwithstanding proceedings regarding a residual rights agreement.~~

708.40-5. 708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground for suspension or termination of their parental rights specified in section 708.34-1. ~~Additionally, the Court shall inform the parents(s) that section 708.34-1(l), which~~ provides that a prior involuntary suspension or termination of parental rights of another child, under certain circumstances, is a ground for the suspension or termination of parental rights for another child.

708.40-6.7. If the Court suspends or terminates parental rights, the Department, or the Court if the Department is not a party to the action, may forward the following information to the State of Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been suspended or terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.40-7.8. If only one (1) parent consents to a voluntary suspension or termination of parental rights or if the grounds for involuntary suspension or termination of parental rights are found to exist as to only one (1) parent, the rights of only that parent may be suspended or terminated without affecting the rights of the other parent if the Court finds such suspension or termination to be in the best interest of the child.

708.41. Adoption

708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption shall be closed.

708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adopted child in the same manner as parents would otherwise be entitled to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been suspended, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. The adopted child's extended biological family retains the right to reasonable communication and visitation with the adopted child, subject to reasonable controls of the adoptive parents.

708.41-3. Closed Adoptions. Closed adoptions occur in situations where an adopted child needs a permanent home and it is necessary to sever all ties between the adopted child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and

(e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

708.42. Adoption Criteria and Eligibility

708.42-1. Criteria for Adoption. Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;

(c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

(1) The child's other parent is deceased; or

(2) The parental rights of the child's other parent with respect to the child have been suspended or terminated.

708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

(a) A married adult couple;

(b) Either spouse if the other spouse is a parent of the child; or

(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

708.43. Adoption Procedure

708.43-1. *Petition for Adoption*. A person proposing to adopt, or the Department, shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

(a) The name, birth date, address, and tribal affiliation of the petitioner;

(b) The name, birth date, address, and tribal affiliation of the child;

(c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;

(d) The name by which the child shall be known if the petition is granted;

(e) The relationship of the petitioner to the child; and

(f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days.

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child.

(a) The Court shall order one (1) of the following to conduct the investigation:

(1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide a copy of the report to the parties by first-class mail at least seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.43-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.43-9. Within five (5) days after entry of the order granting a closed adoption, the Department shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

708.44. Non-Compliance with a Residual Rights Agreement

708.44-1. Any party to a residual rights agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.44-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.44-4. The Court may not revoke a suspension or termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.45. Peacemaking and Mediation

708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or

mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.46. Appeals

708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

708.47. Liability

708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's Child Welfare Attorney or any person acting under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this law.

End.

Adopted – BC-07-26-17-J

Amended – BC-__-__-__-__

Title 7. Children, Elders and Family - Chapter 708

~~CHILDREN'S CODE~~

Latiksaʔshúha Laotilihwa'ke

the children – their issues

CHILDREN'S CODE

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708.1. Purpose and Policy

708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his or her family. Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child.

708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting judicial proceedings and other procedures in which children and all other interested parties are provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while protecting the public safety.

708.2. Adoption, Amendment, Repeal

708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J₂ and amended by resolution BC- - - - .

708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. 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.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

(a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;

(b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;

(c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;

(d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;

(e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and

(f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. 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) "Abuse" means any of the following:

(1) Physical injury inflicted on a child by other than accidental means;

(2) Sexual assault;

(3) Sexual exploitation of a child;

(4) Prostitution or trafficking of a child;

(5) Causing a child to view or listen to sexual activity or sexually explicit materials;

(6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or

(7) Emotional damage for which the child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.

(b) "Advocate" means a person who is a non-attorney presented to the Court as the representative or advisor to a party.

(c) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(d) "Attorney" means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.

(e) "Best interest of the child" means the interest of a child to:

(1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;

(2) Be free from physical, sexual and emotional abuse;

(3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;

(4) Receive appropriate medical care;

- 63 (5) Receive appropriate education;
64 (6) Be raised in conditions which maximize the chances of the child becoming a
65 contributing member of society; and
66 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
67 and heritage(s).
- 68 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
69 holidays recognized by the Nation.
- 70 (g) "Child" means a person who is less than eighteen (18) years of age.
- 71 (h) "Clear and convincing evidence" means that a particular fact is substantially more
72 likely than not to be true.
- 73 (i) "Counsel" means an attorney or advocate presented to the Court as the representative
74 or advisor to a party.
- 75 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida
76 Nation Judiciary that has the designated responsibility to oversee family matters.
- 77 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and
78 authority to do a certain act or hear a certain dispute.
- 79 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 80 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 81 (n) "Dispositional hearing" means a hearing for the Court to make its final determination
82 of a case or issue.
- 83 (o) "Emotional damage" means harm to a child's psychological or intellectual
84 functioning evidenced by one (1) or more of the following characteristics exhibited to a
85 severe degree:
- 86 (1) anxiety;
87 (2) depression;
88 (3) withdrawal;
89 (4) outward aggressive behavior; and/or
90 (5) a substantial and observable change in behavior, emotional response, or
91 cognition that is not within the normal range for the child's age and stage of
92 development.
- 93 (p) "Expert" means a person with special training, experience, or expertise in a field
94 beyond the knowledge of an ordinary person.
- 95 (q) "Extended family" means a person who has reached the age of eighteen (18) and who
96 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
97 nephew, first, second, third or fourth cousin, or stepparent.
- 98 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
99 a petition under this law are proved by clear and convincing evidence.
- 100 (s) "Fictive kin" means any person or persons who, to the biological parents of the child
101 at issue, have an emotional tie to that parent wherein they are like family.
- 102 (t) "Foster home" means any home which is licensed by ~~the~~ Department ~~and~~/or applicable
103 licensing agency and maintained by any individual(s) suitable for placement of children
104 when taken into custody or pending court matters.
- 105 (u) "Good cause" means adequate or substantial grounds or reason to take a certain action,
106 or to fail to take an action.

(v) “Group home” means any facility operated by a person required to be licensed by the Department and/or applicable licensing agency for the care and maintenance of five (5) to eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “Imminent danger” means a risk of harm or injury that will occur immediately.

~~(z)~~(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law ~~as codified at 25 USC 1901.~~

(bb) “Informal disposition” means a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child.

~~(aa)~~(cc) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

~~(bb)~~(dd) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

~~(ee)~~(ee) “Nation” means the Oneida Nation.

~~(dd)~~(ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

~~(ee)~~(gg) “Parent” means the biological or adoptive parent of a child.

(hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who is the subject of the proceedings; the Department, in cases where they are the petitioner; a guardian ad litem, if one has been appointed by the Court; and anyone else permitted to file a petition under this law.

~~(ff)~~(ii) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

~~(gg)~~(jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

~~(hh)~~(kk) “Physical injury” includes, but is not limited to, any of the following:

- (1) lacerations;
- (2) fractured bones;
- (3) burns;
- (4) internal injuries;
- (5) severe or frequent bruising;
- (6) bodily injury which creates a substantial risk of death;
- (7) bodily injury which causes serious permanent disfigurement;
- (8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or
- (9) any other serious bodily injury.

~~(ii)~~(ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a petition filed under this law.

~~(jj)~~(mm) “Probable cause” means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

~~(nn)~~ - “Protective plan” means an immediate short-term action that protects a child from present danger threats in order to allow for completion of the initial assessment, investigation and, if needed, the implementation of a safety plan.

~~(kk)~~(oo) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

~~(ll)~~(pp) “Relative” means any person connected with a child by blood, marriage or adoption.

~~(mm)~~(qq) “Reservation” means all the 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.

~~(nn)~~(rr) “Shelter care facility” means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

~~(oo)~~(ss) “Social history” means the social, economic, cultural and familial aspects of a person and how those aspects affect the person’s functioning and situation in life.

~~(pp)~~(tt) “Special treatment or care” means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

~~(qq)~~(uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a biological parent of the child.

~~(rr)~~(vv) “Stipulation” means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.

~~(ss)~~(ww) “Substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

~~(tt) “Termination of parental rights” means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.~~

~~(uu)~~^(xx) “Treatment” “Service plan” means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.

~~(vv)~~^(yy) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child’s parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation’s laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent~~or~~, guardian, or legal custodian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian or legal custodian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation's laws or state law;

(i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(l) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;

(n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and ~~section 708.5-2~~ all requirements of this law have been met the Court may:

(a) terminate or suspend parental rights to a child;

(b) appoint, revise, and/or remove a guardian; and

(c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

(a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

- (a) An attorney from the Oneida Law Office;
- (b) An attorney contracted by the Oneida Law Office; or
- (c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions or protective plans with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child; and

(t) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:

(a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;

(b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;

(c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;

(d) Adhere to the placement preference order stated in section 708.10; and 11;

(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee and/or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law; and

(f) Share information with other social service agencies, law enforcement agencies, and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

(a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

(b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate or suspend parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;

(c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and

(d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

(a) A guardian ad litem shall be an adult who:

(1) is at least twenty one (21) years of age;

(2) is currently certified as a guardian ad litem and in good standing;

(3) has never been convicted of a felony unless the person received a pardon or forgiveness; and

(4) has never been convicted of any crime against a child.

(b) No person shall be appointed guardian ad litem in that proceeding who:

(1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;

(2) appears as counsel or an advocate in the proceeding on behalf of any party; or

(3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.

(c) A guardian ad litem may be recognized as certified by the Court if he or she:

(1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
(2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, ~~teachers~~ and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;
- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues ~~regard~~regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. Qualifications.

(a) An advocate shall be an adult who:

- (1) is at least twenty one (21) years of age;
- (2) is admitted to practice before the Oneida Judiciary;
- (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
- (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar position, throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) ~~and~~ any other service that may be necessary.

708.11. Order of Placement Preferences

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

708.12. ~~Notice of Petition;~~ General Terms

708.12-1. ~~Petitions alleging that a child is in need~~ Service of ~~protection or services may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

~~documents~~ 708.12-2. Petitions for termination of parental rights, guardianship, and adoption notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be ~~served on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

~~708.12-3. All parties shall be notified of all subsequent hearings under this law~~ by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.

708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

(a) Exception. In circumstances where a hearing is scheduled and it is not possible to provide notice at least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties of the hearing.

708.12-3. When the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure.

708.12-4. In all proceedings under this law, the Department may withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else. A parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information.

708.13. Hearings (General)

708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.13-3. If an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. If the Court enters such an order, then the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child Support Agency.

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-6. The Department may make an ex parte request to the Court to conduct an in camera review to determine what information should and should not be released to the parties and their counsel. In making that determination, the Court shall balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. After the Court conducts the in camera review, the decision regarding the release of records shall be provided to the parties in writing.

708.15. Taking a Child into Custody

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

- (a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;
- (b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or
- (c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

- (a) The child will cause injury to himself or herself or be subject to injury by others;

(b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;

(c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

(d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or

(e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. ~~The person making the custody decision shall consider the wishes of the child in making that determination;~~

(b) A licensed foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

(e) A licensed private or public shelter care facility; ~~or~~

(f) A hospital or other medical or mental health facility; or

(g) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

(a) the date, time and place of the emergency custody hearing;

(b) the nature and possible outcomes of the hearing;

(c) the right to present and cross-examine witnesses; and

(d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.16. Emergency Custody Hearing

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by ~~the~~ Court as soon as possible but no later than seventy-two (72) hours ~~of~~ after the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed unless the Department seeks and receives an extension pursuant to section 708.16-2. ~~The child shall be released from custody if a hearing is not held within the specified timelines.~~

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody. For any parties not present at the hearing, the Department shall serve the petition on those parties by certified mail, return receipt requested.

~~708.16-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of age or older.~~

~~708.16-5.~~ 708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-~~6~~5. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-~~7~~6. All orders to hold a child in custody shall be in writing ~~and shall include all of the following:~~

(a) All orders to hold a child in custody shall include all of the following:

- ~~(a)~~ (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;

~~(b)~~ (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;

~~(c)~~ (3) A finding that the Department- has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best ~~interest~~interests are the paramount concerns;

~~(d)~~ (4) The Department made reasonable efforts to make it possible for the child to return safely home; and

~~(e)~~ (5) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(b) An order to hold a child in custody may include the following:

(1) an transfer of the legal custody of the child, including decisions about health care and education.

708.16-~~8~~7. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-~~9~~8. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.17. Petition for a Child in Need of Protection or Services

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. Upon filing with the Court, the Department shall provide a copy of the petition to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.17-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child

and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. ~~An~~ Upon filing with the Court, the Department shall provide a copy of the amended petition ~~may be given~~ to the parties ~~directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure~~ certified mail with return receipt requested.

708.18. Consent Decree

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

(a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;

(b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;

(c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and

(d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six (6) months in the absence of objection to the extension by the parties to the initial

consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

708.19. Plea Hearing for a Child in Need of Protection or Services

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.19-5. At the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties prior to the hearing in substantial compliance with section 708.15-9. In the request for placement of the child outside of the child's home the Department shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5).

708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing and shall contain the information required by section 708.16-6(a)(1)-(5).

708.20. Fact finding Hearing for a Child in Need of Protection or Services

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go

outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.21. Department's Disposition Report for a Child in Need of Protection or Services

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family;
- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

~~708.21-3. The Department may request the Court to withhold identifying information from the child's parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.~~

708.22. Dispositional Hearing for a Child in Need of Protection or Services

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The ~~treatment~~service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the ~~treatment~~service plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

- (B) The date that is one (1) year after the date on which the order is granted; and
- (C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.
- (d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this ~~subdivision~~subsection on a case-by-case basis based on circumstances specific to the child;
- (e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;
- (f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;
- (g) A statement of the conditions with which the parties are required to comply; and
- (h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.
- (1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.
- 708.22-5. ~~Treatment Plans~~Service plans and Conditions. In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or ~~treatment~~service plan determined by the Court to be necessary for the child's welfare.
- (a) The ~~treatment~~service plan or conditions ordered by the Court shall contain the following information:
- (1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;
- (2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the ~~treatment~~service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;
- (3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the ~~treatment~~service plan, including the

Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a ~~treatment~~service plan does not guarantee the return of a child and that completion of a ~~treatment~~service plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A ~~treatment~~service plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

(5) Parent training and education;

(6) Cultural wellness treatment and training; and/or

(7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action, ~~and the child if the child is age twelve (12) or older.~~

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for suspension or termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.23. Permanency Plans

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services. ~~The permanency plan shall include all of the following:~~

(a) The permanency plan shall include all of the following:

(1) The name, birth date, address, and tribal affiliation of the child;

(2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);

(3) The date on which the child was removed from the home;

(4) A statement as to the availability of a safe and appropriate placement with an extended family member;

(5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;

(6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;

(~~g~~7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;

(~~h~~8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;

(~~i~~9) Information about the child's education; and

(~~j~~10) Any other appropriate information as deemed necessary by the Court or the Department.

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least ~~five (5) business~~seven (7) days before the date of the hearing, the Department shall ~~provide a copy of file~~ the updated permanency plan ~~to~~with the Court and provide a copy to the parties by first-class mail.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

708.24. Change in Placement

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional

order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.24-4. ~~Written notice~~Upon filing with the Court, the Department shall provide a copy of the ~~proposed request for a~~ change in placement ~~shall be sent to all of the parties pursuant to the Oneida Judiciary Rules of Civil Procedure~~by first-class mail.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. ~~Notice~~The Department shall notify the parties of the emergency change in placement ~~shall be sent to the parties~~by personal service as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

(a) The date on which the child reaches eighteen (18) years of age;

(b) The date that is one (1) year after the date on which the change-in-placement order is granted; or

(c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.24-9. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

708.25. Trial Reunification

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court ~~and~~. Upon filing with the Court and at least seven (7) days before the date of reunification, the Department shall provide the parent, guardian, legal custodian, and any other party written notice ~~pursuant to the Oneida Judiciary Rules of Civil Procedure~~ of the proposed reunification by first-class mail. The notice shall contain the information that is required to be included in the request under section 708.25-2.

708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

(a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.

(b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the ~~Department or the~~ Court shall provide notice of the hearing to all parties ~~with a request for the trial reunification attached to the notice~~.

(1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

(2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

(a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than ~~ten (10)~~seven (7) days prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the ~~Department or the~~ Court shall provide notice of the hearing to all parties ~~with a copy of the extension request attached~~.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his or her out-of-home placement the Department shall provide the parties with written notice of the following by first-class mail:

(1) the date of the return of the child to the out-of-home placement; and
(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.24 to place the child in a new out-of-home placement; or

1156 (c) Request a change in placement under section 708.24 to place the child in the trial
1157 reunification home.

1158 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial
1159 reunification is no longer in the best interests of the child and revoke the trial reunification before
1160 the specified trial reunification period ends.

1161 (a) *Revocation Request.* If the Department determines that the trial reunification is no
1162 longer in the best interests of the child, the Department, without prior order by the Court,
1163 may remove the child from the trial reunification home and place the child in the child's
1164 previous out-of-home placement or place the child in a new out-of-home placement.

1165 (1) If the Department places the child in the child's previous out-of-home
1166 placement, within three (3) business days of removing the child from the trial
1167 reunification home, the Department shall submit a request for revocation of the trial
1168 reunification to the Court and shall provide notice of the request to all parties ~~by~~
1169 first-class mail. The request shall contain the following information:

1170 (A) the date on which the child was removed from the trial reunification
1171 home;

1172 (B) the address of the child's current placement, unless providing the
1173 address would present imminent danger to the child; and

1174 (C) the reasons for the proposed revocation.

1175 (2) If the Department places the child in a new out-of-home placement, within
1176 three (3) business days of removing the child from the trial reunification home, the
1177 Department shall request a change in placement under section 708.22. The
1178 procedures specified in section 708.24, including all notice procedures, apply to a
1179 change in placement requested under this ~~subdivision~~subsection, except that the
1180 request shall include the date on which the child was removed from the trial
1181 reunification home in addition to the information required in 708.24-2. The trial
1182 reunification is revoked when the change in placement order is granted.

1183 (b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an
1184 objection with the Court within ten (10) days after the request was filed with the Court.

1185 (1) If no objection is filed, the Court may issue a revocation order.

1186 (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not
1187 less than three (3) business days before the hearing the Court shall provide notice
1188 of the hearing ~~together with a copy of the request for the revocation~~, to all parties.

1189 (c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best
1190 interests of the child who has been placed in his or her previous out-of-home placement,
1191 the Court shall grant an order revoking the trial reunification.

1192 708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the
1193 home of an adult who has been convicted of the first-degree intentional homicide or the second-
1194 degree intentional homicide of a parent of the child or any crime against a child, if the conviction
1195 has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed
1196 for a trial reunification is convicted of homicide or a crime against a child, and the conviction has
1197 not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and
1198 the child shall be returned to his or her previous out-of-home placement, or placed in a new out-
1199 of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.26. Revision of Dispositional Orders

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided ~~by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure~~ to the parties by first-class mail.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.27. Extension of Dispositional Orders

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties ~~pursuant to the Oneida Judiciary Rules of Civil Procedure~~ by first-class mail.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan ~~- if applicable.~~

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.28. Continuation of Dispositional Orders

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect,

the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.29. Guardianship for Certain Children in Need of Protection or Services

708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

- (a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;
- (b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;
- (c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;
- (d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;
- (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and
- (f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

- (a) The child;
- (b) The child's guardian ad litem;
- (c) The child's parent;
- (d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;
- (e) The Department; or
- (f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and

(d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.27-29-1(a)-(f) are met.

~~708.29-4.~~ 708.29-4. Notice of Petition for Guardianship. Upon filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.29-5. Presence of the Proposed Guardian. The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

~~708.29-5.~~ 708.29-5. Plea Hearing for Guardianship. A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

(a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;

(b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and

(c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

~~708.29-6.~~ 708.29-6. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

~~708.29-7.~~ 708.29-7. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7) days prior to the hearing, the Department shall ~~file its report with the Court prior to the fact-finding hearing and shall~~ provide the parent, guardian, legal custodian, proposed guardian, and any other parties ~~with a~~ written copy of the report ~~at least three (3) business days prior to the hearing~~ by first-class mail.

~~708.29-8.~~ 708.29-8. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

~~708.29-9.~~ 708.29-9. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the

best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

- (a) Whether the person would be a suitable guardian of the child;
- (b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and
- (c) The wishes of the child, if the child has the capacity to express their wishes.

~~708.29-10. Disposition~~ 11. Dispositional Order for Guardianship. After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure:

- (a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or
- (b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

~~708.29-11~~ 12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.30. Revisions of Guardianship Order

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the Court's disposition. The motion for the revision shall be filed with the Court ~~with notice and, upon filing, a written copy shall be provided by the~~ to all parties pursuant to the Oneida Judiciary Rules of Civil Procedure, by first-class mail.

- ~~(a)~~ (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. ~~The~~ Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall ~~file its report with the Court prior to the hearing on the revision of guardianship and shall~~ provide the parties with a written copy of the report ~~at least three (3) business days prior to the hearing~~ by first-class mail.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.31. Termination of Guardianship

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical

equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or

(c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall ~~file its report with the Court prior to the hearing on the termination of guardianship and shall~~ provide the parties with a written copy of the report ~~at least three (3) business days prior to the hearing~~ by first-class mail.

708.31-3. Any person authorized to file a petition ~~under~~ for guardianship may request that ~~an~~ appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

708.32. Suspension or Termination of Parental Rights

~~708.32-1.~~ 708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.

708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be suspended or terminated only as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights.

708.32-3. ~~708.32-2~~ *Suspension of Parental Rights.* The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.

708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights, powers, privileges, immunities, duties and obligations existing between biological parent and child are permanently severed.

708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary basis.

708.32-6. ~~708.32-3.~~ An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child.

~~(a) An order terminating parental rights does not affect a child's relationship with the child's extended biological family unless the Court expressly finds that it is in the child's best interest to terminate the child's relationship with his or her extended biological family.~~

708.32-47. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

708.33. Voluntary Suspension or Termination of Parental Rights

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to suspension or termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the suspension or termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of suspension or termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the suspension or termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings without prejudice. That dismissal shall not preclude an involuntary suspension or termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order suspending or terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend peacemaking to establish an agreement regarding post-voluntary suspension or termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary suspension or termination contact agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary suspension or termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a suspension or termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary suspension or termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.34. Grounds for Involuntary Suspension or Termination of Parental Rights

708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

(a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to

visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services*. Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-78;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions within the nine (9) months as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-

two (22) months, not including any period following the termination of parental rights fact-finding hearing during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home.

(d) *Continuing Parental Disability.* Continuing parental disability shall be established by proving that:

(1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;

(2) The condition of the parent is likely to continue indefinitely; and

(3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

(1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.20-722-8, Wis. Stat. 48.356-(2),(2), or Wis. Stat. 938.356 (2); and

(2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse.* Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

(1) That the parent has caused death or injury to a child resulting in a felony conviction; or

(2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

(A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;

(B) Whether the person has neglected or refused to provide care or support for the child; and

(C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a suspension or termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the suspension or termination of the other parent's parental rights.

(k) *Commission of a Felony Against a Child.*

(1) Commission of a serious felony against the child, shall be established by proving that the child was the victim of a serious felony and parent was convicted of that serious felony.

~~(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.051 involving any child if committed in this state.~~

~~(3)~~(2) In this subsection, "serious felony" means any of the following:

(A) The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of any of the following:

(i) First degree intentional homicide [under Wis. Stat. 940.01];

(ii) First degree reckless homicide [under Wis. Stat. 940.02];

(iii) Felony murder [under Wis. Stat. 940.03];

(iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

(v) A violation of the law of any other state or federal law, if that violation would be a violation of the above-mentioned felonies if committed in Wisconsin.

(B) The commission of a violation of any of the following:

(i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

(ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

(iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

(iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];

(v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];

(vi) Sexual ~~exploration~~ exploitation of a child [under Wis. Stat. 948.05];

(vii) Trafficking of a child [under Wis. Stat. 948.051];

(viii) Incest with a child [under Wis. Stat. 948.06];

(ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

(x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or

(xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

(C) The commission of a violation of neglecting a child under Wis. Stat. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.21 if committed in this state, that resulted in the death of the victim.

(l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.* Prior involuntary suspension or termination of parental rights to another child shall be established by proving all of the following:

(1) That the child who is the subject of the petition is in need of protection or services under section 708.5-2(b), (d), or (k); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child; and

(2) That, within three (3) years prior to the date the Court determined the child to be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the case of a child born after the filing of a petition as specified in section 708.34-1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

708.35. Petition for Suspension or Termination of Parental Rights

708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition for the suspension or termination of parental rights shall be filed by the:

(a) Nation's Child Welfare attorney, ~~the~~;

(b) Department; ~~or the~~

(c) child's parent in the case of a step-parent adoption.

708.35-2. A petition for the suspension or termination of parental rights ~~may~~shall be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months or if grounds exist for suspension or termination of parental rights unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that suspension or termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, or did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the time period in the child's permanency plan; or
- (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

708.35-3. A petition for the suspension or termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:
 - (1) A statement that consent will be given to voluntary suspension or termination of parental rights as provided in section 708.33; or
 - (2) A statement of the grounds for involuntary suspension or termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. The Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall ensure~~serve~~ the summons and petition ~~are served~~ upon the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure by personal service or, if personal service is not possible, by certified mail, return receipt requested:

- ~~(a)~~ (a) The parent(s) of the child, including an alleged father if paternity has not been established; and
- ~~(b)~~ (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail; and.

~~(e) The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.~~

708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;
- (b) Establish whether any promises or threats were made to elicit an admission; and
- (c) Make such inquiries to establish a factual basis for the admission.

708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. -A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition.- Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.38. Department's Suspension or Termination of Parental Rights Report

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family, including any relevant medical conditions;
- (b) A statement of the facts supporting the need for suspension or termination of parental rights;
- (c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. -If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.39. Standards and Factors

708.39-1. In making a decision about the appropriate disposition for suspension or termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all suspension and termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

(a) The likelihood of the child's adoption after suspension or termination;

(b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);

(c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;

(d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;

(e) The wishes of the child, if the child has the capacity to express their wishes;

(f) The duration of the separation of the parent from the child; and

(g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.40. Dispositional Hearings for Suspension or Termination of Parental Rights

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

(a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

(a) The Court may dismiss the petition if it finds the evidence does not warrant the suspension or termination of parental rights or if the Court finds that a parent is attempting to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order suspending or terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

(1) A tribal or county department authorized to accept guardianship;

(2) A child welfare agency licensed to accept guardianship;

(3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.40-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the suspension or termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the suspension or termination of parental rights is in the best interests of the child.

~~708.40-5. If an order is entered to terminate a parent's~~ (c) If the disposition is for the suspension or termination of parental rights, the order may contain all of the following:

(1) A termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties;

(2) Order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child;

(3) Order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and

(4) Order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated.

708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

1883 708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court
1884 shall orally inform the parent(s) who appear in Court or place in the written order the ground(s)
1885 for suspension or termination of their parental rights specified in section 708.34-1(1), which
1886 provides that a prior involuntary suspension or termination of parental rights, under certain
1887 circumstances, is a ground for the suspension or termination of parental rights for another child.

1888 708.40-~~6~~7. If the Court suspends or terminates parental rights, the Department, or the Court if the
1889 Department is not a party to the action, ~~shall~~may forward the following information to the State of
1890 Wisconsin:

- 1891 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights
1892 have been suspended or terminated;
- 1893 (b) The names and current addresses of the child's birth parents, guardian and legal
1894 custodian; and
- 1895 (c) Any medical or genetic information received by the Department.

1896 708.40-~~7~~8. If only one (1) parent consents ~~for~~to a voluntary suspension or termination of parental
1897 rights or if the grounds for involuntary suspension or termination of parental rights are found to
1898 exist as to only one (1) parent, the rights of only that parent may be suspended or terminated
1899 without affecting the rights of the other parent if the Court finds such suspension or termination to
1900 be in the best interest of the child.

1902 **708.41. Adoption**

1903 708.41-1. Adoptions under this law shall take the form of customary adoptions ~~unless when~~ the
1904 Court ~~determines there is good cause for~~has granted a petition to suspend parental rights. When
1905 the Court grants a petition to terminate parental rights the adoption ~~to~~shall be closed.

1906 708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive
1907 the adopted child of connections to, or knowledge of, the adopted child's biological family, but to
1908 provide the adopted child a permanent home. The following shall apply to all customary adoptions
1909 and shall be contained in all adoptive orders and decrees:

- 1910 (a) The relationship between an adoptive parent and ~~adoptive~~adopted child shall have all
1911 the same rights, responsibilities, and other legal consequences as the relationship between
1912 a biological child and parent;
- 1913 (b) The ~~adoptive~~adopted child shall have an absolute right, absent a convincing and
1914 compelling reason to the contrary, to information and knowledge about his or her biological
1915 family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption
1916 information from files maintained by the Court or Department;
- 1917 (c) Adoption shall not prevent an ~~adoptive~~adopted child from inheriting from a biological
1918 parent in the same manner as any other biological child. The biological parents shall not
1919 be entitled to inherit from an ~~adoptive~~adopted child in the same manner as parents would
1920 otherwise be entitled to inherit. An ~~adoptive~~adopted child shall be entitled to inherit from
1921 adoptive parents, and vice versa, in the same manner as if biological parents and child;
- 1922 (d) Although parental rights have been ~~terminated~~suspended, the biological parent may
1923 retain certain residual parental rights when appropriate as determined by agreement
1924 between the adoptive parent and biological parent made through peacemaking, or by order
1925 of the Court. Such residual parental rights may include:
 - 1926 (1) The right to communication;
 - 1927 (2) The right to visitation;
 - 1928 (3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. ~~The adopted child's extended biological family retains the right to reasonable communication and visitation with the adopted child,~~ subject to reasonable controls of the adoptive parents.

708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where ~~a~~an adopted child needs a permanent home and it is necessary to sever all ties between the adopted child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and ~~adoptive~~adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and

(e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

708.42. Adoption Criteria and Eligibility

708.42-1. *Criteria for Adoption*. Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;

(c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

(1) The child's other parent is deceased; or

(2) The parental rights of the child's other parent with respect to the child have been suspended or terminated.

708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

(a) A married adult couple;

(b) Either spouse if the other spouse is a parent of the child; or

(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside

or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

708.43. Adoption Procedure

708.43-1. *Petition for Adoption.* A person proposing to adopt or the Department, shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the petitioner;
- (b) The name, birth date, address, and tribal affiliation of the child;
- (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
- (d) The name by which the child shall be known if the petition is granted;
- (e) The relationship of the petitioner to the child; and
- (f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days. ~~Notice of the hearing shall be served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. ~~The Court shall order one (1) of the following to conduct the investigation:~~

(a) The Court shall order one (1) of the following to conduct the investigation:

- ~~(a)~~ (1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or
- ~~(b)~~ (2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide ~~the parties with~~ a copy of the report to the parties by first-class mail at least ~~three (3) business~~ seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.43-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent

is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.43-9. ~~After~~Within five (5) days after entry of the order granting ~~thea~~ closed adoption, the Department shall ~~promptly~~ mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

708.44. Non-Compliance with a Residual Rights Agreement

708.44-1. Any party to a residual rights agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.44-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.44-4. The Court may not revoke a suspension or termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.45. Peacemaking and Mediation

708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.46. Appeals

708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

708.47. Liability

708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's Child Welfare Attorney or any person acting under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this law.

End.

2068 Adopted – BC-07-26-17-J

2069 Amended – BC- - - -

Title 7. Children, Elders and Family - Chapter 708
Latiksa'shúha Laotilihwa'ke
the children – their issues
CHILDREN'S CODE

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1

2 **708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of
4 Oneida children through the preservation of the family unit, while recognizing that in some
5 circumstances it may be in the child's best interest to not be reunited with his or her family.
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities
7 as well as facilitating the return of Oneida children to the jurisdiction of the Nation and
8 acknowledging the customs and traditions of the Nation when raising an Oneida child.

9 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting
10 judicial proceedings and other procedures in which children and all other interested parties are
11 provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while
12 protecting the public safety.

13

14 **708.2. Adoption, Amendment, Repeal**

15 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J,
16 and amended by resolution BC-__-__-__.

17 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida
18 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. 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.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. 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) “Abuse” means any of the following:
 - (1) Physical injury inflicted on a child by other than accidental means;
 - (2) Sexual assault;
 - (3) Sexual exploitation of a child;
 - (4) Prostitution or trafficking of a child;
 - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
 - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
 - (7) Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) “Advocate” means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) “Alcohol and other drug abuse impairment” means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted.
- (d) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) “Best interest of the child” means the interest of a child to:
 - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
 - (2) Be free from physical, sexual and emotional abuse;
 - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;
 - (4) Receive appropriate medical care;
 - (5) Receive appropriate education;

- 64 (6) Be raised in conditions which maximize the chances of the child becoming a
65 contributing member of society; and
66 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
67 and heritage(s).
- 68 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
69 holidays recognized by the Nation.
- 70 (g) "Child" means a person who is less than eighteen (18) years of age.
- 71 (h) "Clear and convincing evidence" means that a particular fact is substantially more
72 likely than not to be true.
- 73 (i) "Counsel" means an attorney or advocate presented to the Court as the representative
74 or advisor to a party.
- 75 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida
76 Nation Judiciary that has the designated responsibility to oversee family matters.
- 77 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and
78 authority to do a certain act or hear a certain dispute.
- 79 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 80 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 81 (n) "Dispositional hearing" means a hearing for the Court to make its final determination
82 of a case or issue.
- 83 (o) "Emotional damage" means harm to a child's psychological or intellectual
84 functioning evidenced by one (1) or more of the following characteristics exhibited to a
85 severe degree:
- 86 (1) anxiety;
87 (2) depression;
88 (3) withdrawal;
89 (4) outward aggressive behavior; and/or
90 (5) a substantial and observable change in behavior, emotional response, or
91 cognition that is not within the normal range for the child's age and stage of
92 development.
- 93 (p) "Expert" means a person with special training, experience, or expertise in a field
94 beyond the knowledge of an ordinary person.
- 95 (q) "Extended family" means a person who has reached the age of eighteen (18) and who
96 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
97 nephew, first, second, third or fourth cousin, or stepparent.
- 98 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
99 a petition under this law are proved by clear and convincing evidence.
- 100 (s) "Fictive kin" means any person or persons who, to the biological parents of the child
101 at issue, have an emotional tie to that parent wherein they are like family.
- 102 (t) "Foster home" means any home which is licensed by the Department or applicable
103 licensing agency and maintained by any individual(s) suitable for placement of children
104 when taken into custody or pending court matters.
- 105 (u) "Good cause" means adequate or substantial grounds or reason to take a certain action,
106 or to fail to take an action.
- 107 (v) "Group home" means any facility operated by a person required to be licensed by the
108 Department and/or applicable licensing agency for the care and maintenance of five (5) to
109 eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “Imminent danger” means a risk of harm or injury that will occur immediately.

(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law.

(bb) “Informal disposition” means a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child.

(cc) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

- (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
- (2) To protect, educate and discipline the child so long as it is in the child’s best interest; and
- (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(dd) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

(ee) “Nation” means the Oneida Nation.

(ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(gg) “Parent” means the biological or adoptive parent of a child.

(hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who is the subject of the proceedings; the Department, in cases where they are the petitioner; a guardian ad litem, if one has been appointed by the Court; and anyone else permitted to file a petition under this law.

(ii) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

(jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(kk) “Physical injury” includes, but is not limited to, any of the following:

(1) lacerations;

(2) fractured bones;

(3) burns;

(4) internal injuries;

(5) severe or frequent bruising;

(6) bodily injury which creates a substantial risk of death;

(7) bodily injury which causes serious permanent disfigurement;

(8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or

(9) any other serious bodily injury.

(ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a petition filed under this law.

(mm) “Probable cause” means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

(nn) “Protective plan” means an immediate short-term action that protects a child from present danger threats in order to allow for completion of the initial assessment, investigation and, if needed, the implementation of a safety plan.

(oo) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

(pp) “Relative” means any person connected with a child by blood, marriage or adoption.

(qq) “Reservation” means all the 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.

(rr) “Shelter care facility” means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

(ss) “Social history” means the social, economic, cultural and familial aspects of a person and how those aspects affect the person’s functioning and situation in life.

(tt) “Special treatment or care” means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

(uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a biological parent of the child.

(vv) “Stipulation” means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.

(ww) “Substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

(xx) “Service plan” means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.

(yy) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child’s parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation’s laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent, guardian, or legal custodian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian or legal custodian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation’s laws or state law;

- (i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (l) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;
- (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and all requirements of this law have been met the Court may:

- (a) terminate or suspend parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

- (a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

- (a) An attorney from the Oneida Law Office;
- (b) An attorney contracted by the Oneida Law Office; or

(c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. Indian Child Welfare Worker. The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions or protective plans with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child; and
- (t) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. Department. In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;
- (b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;
- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;

- (d) Adhere to the placement preference order stated in section 708.11;
- (e) Enter into memorandums of understanding or agreement with the Oneida Trust Enrollment Committee or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law; and
- (f) Share information with other social service agencies, law enforcement agencies, and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- (a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;
- (b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate or suspend parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;
- (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and
- (d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

- (a) A guardian ad litem shall be an adult who:
 - (1) is at least twenty one (21) years of age;
 - (2) is currently certified as a guardian ad litem and in good standing;
 - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who:
 - (1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;
 - (2) appears as counsel or an advocate in the proceeding on behalf of any party; or
 - (3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
 - (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
 - (2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;

- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. *Qualifications.*

(a) An advocate shall be an adult who:

- (1) is at least twenty one (21) years of age;
- (2) is admitted to practice before the Oneida Judiciary;
- (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
- (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar position, throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) any other service that may be necessary.

708.11. Order of Placement Preferences

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

708.12. Notice; General Terms

708.12-1. Service of documents and notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.

708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

(a) *Exception.* In circumstances where a hearing is scheduled and it is not possible to provide notice at least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties of the hearing.

708.12-3. When the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure.

708.12-4. In all proceedings under this law, the Department may withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else. A parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information.

708.13. Hearings (General)

708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.13-3. If an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. If the Court enters such an order, then the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child Support Agency.

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-6. The Department may make an ex parte request to the Court to conduct an in camera review to determine what information should and should not be released to the parties and their counsel. In making that determination, the Court shall balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. After the Court conducts the in camera review, the decision regarding the release of records shall be provided to the parties in writing.

708.15. Taking a Child into Custody

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

- (a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;
- (b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or
- (c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

- (a) The child will cause injury to himself or herself or be subject to injury by others;
- (b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;
- (c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;
- (d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or
- (e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

- (a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;
- (b) A licensed foster home;
- (c) A licensed group home;
- (d) A non-secure facility operated by a licensed child welfare agency;
- (e) A licensed private or public shelter care facility;
- (f) A hospital or other medical or mental health facility; or
- (g) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

- (a) the date, time and place of the emergency custody hearing;
- (b) the nature and possible outcomes of the hearing;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.16. Emergency Custody Hearing

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by the Court as soon as possible but no later than seventy-two (72) hours after the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed

unless the Department seeks and receives an extension pursuant to section 708.16-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody. For any parties not present at the hearing, the Department shall serve the petition on those parties by certified mail, return receipt requested.

708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-5. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-6. All orders to hold a child in custody shall be in writing.

- (a) All orders to hold a child in custody shall include all of the following:
 - (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
 - (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;
 - (3) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
 - (4) The Department made reasonable efforts to make it possible for the child to return safely home; and
 - (5) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines

that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(b) An order to hold a child in custody may include the following:

(1) an transfer of the legal custody of the child, including decisions about health care and education.

708.16-7. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-8. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.17. Petition for a Child in Need of Protection or Services

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. Upon filing with the Court, the Department shall provide a copy of the petition to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.17-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. Upon filing with the Court, the Department shall provide a copy of the amended petition to the parties by certified mail with return receipt requested.

708.18. Consent Decree

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is

twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

(a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;

(b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;

(c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and

(d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six (6) months in the absence of objection to the extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

708.19. Plea Hearing for a Child in Need of Protection or Services

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If

all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.19-5. At the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties prior to the hearing in substantial compliance with section 708.15-9. In the request for placement of the child outside of the child's home the Department shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5).

708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing and shall contain the information required by section 708.16-6(a)(1)-(5).

708.20. Fact finding Hearing for a Child in Need of Protection or Services

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.21. Department's Disposition Report for a Child in Need of Protection or Services

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family;

(b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;

(c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and

(d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

708.22. Dispositional Hearing for a Child in Need of Protection or Services

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

- (a) That continued placement of the child in his or her home would be contrary to the best interests of the child;
- (b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and

child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the service plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this subsection on a case-by-case basis based on circumstances specific to the child;

(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made

reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(g) A statement of the conditions with which the parties are required to comply; and

(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.22-5. *Service plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or service plan determined by the Court to be necessary for the child's welfare.

(a) The service plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a service plan does not guarantee the return of a child and that completion of a service plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A service plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

(5) Parent training and education;

(6) Cultural wellness treatment and training; and/or

(7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action.

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for suspension or termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.23. Permanency Plans

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services.

(a) The permanency plan shall include all of the following:

- (1) The name, birth date, address, and tribal affiliation of the child;
- (2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- (3) The date on which the child was removed from the home;
- (4) A statement as to the availability of a safe and appropriate placement with an extended family member;
- (5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;
- (6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- (7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;
- (8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;
- (9) Information about the child's education; and
- (10) Any other appropriate information as deemed necessary by the Court or the Department.

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least seven (7) days before the date of the hearing, the Department shall file the updated permanency plan with the Court and provide a copy to the parties by first-class mail.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

- (a) The continuing necessity for and the safety and appropriateness of the placement;
- (b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;
- (c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);
- (d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;
- (e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;
- (f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);
- (g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and
- (h) The date of the next review hearing, if appropriate.

708.24. Change in Placement

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a change in placement to the parties by first-class mail.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. The Department shall notify the parties of the emergency change in placement by personal service as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

- (a) The date on which the child reaches eighteen (18) years of age;
- (b) The date that is one (1) year after the date on which the change-in-placement order is granted; or
- (c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.24-9. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

708.25. Trial Reunification

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
 - (b) A statement describing why the trial reunification is in the best interests of the child;
- and

(c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court. Upon filing with the Court and at least seven (7) days before the date of reunification, the Department shall provide the parent, guardian, legal custodian, and any other party written notice of the proposed reunification by first-class mail. The notice shall contain the information that is required to be included in the request under section 708.25-2.

708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

(a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.

(b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

(2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

(a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than seven (7) days prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his or her out-of-home placement the Department shall provide the parties with written notice of the following by first-class mail:

(1) the date of the return of the child to the out-of-home placement; and

(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.24 to place the child in a new out-of-home placement; or

(c) Request a change in placement under section 708.24 to place the child in the trial reunification home.

708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial reunification is no longer in the best interests of the child and revoke the trial reunification before the specified trial reunification period ends.

(a) *Revocation Request.* If the Department determines that the trial reunification is no longer in the best interests of the child, the Department, without prior order by the Court, may remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or place the child in a new out-of-home placement.

(1) If the Department places the child in the child's previous out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall submit a request for revocation of the trial reunification to the Court and shall provide notice of the request to all parties by first-class mail. The request shall contain the following information:

(A) the date on which the child was removed from the trial reunification home;

(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and

(C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.24, including all notice procedures, apply to a change in placement requested under this subsection, except that the request shall include the date on which the child was removed from the trial reunification home

in addition to the information required in 708.24-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

(1) If no objection is filed, the Court may issue a revocation order.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.25-10. Prohibited Trial Reunifications. The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.26. Revision of Dispositional Orders

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided to the parties by first-class mail.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.27. Extension of Dispositional Orders

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties by first-class mail.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan if applicable.

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.28. Continuation of Dispositional Orders

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.29. Guardianship for Certain Children in Need of Protection or Services

708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's

best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

- (a) The child;
- (b) The child's guardian ad litem;
- (c) The child's parent;
- (d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;
- (e) The Department; or
- (f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and
- (d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

- (a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;
- (b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and
- (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the hearing, the Department shall provide the parent, guardian, legal custodian, proposed guardian, and any other parties a written copy of the report by first-class mail.

708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

- (a) Whether the person would be a suitable guardian of the child;
- (b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and
- (c) The wishes of the child, if the child has the capacity to express their wishes.

708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure:

- (a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or
- (b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.29-12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.30. Revisions of Guardianship Order

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing, a written copy shall be provided to all parties by first-class mail.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.31. Termination of Guardianship

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
- (c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.31-3. Any person authorized to file a petition for guardianship may request that an appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

708.32. Suspension or Termination of Parental Rights

708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.

708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be suspended or terminated only as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights.

708.32-3. *Suspension of Parental Rights*. The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.

708.32-4. *Termination of Parental Rights*. The termination of parental rights means that all rights, powers, privileges, immunities, duties and obligations existing between biological parent and child are permanently severed.

708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary basis.

708.32-6. An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child.

708.32-7. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

708.33. Voluntary Suspension or Termination of Parental Rights

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to suspension or termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the suspension or termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of suspension or termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the suspension or termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings

without prejudice. That dismissal shall not preclude an involuntary suspension or termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order suspending or terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend peacemaking to establish an agreement regarding post-voluntary suspension or termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary suspension or termination contact agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary suspension or termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a suspension or termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary suspension or termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.34. Grounds for Involuntary Suspension or Termination of Parental Rights

708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

(a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services*. Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-8;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home.

(d) *Continuing Parental Disability*. Continuing parental disability shall be established by proving that:

(1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;

(2) The condition of the parent is likely to continue indefinitely; and

(3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation*. Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

(1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.22-8, Wis. Stat. 48.356(2), or Wis. Stat. 938.356 (2); and

(2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse*. Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

(1) That the parent has caused death or injury to a child resulting in a felony conviction; or

(2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

(A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;

(B) Whether the person has neglected or refused to provide care or support for the child; and

(C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a suspension or termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the suspension or termination of the other parent's parental rights.

1599 (k) *Commission of a Felony Against a Child.*

1600 (1) Commission of a serious felony against the child, shall be established by
1601 proving that the child was the victim of a serious felony and parent was convicted
1602 of that serious felony.

1603 (2) In this subsection, “serious felony” means any of the following:

1604 (A) The commission of, the aiding or abetting of, or the solicitation,
1605 conspiracy or attempt to commit, a violation of any of the following:

1606 (i) First degree intentional homicide [under Wis. Stat. 940.01];

1607 (ii) First degree reckless homicide [under Wis. Stat. 940.02];

1608 (iii) Felony murder [under Wis. Stat. 940.03];

1609 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

1610 (v) A violation of the law of any other state or federal law, if that
1611 violation would be a violation of the above-mentioned felonies if
1612 committed in Wisconsin.

1613 (B) The commission of a violation of any of the following:

1614 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.
1615 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

1616 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

1617 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

1618 (iv) Engaging in repeated acts of sexual assault of the same child [under
1619 Wis. Stat. 948.025];

1620 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),
1621 or (5) (a) 1., 2., or 3.];

1622 (vi) Sexual exploitation of a child [under Wis. Stat. 948.05];

1623 (vii) Trafficking of a child [under Wis. Stat. 948.051];

1624 (viii) Incest with a child [under Wis. Stat. 948.06];

1625 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

1626 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.
1627 940.302 (2) (a) 1. b. applies]; or

1628 (xi) A violation of the law of any other state or federal law, if that
1629 violation would be a violation listed under the above listed felonies if
1630 committed in Wisconsin.

1631 (C) The commission of a violation of neglecting a child under Wis. Stat.
1632 948.21 or a violation of the law of any other state or federal law, if that
1633 violation would be a violation of Wis. Stat. 948.21 if committed in this state,
1634 that resulted in the death of the victim.

1635 (l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*
1636 Prior involuntary suspension or termination of parental rights to another child shall be
1637 established by proving all of the following:

1638 (1) That the child who is the subject of the petition is in need of protection or
1639 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of
1640 the petition was born after the filing of a petition under this subsection whose
1641 subject is a sibling of the child; and

1642 (2) That, within three (3) years prior to the date the Court determined the child to
1643 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the
1644 case of a child born after the filing of a petition as specified in section 708.34-1 (l)

(1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

708.35. Petition for Suspension or Termination of Parental Rights

708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition for the suspension or termination of parental rights shall be filed by the:

- (a) Nation's Child Welfare attorney;
- (b) Department; or
- (c) child's parent in the case of a step-parent adoption.

708.35-2. A petition for the suspension or termination of parental rights shall be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months or if grounds exist for suspension or termination of parental rights unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that suspension or termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home or did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the permanency plan; or
- (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

708.35-3. A petition for the suspension or termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:
 - (1) A statement that consent will be given to voluntary suspension or termination of parental rights as provided in section 708.33; or
 - (2) A statement of the grounds for involuntary suspension or termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension

or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall serve the summons and petition upon the following persons by personal service or, if personal service is not possible, by certified mail, return receipt requested:

(a) The parent(s) of the child, including an alleged father if paternity has not been established; and

(b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail.

708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.38. Department's Suspension or Termination of Parental Rights Report

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for suspension or termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.39. Standards and Factors

708.39-1. In making a decision about the appropriate disposition for suspension or termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all suspension and termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

(a) The likelihood of the child's adoption after suspension or termination;

(b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);

(c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;

(d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;

(e) The wishes of the child, if the child has the capacity to express their wishes;

(f) The duration of the separation of the parent from the child; and

(g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.40. Dispositional Hearings for Suspension or Termination of Parental Rights

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

(a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

(a) The Court may dismiss the petition if it finds the evidence does not warrant the suspension or termination of parental rights or if the Court finds that a parent is attempting to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order suspending or terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

(1) A tribal or county department authorized to accept guardianship;

(2) A child welfare agency licensed to accept guardianship;

(3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.40-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the suspension or termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the suspension or termination of parental rights is in the best interests of the child.

(c) If the disposition is for the suspension or termination of parental rights, the order may contain all of the following:

(1) A termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties;

(2) Order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child;

(3) Order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and

(4) Order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated.

708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground for suspension or termination of their parental rights specified in section 708.34-1(l), which provides that a prior involuntary suspension or termination of parental rights, under certain circumstances, is a ground for the suspension or termination of parental rights for another child.

708.40-7. If the Court suspends or terminates parental rights, the Department, or the Court if the Department is not a party to the action, may forward the following information to the State of Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been suspended or terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.40-8. If only one (1) parent consents to a voluntary suspension or termination of parental rights or if the grounds for involuntary suspension or termination of parental rights are found to exist as to only one (1) parent, the rights of only that parent may be suspended or terminated without affecting the rights of the other parent if the Court finds such suspension or termination to be in the best interest of the child.

708.41. Adoption

708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption shall be closed.

708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled

to inherit from an adopted child in the same manner as parents would otherwise be entitled to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been suspended, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. The adopted child's extended biological family retains the right to reasonable communication and visitation with the adopted child, subject to reasonable controls of the adoptive parents.

708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where an adopted child needs a permanent home and it is necessary to sever all ties between the adopted child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and

(e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

708.42. Adoption Criteria and Eligibility

708.42-1. *Criteria for Adoption*. Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;

(c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

(1) The child's other parent is deceased; or

(2) The parental rights of the child's other parent with respect to the child have been suspended or terminated.

708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

(a) A married adult couple;

(b) Either spouse if the other spouse is a parent of the child; or

(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

708.43. Adoption Procedure

708.43-1. *Petition for Adoption*. A person proposing to adopt, or the Department, shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

(a) The name, birth date, address, and tribal affiliation of the petitioner;

(b) The name, birth date, address, and tribal affiliation of the child;

(c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;

(d) The name by which the child shall be known if the petition is granted;

(e) The relationship of the petitioner to the child; and

(f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days.

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child.

(a) The Court shall order one (1) of the following to conduct the investigation:

(1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide a copy of the report to the parties by first-class mail at least seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

1962 708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is
1963 satisfied that the adoption is in the best interests of the child, the Court shall make an order granting
1964 the adoption. The order may change the name of the child to that requested by petitioners.

1965 708.43-8. After the order of adoption is entered the relation of parent and child and all the rights,
1966 duties and other legal consequences of the natural relation of child and parent thereafter exists
1967 between the adopted child and the adoptive parents. The relationship between the adopted child
1968 and biological parents shall be completely altered and all the rights, duties, and other legal
1969 consequences of those relationships shall cease to exist, excluding any residual rights granted to
1970 the biological parents and extended family through customary adoption. If the biological parent
1971 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,
1972 duties, and other legal consequences shall cease to exist only with respect to the biological parent
1973 who is not the spouse of the adoptive parent.

1974 708.43-9. Within five (5) days after entry of the order granting a closed adoption, the Department
1975 shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any
1976 additional data needed for the issuance of a new birth certificate.

1977 1978 **708.44. Non-Compliance with a Residual Rights Agreement**

1979 708.44-1. Any party to a residual rights agreement or the child who is the subject of the
1980 proceedings may petition the Court that approved the agreement to compel any person who is
1981 bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to
1982 show that a person who is bound by the agreement is not in compliance with the agreement and
1983 that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving
1984 rise to the filing of the petition. The petition may also allege facts showing that the noncompliance
1985 with the agreement is not in the best interests of the child.

1986 708.44-2. After receiving a petition for action regarding a residual rights contact agreement the
1987 Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing
1988 to all parties to the agreement and may reappoint a guardian ad litem for the child.

1989 708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in
1990 compliance with the agreement and that the petitioner, before filing the petition, attempted in good
1991 faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order
1992 requiring the person to comply with the agreement and may find a party in contempt.

1993 708.44-4. The Court may not revoke a suspension or termination of parental rights order or an
1994 order of customary adoption because an adoptive parent or other custodian of the child or a birth
1995 parent, birth sibling, or other birth relative of the child fails to comply with a residual rights
1996 agreement; however, the parties may return to peacemaking to revise the agreement, or the Court
1997 may amend an order if it finds an amendment to the order is in the best interests of the child.

1998 1999 **708.45. Peacemaking and Mediation**

2000 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to
2001 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or
2002 mediation if attending the session will cause undue hardship or would endanger the health or safety
2003 of a party.

2004 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,
2005 the Court shall enter an order finding good cause to suspend the time limits established under this
2006 law.

2008 **708.46. Appeals**

2009 708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of
2010 Appeals in accordance with the Rules of Appellate Procedure.

2011
2012 **708.47. Liability**

2013 708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's
2014 Child Welfare Attorney or any person acting under their authority for statements, acts or omissions
2015 made in good faith while in the course of activities taken under this law.

2016
2017 *End.*

2018 Adopted – BC-07-26-17-J

2019 Amended – BC-__-__-__-__



CHILDREN'S CODE AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> Provide that any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed [7 O.C. 708.5-6]; Provide that the Department may enter into a protective plan with a family [7 O.C. 708.7-1(f)]; Update the general notice provisions in the Children's Code, as well as notice provisions throughout the Children's Code to provide greater clarification on providing notice in child welfare matters [7 O.C. 708.12]; Allow the Department to withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else, but that a parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information [7 O.C. 708.12-4]; Provide clarification on how a matter is referred to the Oneida Nation Child Support Agency for initiating a paternity action, and allow the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action [7 O.C. 708.13-3]; Allow the Department to make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel [7 O.C. 708.14-6]; Allow a child to be held in custody in a hospital or other medical or mental health facility [7 O.C. 708.15-6(f)]; Provide information that may be, but is not required to be, included in the Court's order to hold a child in custody [7 O.C. 708.16-6(b)]; Allow the Department to request the placement of the child outside of the child's home at the plea hearing [7 O.C. 708.19-5]; Allow for the suspension of parental rights in addition to the termination of parental rights [7 O.C. 708.32]; Update the continuing need of protection or services ground for involuntary suspension or termination of parental rights to be consistent with recent revisions to State statute [7 O.C. 708.34-1(c)]; Provide information that may be, but is not required to be, included in the Court's order of disposition for the suspension or termination of parental rights [7 O.C. 708.40-4(c)]; Clarify that an adoption under this law shall take the form of customary adoption when the Court has granted a petition to suspend parental rights, and take the form of a closed adoption when the Court has granted a petition to terminate parental rights [7 O.C. 708.41-1];

	<ul style="list-style-type: none"> Allow the Department to contract with a third-party agency to conduct an adoption investigation that may have been ordered by the Court/[7 O.C. 708.43-3(b)]; and Make other minor drafting revisions throughout the Children’s Code.
Purpose	The purpose of this law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child’s best interest to not be reunited with his or her family. Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child. [7 O.C. 708.1-1].
Affected Entities	Indian Child Welfare Department (“the Department”), Oneida Family Court (“the Court”), Oneida Law Office
Related Legislation	Oneida Judiciary Rules of Civil Procedure, Oneida Judiciary Rules of Evidence, Family Court law, Paternity law, Child Support law
Public Meeting	A public comment period has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Children’s Code was adopted by the Oneida Business Committee on July 26, 2017, through the adoption of resolution BC-07-26-17-J for the purpose of providing for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child’s best interest to not be reunited with his or her family. Furthermore, the Children’s Code strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child. [7 O.C. 708.1-1]. It is the policy of the Nation to ensure there is a standard process for conducting judicial proceedings and other procedures in which children and all other interested parties are provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while protecting the public safety. [7 O.C. 708.1-2].
- B. Request for Amendments.** On August 25, 2020, the Oneida Law Office and Indian Child Welfare Department requested that emergency amendments be made to the Children’s Code to address customary adoption. The departments were seeking amendments to the Children’s Code regarding customary adoption be changed to allow for a suspension of rights rather than a termination of rights to allow for the adopting family to be eligible for Adoption Assistance with the State. On August 28, 2020, the LOC considered this request and determined that it did not meet the standard for emergency amendments provided by the Legislative Procedures Act, but that the LOC would add this item to the AFL for amendments to be made via the normal legislative process. The Legislative Operating Committee added the Children’s Code amendments to its Active Files List on October 7, 2020.
- C.** The Legislative Operating Committee is now seeking amendments to the Children’s Code.

SECTION 3. CONSULTATION AND OUTREACH

- A.** Representatives from the following departments or entities participated in the development of the amendments to the Children’s Code and this legislative analysis:

- Oneida Law Office;
- Indian Child Welfare Department; and
- Oneida Family Court.

B. The following laws were reviewed in the drafting of this analysis:

- Oneida Judiciary Rules of Civil Procedure;
- Family Court Law;
- Paternity law; and
- Child Support law.

SECTION 4. PROCESS

A. The development of the proposed amendments to the Children's Code complies with the process set forth in the Legislative Procedures Act (LPA).

- On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files List.
- On April 20, 2022, the Legislative Operating Committee approved the draft of the proposed amendments to the Children's Code and directed that a legislative analysis be developed.

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

- October 13, 2020: LOC work session with the Indian Child Welfare Department and Oneida Law Office.
- April 12, 2021: LOC work session with the Oneida Family Court.
- April 12, 2021: LOC work session with the Indian Child Welfare Department and Oneida Law Office.
- April 26, 2021: LOC work session with the Oneida Family Court.
- June 4, 2021: Work session with the Indian Child Welfare Department and the Oneida Law Office.
- February 16, 2022: LOC work session with Oneida Law Office.
- April 12, 2022: LOC work session with the Indian Child Welfare Department, Oneida Law Office, and the Oneida Family Court.

SECTION 5. CONTENTS OF THE LEGISLATION

A. *Hierarchy of Child Welfare Court Orders.* A new provision added to the Children's Code through these amendments provides that any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed. [7 O.C. 708.5-6].

- *Effect.* The overall purpose of this provision is to provide clarification that any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed. This clarification was added to prevent an individual from seeking a custody or placement order for a child in this Court or a court of competent jurisdiction in an attempt to trump a child welfare order.

70 **B. *Protective Plans.*** The Children’s Code provides the various duties and responsibilities of the Indian
71 Child Welfare Worker. [7 O.C. 708.7-1]. The Children’s Code provides that an Indian Child Welfare
72 worker may enter into informal dispositions with families. [7 O.C. 708.7-1(f)]. The proposed
73 amendments to the Children’s Code revise the responsibilities and duties of the Indian Child Welfare
74 work to include that they also may enter into a protective plan with a family. *Id.* Definitions for both
75 informal dispositions and protective plans were then added to the Children’s Code. Informal disposition
76 is defined in the Children’s Code as a written agreement with all the parties describing the conditions
77 and obligations that must be met to ensure the child is protected and to alleviate the condition that led
78 to the referral to the Department. [7 O.C. 708.3-1(bb)]. An informal disposition is utilized by the
79 Department when the Department determines that the interest of the child does not require a formal
80 Court intervention to provide protection and services to the child. *Id.* Protective plan is defined as an
81 immediate short-term action that protects a child from present danger threats in order to allow for
82 completion of the initial assessment, investigation and, if needed, the implementation of a safety plan.
83 [7 O.C. 708.3-1(nn)].

- 84 ■ *Effect.* The proposed amendments to the Children’s Code provide greater clarification as to the
85 duties and responsibilities of the Indian Child Welfare workers.

86 **C. *General Notice Provisions.*** The proposed amendments to the Children’s Code update the general
87 notice provisions in the Children’s Code. The proposed amendments to the Children’s Code provide
88 that service of documents and notices shall be as specified in this law, and if a method of service is not
89 specified in this law then service shall be by first-class mail to the recently verified last-known address
90 of the party. [7 O.C. 708.12-1]. If a party’s whereabouts are unknown and cannot be found after diligent
91 effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure. *Id.*
92 The proposed amendments provide that the Court shall provide the parties with notice of all hearings
93 at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to
94 be heard, except in situations where a hearing is scheduled and it is not possible to provide notice at
95 least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties
96 of the hearing. [7 O.C. 708.12-2]. Additionally, the proposed amendments provide that when the
97 Department is required to perform personal service, the Indian Child Welfare Worker may deliver the
98 document(s) directly to the party(s) if such service is appropriate and safe under the circumstances, and
99 in the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of
100 Civil Procedure. The proposed amendments also include a new provision which provides that in all
101 proceedings under this law, the Department may withhold the placement provider’s identifying
102 information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to
103 believe that disclosure would result in imminent danger to the child or anyone else, but that a parent,
104 guardian, or legal custodian may request judicial review of the decision to withhold the identifying
105 information. [7 O.C. 708.12-4]. Previously the Children’s Code provided general provisions on the
106 notice of petitions, and provided that petitions alleging that a child is in need of protection or services
107 may be given to the parties directly by the Nation’s Child Welfare attorney or the Indian Child Welfare
108 Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. While
109 petitions for termination of parental rights, guardianship, and adoption shall be served on all other
110 parties pursuant to the Oneida Judiciary Rules of Civil Procedure. The Children’s previously provided
111 that all parties shall be notified of all subsequent hearings under this law by first-class mail to the
112 recently verified last-known address of the party.

- *Effect.* Updates were made to the general notice provisions in the Children’s Code to provide greater clarification on how notice is provided to the parties involved in child welfare matters. The prior simple reference to following the Oneida Judiciary Rules of Civil Procedure did not provide the Indian Child Welfare Department and the Oneida Law Office the guidance they needed in how notice should occur, because the Oneida Judiciary Rules of Civil Procedures did not address the notice of particular documents or processes contained in the Children’s Code. The new provisions provide the necessary clarification to guide notice practices under the Children’s Code.

D. *Notice Provisions Throughout the Law.* In addition to the general notice provisions that have been amended in section 708.12, notice provisions have been clarified and updated throughout the Children’s Code including:

- *Section 708.16-3.* The proposed amendments to the Children’s Code remove a provision which states that prior to the start of a hearing for emergency custody, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian, if present, and to the child if he or she is twelve (12) years of age or older. Instead, the proposed amendments now provide that for any parties not present at the hearing, the Department shall serve the petition on those parties by verified mail, return receipt requested.
- *Section 708.17-1.* The proposed amendments to the Children’s Code provide that upon filing with the Court, the Department shall provide a copy of the petition for a child in need of protection or services to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.
- *Section 708.17-4.* The proposed amendments to the Children’s Code provide that upon filing with the Court, the Department shall provide a copy of the amended petition to the parties by certified mail with return receipt requested. Previously, this section of the Children’s Code provided that an amended petition may be given to the parties directly by the Nation’s Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- *Section 708.21-1.* The Children’s Code provides that before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties at least seven (7) days prior to the hearing. The proposed amendments to the Children’s Code clarify that the copy of the written report shall be provided to the parties by first-class mail.
- *Section 708.23-3.* The proposed amendments to the Children’s Code provide that at least seven (7) days before the date of the permanency plan hearing, the Department shall file the updated permanency plan with the Court and provide a copy to the parties by first-class mail. Previously, this section of the Children’s Code required that at least five (5) business days before the date of the hearing the Department shall provide a copy of the updated permanency plan to the Court and the parties.
- *Section 708.24-4.* The proposed amendments to the Children’s Code provide that upon filing with the Court, the Department shall provide a copy of the request for a change in placement to the parties by first-class mail. Previously, this section of the Children’s Code provided that written notice of the proposed change in placement shall be sent to all of the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- *Section 708.24-6.* The proposed amendments to the Children’s Code provide that the Department shall notify the parties of the emergency change in placement by personal

service as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. Previously, this section of the Children's Code provided that notice of the emergency change in placement shall be sent to the parties as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays.

- *Section 708.25-4.* The proposed amendments to the Children's Code provide that upon filing a request for trial reunification with the Court and at least seven (7) days before the date of reunification, the Department shall provide the parent, guardian, legal custodian, and any other party written notice of the proposed reunification by first-class mail. Previously, this section of the Children's Code provided that Department or Nation's Child Welfare attorney shall provide the parent, guardian, legal custodian, and any other party written notice pursuant to the Oneida Judiciary Rules of Civil Procedure.
- *Section 708.24-7.* The proposed amendments to the Children's Code provide that no later than seven (7) days prior to the expiration of the trial reunification, the Department shall submit the request for an extension of the trial reunification to the Court and shall cause notice of the request to be provided to all parties by first-class mail. Previously, this section of the Children's Code provided that no later than ten (10) days prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties.
- *Section 708.25-8.* The proposed amendments to the Children's Code clarify that the Department is required to provide written notice of the end of a trial reunification period to the parties by first-class mail.
- *Section 708.25-9(a)(1).* The proposed amendments to the Children's Code clarify that the Department's request for revocation of the trial reunification is required to be provided by first-class mail.
- *Section 708.26-2.* The proposed amendments to the Children's Code clarify that the Department's request for a revision of the dispositional order is required to be provided to the parties by first-class mail. Previously, this section of the Children's Code provided that notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- *Section 708.27-1.* The proposed amendments to the Children's Code clarify that the Department's request for an extension of the dispositional order is required to be provided to the parties by first-class mail. Previously, this section of the Children's Code provided that notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- *Section 708.29.4.* The proposed amendments to the Children's Code provide that upon filing with the Court and at least seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.
- *Section 708.29-8(a).* The proposed amendments to the Children's Code provide that upon filing with the Court and at least seven (7) days prior to the fact-finding hearing, the Department shall provide the parent, guardian, legal custodian, proposed guardian, and any other parties a written copy of the report by first-class mail. Previously, this section of the Children's Code provided that the Department shall file its report with the Court prior to

the fact-finding hearing and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

- *Section 708.30-2.* The proposed amendments to the Children's Code provide that the motion for a revision of guardianship shall be filed with the Court and, upon filing, a written copy shall be provided to all parties by first-class mail. Previously, the notice of revision was required to be filed with the Court with notice provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. Additionally, the proposed amendments to subsection (a) of 708.30-2 provide that upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall provide the parties with a written copy of their report by first-class mail. Previously, subsection (a) provided that the department shall file its report with the Court prior to the hearing on the revision of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.
- *Section 708.31-2(a).* The proposed amendments to the Children's Code provide that upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall provide the parties with a written copy of the report for the termination of a guardianship by first class mail. Previously, the Children's Code provided that the Department shall file its report with the Court prior to the hearing on the termination of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.
- *Section 708.35-5.* The proposed amendments to the Children's Code provide that upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall serve the summons and petition upon the following persons by personal service or, if personal service is not possible, by certified mail, return receipt requested: The parent(s) of the child, including an alleged father if paternity has not been established; and The child's foster parent, guardian or legal custodian, if applicable. Previously, the Children's Code provided that the petitioner shall ensure the summons and petition are served upon the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure: The parent(s) of the child, including an alleged father if paternity has not been established; The child's foster parent, guardian or legal custodian, if applicable; and The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.
- *Section 708.43-4.* The proposed amendments to the Children's Code provide that the Department or other agency or department making the adoption investigation shall file its report with the Court prior to the hearing on the petition and shall provide a copy of the report to the parties by first-class mail at least seven (7) days prior to the hearing. Previously, this section of the Law provided that the Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.
- *Section 708.43-9.* The proposed amendments to the Children's Code provide that within five (5) days after entry of the order granting a closed adoption, the Department shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate. Previously this section

provided that after entry of the order granting the adoption, the Department shall promptly mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

- *Effect.* Revisions to specific notice requirements throughout the Children's Code were made to provide greater clarification on how notice shall occur.

E. *Referral of a Paternity Action to the Oneida Nation Child Support Agency.* The proposed amendments to the Children's Code addresses referrals for paternity actions. The proposed amendments provides that if an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. [7 O.C. 708.13-3]. There is a new provision added to the that that provides that if the Court enters such an order, then the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action. *Id.* While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law. *Id.* Previously, the Children's Code provided that if an alleged father appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity.

- *Effect.* The proposed amendments to the Children's Code provide greater clarification on how a referral to the Oneida Nation Child Support Agency occurs – that the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency – so it is not the Court itself that refers the matter to the Oneida Nation Child Support Agency. Authority was given to the Department to sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action, so that a situation could be avoided where a paternity action is unable to be initiated because the mother of the child is unable to or not around to sign the necessary documents.

F. *Withholding the Release of Information.* The proposed amendments add a new provision to the Children's Code which provides that the Department may make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel. [7 O.C. 708.14-6]. In making that determination, the Court is required to balance what is necessary to a fair determination of the child welfare legal matter, including access to records, against the interest in protecting the child from the risk of harm. *Id.* After the Court conducts the in-camera review, the decision regarding the release of records shall be provided to the parties in writing. *Id.*

- *Effect.* The Children's Code provides that upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law. [708.14-1]. The Indian Child Welfare Department expressed concerns that the Department may have certain records which if released could cause harm to the child. This provision was added to give the Department a method to seek intervention by the Court to determine if certain records can be withheld in the interest in protecting the child.

G. *Holding a Child in Custody.* The Children's Code provides a list of options for where a child may be held in custody as long as the place is in the best interest of the child and all people residing or regularly visiting the premises have cleared a background check. [7 O.C. 708.15-6]. The proposed amendments

to the Children's Code add a new option to the list of where a child may be held in custody at, which is a hospital or other medical or mental health facility. [7 O.C. 708.15-6].

- *Effect.* The option to hold a child in custody in a hospital or other medical or mental health facility was added to address child welfare cases where the child may need to be hospitalized or held in a medical facility. This provides greater flexibility in determining where a child should be held in custody that best meets the needs and interests of the child.

H. *Order for Holding a Child in Custody at an Emergency Custody Hearing.* The Children's Code provides that all orders to hold a child in custody at an emergency custody hearing shall be in writing and provides what information is required to be included in the order. [7 O.C. 7008.16-6(a)]. The proposed amendments to the Children's Code will now include the addition of information that may be, but not required to be, included in the order to hold a child in custody. [7 O.C. 7008.16-6(b)]. Now an order to hold a child in custody may include a transfer of the legal custody of the child, including decisions about health care and education.

- *Effect.* Allowing an order to hold a child in custody at an emergency custody hearing to include a transfer of the legal custody of the child, including decisions about health care and education, allow for legal custody to be transferred to the Department or the other parent, if necessary, especially if medical decisions need to be made on behalf of the child.

I. *Request for Out of Home Placement of the Child at the Plea Hearing.* The proposed amendments to the Children's Code provide that at the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties prior to the hearing in substantial compliance with section 708.15-9. [7 O.C. 708.19-5]. The Children's Code will not require that in the request for placement of the child outside of the child's home the Department shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5). *Id.* If the Court orders the out of home placement of the child, the order shall be in writing and shall contain the information required by section 708.16-6(a)(1)-(5). [7 O.C. 708.19-6]. Previously, the Children's Code did not allow for the Department to request the out of home placement of a child at the plea hearing.

- *Effect.* The proposed amendments to the Children's Code will allow for the Department to request the placement of a child outside of the child's home at the plea hearing. Currently, it has been interpreted that a request for the placement of the child outside of the child's home can only occur at an emergency custody hearing or at the dispositional hearing for a child in need of protection or services. The Department requested this amendment so that the Department would have the ability to avoid taking a child into emergency custody when the parents are already in agreement with a protective plan and the child is already staying out of home under the protective plan. This allows the Department to avoid unnecessary litigation and pressure to the family if the emergency custody hearing can be skipped, and the department can file a petition for a child in need of protection or services and request the ordered out of home placement at the time of the plea hearing. A protective plan is a safety tool the Department can implement during the Initial Assessment stage of a case. Initial Assessment lasts sixty (60) days and during that time the Indian Child Welfare Department workers gather information, and a determination is made whether a petition for a child in need of protection or services needs to be filed. Parents have to agree to a protective plan and the plan can only last for sixty (60) days. There isn't a formal order placing the child out of home within a protective plan because a protective plan is temporary and agreed to by the parents. When the sixty (60) days for the initial assessment ends, if it is clear that a petition for a child in need of protection

or services needs to be filed, then the Department would like the ability to skip a contentious emergency custody hearing and simply file a petition and ask for an order for out of home placement at the first hearing, which is the plea hearing. An emergency custody hearing is also not the best option in these situations because an “emergency” does not necessarily exist because the child is safe under the protective plan and staying out of the home.

J. *Withholding Identifying Information in the Dispositional Report.* The proposed amendments to the Children’s Code eliminated section 708.21-3 of the Code which provided that the Department may request the Court to withhold identifying information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

- *Effect.* Section 708.21-3 of the Children’s Code- which provided that the Department may request the Court to withhold identifying information in the dispositional report from the child’s parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else - was eliminated from the Children’s Code because it was duplicative of section 708.12-4 – a new, more general, addition to the Code – which provides that in all proceedings under this law, the Department may withhold the placement provider’s identifying information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else. Section 708.12-4 then allows a parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information.

K. *Copy of the Dispositional Order to the Child.* The proposed amendments to the Children’s Code remove the requirement to provide a copy of the dispositional order to the child is the child is age twelve (12) or older.

- *Effect.* After much discussion between the Indian Child Welfare Department, Oneida Law Office, and Oneida Family Court it was determined that it may not be appropriate to provide a child age twelve (12) or older a copy of the dispositional order due to the nature of the information that may be included in the dispositional order and therefore this provision of the Children’s Code should be removed.

L. *Capacity of the Child to Express their Wishes.* The Children’s Code provides that in making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, whether the person would be a suitable guardian of the child, the willingness and ability of the person to serve as the child’s guardian for an extended period of time or until the child reaches the age of eighteen (18) years, and the wishes of the child. The proposed amendments to the Children’s Code clarify that the wishes of the child should only be considered when the child has the capacity to express their wishes. This same revision occurs in section 708.39-3 of the Children’s Code.

- *Effect.* The proposed amendments provide clarification that the wishes of the child should be taken into consideration by the Court when the child has the capacity to express their wishes.

M. *Suspension of Parental Rights.* The proposed amendments to the Children’s Code now allow for the suspension of parental rights in addition to the termination of parental rights. The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child. [7 O.C. 708.32-3]. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language,

religion, and values. [7 O.C. 708.32-1]. Much like the termination of parental rights, the suspension of parental rights should only be used as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights. [7 O.C. 708.32-2]. The suspension of parental rights can occur on a voluntary or involuntary basis. [7 O.C. 708.32-5]. An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child. [7 O.C. 708.32-6]. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation. [7 O.C. 708.32-6]. The suspension of parental rights is handled the same way as the termination of parental rights in regard to the process for the voluntary suspension or termination [7 O.C. 708.33], grounds for involuntary suspension or termination [7 O.C. 708.34], the petition for the suspension or termination [7 O.C. 708.35], the initial hearing on the suspension or termination [7 O.C. 708.36], the fact-finding hearing for the suspension or termination [7 O.C. 708.37], the Department's suspension or termination of parental rights report [7 O.C. 708.38], standards and factors to be utilized by the Court when making a decision [7 O.C. 708.39], and the dispositional hearing for the suspension or termination of parental rights [7 O.C. 708.40].

- **Effect.** The proposed amendments to the Children's Code add in provision regarding the suspension of parental rights, in addition to the termination of parental rights that was already included in the Children's Code. This provides one more option for finding the best solution to a child welfare matter to best meet the needs of the child.

N. Continuing Need of Protection or Services as a Ground for Involuntary Suspension or Termination of Parental Rights. The Children's Code provides various grounds for suspension or termination of parental rights. [7 O.C. 708.34-1]. Specifically, the Children's Code provides what needs to be proved to demonstrate that the child is in continuing need of protection or services – which is a ground for the suspension or termination of parental rights. [7 O.C. 708.34-1(c)]. The proposed amendments to the Children's Code provides that it must be provided that the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home. [7 O.C. 708.34-1(c)(3)]. Previously the Children's required that it be proved that the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the nine (9) month period following the termination of parental rights fact-finding hearing.

- **Effect.** This proposed revision to the Children's Code was made to be consistent with recent revisions to Wis. Stat. §48.415(2). Although the Nation is under no obligation to amend its laws to be consistent with laws of the State, concern was expressed that it may be beneficial to ensure the Nation's grounds for suspension or termination of parental rights are consistent with the State's

grounds so that if a case transfers after being filed in State court, we are not in a position where we have to dismiss the petition if the grounds pled in State court are different from the grounds found in the Children's Code, causing the Department to have to refile, assuming they have a factual basis to do so.

O. *Order of Disposition for the Suspension or Termination of Parental Rights.* The Children's Code provides that if the disposition of the Court is for the suspension or termination of parental rights, the order shall be in writing, and the Children's Code then provides the information that is required to be included in that order. [7 O.C. 708.40-4(b)]. The proposed amendments to the Children's Code now provide what the order for the disposition for the suspension or termination of parental rights may, but is not required, to include. [7 O.C. 708.40-4(c)]. If the disposition is for the suspension or termination of parental rights, the order may contain a termination of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties; an order restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the child; an order that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated; and an order that any prior court order for custody, visitation, or contact, with the minor child is hereby terminated. [7 O.C. 708.40-4(c)(1)-(4)]. The proposed amendments now also require that the Court provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption.

- *Effect.* The purpose of this proposed amendment to the Children's Code is to provide greater clarification as to what information may be included in the Court's order for the disposition for the suspension or termination of parental rights but is not required to be included. Additionally, requiring that the Court provide a copy of the order suspending or terminating parental rights to the child's parent, guardian, and legal custodian; the other parties to the action; and the current or future foster parents for the purpose of pursuing adoption ensures that foster parents or relative placement providers – particularly those not licensed by Nation – have as method to obtain a copy of the suspension or termination of parental rights order order that they will need to attach to the petition for adoption, since they may not have access to the Department's records otherwise.

P. *Form of Adoption.* The proposed amendments to the Children's Code provide clarification on adoption now that suspension of parental rights is available. The amendments provide that an adoption under this law shall take the form of customary adoption when the Court has granted a petition to suspend parental rights. [7 O.C. 708.41-1]. When the Court grants a petition to terminate parental rights, the adoption shall be closed. *Id.* Previously, the Law provided that adoptions shall take the form of customary adoptions unless the Court determines there is good cause for the adoption to be closed.

- *Effect.* Previously, the Children's Code only provided for the termination of parental rights. Now that the suspension of parental rights is also allowed under the Children's Code, this proposed amendment provides guidance on what form of adoption should be sought and utilized based on whether a suspension or termination of parental rights occur. The Department sought amendments to the Children's Code so that customary adoptions would occur when a suspension of parental rights occurs, rather than a termination of parental rights. The Department sought this amendment because in order to qualify for Adoption Assistance with the State, for a customary adoption, it had to be a suspension of parental rights that occurred and not a termination of parental rights. The

Department wanted to ensure that adopting families under the Children's Code had access to support and financial assistance under the State.

Q. *Adoption Investigations.* The Children's Code provides that when a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. [7 O.C. 708.43-3]. The Court shall order one of the following to conduct the investigation: if the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or if no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department. [7 O.C. 708.43-3(a)(1)-(2)]. The proposed amendment to the Law clarifies that if the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation. [7 O.C. 708.43-3(b)].

- *Effect.* The proposed amendment to the Children's Code allows the Department to contract with a third-party agency to conduct an adoption investigation that may have been ordered by the Court. This provides greater flexibility to the Department in balancing their resources and time when ordered to conduct an investigation.

R. *Other Revisions.* Other minor drafting revisions are made throughout the Children's Code

SECTION 6. EXISTING LEGISLATION

A. *Related Legislation.* The following laws of the Nation are related to the Children's Code:

- *Paternity Law.* The purpose of the Paternity law is to establish paternity of Oneida children and other Indian children in order to protect the best interest of these children regarding such matters as enrollment, customs and traditions of the Tribe, survivorship and inheritance, health, support, and social security benefits. [7 O.C. 703.1-1]. It is the policy of this law to legally establish paternity in order to recognize and identify the father of Oneida children and other Indian children, when necessary. [7 O.C. 703.1-2].
 - The Children's Code provides that if an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. [7 O.C. 708.13-3]. If the Court enters such an order, then the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action. *Id.* While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law. *Id.*
 - The process for adjudicating paternity is then provided by the Paternity law. [7 O.C. 703.1-6].
- *Oneida Judiciary Rules of Civil Procedure.* The Oneida Judiciary Rules of Civil Procedure governs all civil actions that fall under the jurisdiction of the Nation to ensure that there is a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Tribal Courts to have their disputes resolved. [8 O.C. 803.1-1, 803.1-2].
 - The Children's Code provides that service of documents and notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service

shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.
[7 O.C. 708.12-1].

- The Oneida Judiciary Rules of Civil Procedure provides that when the other party's whereabouts are unknown and cannot be found after diligent effort, service may be completed by publication. The publication shall be in the Tribal newspaper or in a newspaper of general circulation in the area of the party's last known address and shall be designated as "Legal Notice." This notice shall be published at least two (2) times within a thirty (30) day period. The two (2) notices shall be published at least ten (10) days before the hearing. Copies of the two (2) published notices and an affidavit of service stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service. The Court may, on its own, order different time limits for service by publication. [8 O.C. 803.5-6(c)].
- The Children's Code provides that when the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure. [7 O.C. 708.12-3].
 - The Oneida Judiciary Rules of Civil Procedure provides that personal service shall consist of delivering to the party a copy of the paper being served by a law enforcement officer or other person, who is not a party to the action and who is at least eighteen (18) years of age. An affidavit of service shall be filed with the Court as proof of service. Personal service shall be completed by hand delivering the required papers to any of the following: The party named in the action or proceeding; An individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age; An officer, manager, agent, or partner of a non-individual party; or an attorney or advocate of the party, if represented. [8 O.C. 803.5-6(a)].
- The Children's Code provides that in addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law. [7 O.C. 708.14-5].
 - The Oneida Judiciary Rules of Civil Procedure provides procedures for discovery including the scope, required disclosures, limitations, time for required disclosures, required pretrial disclosures, protective orders, supplementing disclosures and responses, signatures required and the effect of signatures, failure to disclose and information produced. [8 O.C. 803.14].
- The Children's Code provides that the fact-finding hearing for a child in need of protection or services shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing. [7 O.C. 708.20-2].
 - The Oneida Judiciary Rules of Civil Procedure provides general hearing procedures. [8 O.C. 803.38].
- The Children's Code provides that after receiving any evidence relating to the disposition for guardianship, the Court shall enter a disposition and issue a written

550 decision consistent with the Oneida Judiciary Rules of Civil Procedure.[7 O.C. 708.29-
551 11].

- 552 ▪ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering
553 and enforcing a judgment of the Court. [8 O.C. 803.31].
- 554 ▪ The Children’s Code provides that the fact-finding hearing for the suspension or
555 termination of parental rights shall be conducted according to the Oneida Judiciary
556 Rules of Civil Procedure except that the Court may exclude the child from the hearing.
557 [7 O.C. 708.37-2].
- 558 ▪ The Oneida Judiciary Rules of Civil Procedure provides general hearing
559 procedures. [8 O.C. 803.38].
- 560 ▪ The Children’s Code provides that after receiving any evidence relating to the
561 disposition for the suspension or termination of parental rights, the Court shall enter a
562 disposition and issue a written decision consistent with the Oneida Judiciary Rules of
563 Civil Procedure.[7 O.C. 708.40-1].
- 564 ▪ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering
565 and enforcing a judgment of the Court. [8 O.C. 803.31].
- 566 ▪ *Family Court Law.* The purpose of the Family Court law is to establish a Family Court, and to
567 provide for the administration of law, justice, judicial procedures and practices by the Oneida
568 Tribe as a sovereign nation by exercising the inherent power to make, execute, apply, and
569 enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida
570 people as it pertains to the family and/or to our children.
- 571 ▪ The Children’s Code provides that the Court has personal jurisdiction over an Oneida
572 Child, and over a non-Oneida child in certain circumstances. [7 O.C. 708.5-1].
573 Additionally, the Children’s Code provides that the Court has jurisdiction over a child
574 alleged to be in need of protection or services if personal jurisdiction has been
575 established and the child meets certain requirements. [7 O.C. 708.5-2]. Court is defined
576 in the Children’s Code as the Oneida Nation Family Court, which is the branch of the
577 Oneida Nation Judiciary that has the designated responsibility to oversee family
578 matters. [7 O.C. 708.3-1(j)].
- 579 ▪ The Family Court law provides that there is a Family Court, which shall
580 administer the judicial authorities and responsibilities of the Tribe over all
581 matters pertaining to the family, children, and elders, except for probate
582 matters. [8 O.C. 806.4-1]. The Family Court shall have subject matter
583 jurisdiction over cases and controversies arising under the following: Tribal
584 laws which specifically authorize the Court to exercise jurisdiction, and the
585 Constitution. [8 O.C. 806.5-2]. The Family Court law then describes when the
586 Family Court has personal jurisdiction of an individual including Indians and
587 non-Indians. [8 O.C. 806.5-3].
- 588 ▪ *Oneida Judiciary Rules of Evidence.* The Oneida Judiciary Rules of Evidence establishes rules
589 of evidence to apply in proceedings held in the Trial court and Family Court of the Oneida
590 Judiciary administer Court proceedings fairly, eliminate unjustifiable expense and delay, and
591 promote the development of evidence law, by obtaining the truth and securing a just
592 determination. [8 O.C. 804.1-1, 804.1-2].

593 ▪ The Children’s Code provides that the Oneida Judiciary Rules of Evidence are not
594 binding at emergency custody hearings, dispositional hearings, or a hearing about
595 changes in placement, revision of dispositional orders, extension of dispositional
596 orders, or termination of guardianship orders. At those hearings, the Court shall admit
597 all testimony having reasonable probative value, but shall exclude immaterial,
598 irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has
599 demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect
600 to the rules of privilege recognized by laws of the Nation. The Court shall apply the
601 basic principles of relevancy, materiality, and probative value to proof of all questions
602 of fact. [7 O.C. 708.13-2].

603 ▪ *Child Support Law.* The purpose of the Child Support law is to establish the legal responsibility
604 of parents to provide financially for their children’s general well-being; make support payments
605 more equitable by ensuring consistent treatment of persons in similar circumstances; make
606 support payments based on the real earning capability of parents; and improve the efficiency
607 of child support establishment and enforcement. [7 O.C. 704.1-1].

608 ▪ The Children’s Code provides that at any time, the Court or the Department may refer
609 the matter to the Nation’s Child Support Agency. [7 O.C. 708.13-4].
610

611 **SECTION 7. OTHER CONSIDERATIONS**

612 **A. *Fiscal Impact.*** Under the Legislative Procedures Act, a fiscal impact statement is required for all
613 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
614 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
615 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
616 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
617 completing the fiscal impact statement.

618 ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact
619 statement for the proposed amendments to the Children’s Code be prepared.
620

April 20, 2022 Legislative Operating Committee E-Poll Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Request

E-POLL REQUEST: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Request



LOC

To: David P. Jordan; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen; Daniel P. Guzman
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill

Vote by clicking Vote in the Respond group above.
This message was sent with High importance.



2022 04 20 ONGO Amendments E-Poll Materials.pdf
3 MB

Reply

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Wed 4/20/2022 12:15 PM

Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the updated materials and fiscal impact statement request memorandum for the Oneida Nation Gaming Ordinance (ONGO) amendments.

EXECUTIVE SUMMARY

The Legislative Operating Committee (LOC) is currently processing the permanent adoption of amendments to ONGO. On March 16, 2022, the LOC approved the draft and legislative analysis of the amendments to ONGO and directed that a public comment period be held open for the proposed amendments to ONGO until April 13, 2022. One (1) submission of public comments was received during the public comment period. At the April 20, 2022, LOC meeting, the LOC adopted a motion to accept the public comments and public comment review memorandum and defer to a work meeting for further consideration. Later that morning on April 20, 2022, the LOC held a work meeting to review and consider the public comments that were received.

It is now time for the ONGO amendments to continue through the legislative process. The next step in the legislative process is to request a fiscal impact statement. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and can include: startup costs, personnel, office costs, documentation costs, and an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

Attached to this e-poll please find the following materials:

- Updated public comment review memorandum;
- ONGO Amendments Draft 2 (Redline to Draft 1);
 - This draft demonstrates the changes that were made to ONGO after the public comment period.
- ONGO Amendments Draft 2 (Clean);
- ONGO Amendments Draft 2 (Redline to Last Permanent Draft BC-09-09-15-A);
 - This draft demonstrates all the proposed amendments made to ONGO;
- Updated ONGO Amendments legislative analysis; and
- Fiscal impact statement request memorandum.

The LOC is now being asked to approve by e-poll the updated public comment review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact

statement of the proposed amendments to the ONGO be prepared and submitted to the LOC by May 3, 2022.

An e-poll is necessary for this matter because it is necessary to request the fiscal impact statement prior to the next LOC meeting, which is scheduled for May 4, 2022. The current emergency amendments to ONGO expire on May 12, 2022. Therefore, the LOC intends to bring the proposed amendments to ONGO to the Oneida Business Committee for consideration on May 11, 2022. In order to meet that deadline, the adoption materials for the ONGO amendments will need to be included on the May 4, 2022, LOC meeting agenda for approval. The LOC intends to include the fiscal impact statement for the ONGO amendments as a handout at the May 4, 2022, LOC meeting. Oneida Business Committee resolution BC-10-28-20-A, *Further Interpretation of 'Fiscal Impact Statement' in the Legislative Procedures Act*, 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. Immediate action is required by LOC to approve the updated materials and fiscal impact statement request so that adequate time can be allotted to the Finance Department to complete the fiscal impact statement for the proposed ONGO amendments so that it may be included on the May 4, 2022, LOC meeting agenda.

REQUESTED ACTION

- Approve the updated public comment review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and forward the fiscal impact statement request memorandum to the Finance Department directing that a fiscal impact statement of the proposed amendments to ONGO be prepared and submitted to the LOC by May 3, 2022.

DEADLINE FOR RESPONSE

April 20, 2022 at 4:00 p.m.

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



E-POLL RESULTS:

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

Re: E-POLL REQUEST: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Req...



David P. Jordan
To: LOC; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen; Daniel P. Guzman
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill

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 ...

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RE: E-POLL REQUEST: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Req...



Daniel P. Guzman

To: LOC; David P. Jordan; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill

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RE: E-POLL REQUEST: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Req...



Jennifer A. Webster

To: LOC; David P. Jordan; Ethel M. Summers; Kirby W. Metoxen; Daniel P. Guzman
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill

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Approve,
Jenny

Re: E-POLL REQUEST: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Req...



Kirby W. Metoxen

To: Jennifer A. Webster; LOC; David P. Jordan; Ethel M. Summers; Daniel P. Guzman
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill

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Re: E-POLL REQUEST: Approval of the ONGO Amendments Updated Public Comment Review Memo, Draft, Legislative Analysis and FIS Req...



Ethel M. Summers

To: LOC; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen; Daniel P. Guzman
Cc: Clorissa N. Santiago; Rhiannon R. Metoxen; Kristal E. Hill

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Approve.
Yaw^ko,
Marie Summers



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CNS*
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.

Title 5. Business - Chapter 501
Thatiwi·ʔStunya·tha Olihwa·ke
Matters of interest to where they make the money
ONEIDA NATION GAMING ORDINANCE

501.1. Purpose and Policy	501.11. Licenses, Generally
501.2. Adoption, Amendment, Repeal	501.12. Gaming Employee License
501.3. Definitions	501.13. Gaming Services Licensing and Non-Gaming Services Permitting
501.4. Jurisdiction	501.14. Gaming Facility License
501.5. Oneida Business Committee: Powers and Duties	501.15. Gaming Operator License
501.6. Oneida Gaming Commission	501.16. Games
501.7. Gaming Surveillance: Powers, Duties and Limitations	501.17. Allocation of Gaming Funds
501.8. [Reserved for future use.]	501.18. Audits
501.9. Gaming Security Department	501.19. Enforcement and Penalties
501.10. Background Investigations	

501.1. Purpose and Policy

501.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Nation regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

501.1-2. *Policy.* It is the policy of this Ordinance to ensure that the Oneida Nation is the primary beneficiary of its Gaming Operations and has the sole proprietary interest; that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly; and that all internal departments, enterprises, officials and employees of the Nation work cooperatively to advance the best interests of the Nation, to protect its gaming resources, to protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance, and to ensure fairness of all games offered to the Nation's gaming patrons.

501.2. Adoption, Amendment, Repeal

501.2-1. This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B, BC-09-09-15-A and BC-__-__-__-__.

501.2-2. This Ordinance may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

501.2-3. Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

501.2-4. In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control; provided, that this Ordinance repeals the following:

- (a) BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);
- (b) GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);

- (c) GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) BC-03-16-94-A (Comprehensive Gaming Ordinance Interpretation); and
- (f) BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

501.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Nation.

501.2-6. *Preemptive Authority.* The Oneida Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

501.3. Definitions

501.3-1. This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. All words or phrases not defined herein shall be used in their ordinary and everyday sense.

(a) “Applicant” means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

(b) “Background Investigation” means a standard and thorough investigation conducted by the Nation in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

(c) “Class I Gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

(d) “Class II Gaming” means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) in which:

(A) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(B) The holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.

(C) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(2) Card games that:

(A) Are explicitly authorized by the laws of the State; or

(B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

(e) “Class III Gaming” means all forms of Gaming that are not Class I or Class II Gaming.

- (f) “Commission” means the Oneida Gaming Commission as established by this Ordinance.
- (g) “Commissioner” means a duly elected member of the Oneida Gaming Commission.
- (h) “Compact” means the 1991 Tribe-State Gaming Compact between the Nation and the State of Wisconsin, as amended and including any future amendments or successor compact entered into by the Nation and the State of Wisconsin and approved by the Secretary of the United States Department of Interior.
- (i) “Compliance Certificate” means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.
- (j) “Environmental Assessment” means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 *et seq.*, and all related federal regulations.
- (k) “Fraud” means any act of trickery or deceit used to or intended to gain control or possession of the property of another.
- (l) “Games, Gaming or Gaming Activity” means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.
- (m) “Gaming Employee” means any person employed by a Gaming Operation.
- (n) “Gaming Facility or Gaming Facilities” means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted or operated. Gaming Facility or Gaming Facilities does not include the site of a fair, carnival, exposition or similar occasion.
- (o) “Gaming Operation” means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.
- (p) “Gaming Operator” means the Nation, an enterprise owned by the Nation, or such other entity of the Nation as the Nation may from time-to-time designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.
- (q) “Gaming Services” means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.
- (r) “Indian Gaming Regulatory Act or IGRA” means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, *et seq.*, as amended.
- (s) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (t) “License” means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. A License ~~must~~shall be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.
- (u) “Licensee” means a person or entity issued a valid License.
- (v) “Nation” means the Oneida Nation.
- (w) “NIGC” means the National Indian Gaming Commission.

(x) “Oneida Business Committee” means the elected governing body of the Nation that exercises the authority delegated it by the Oneida General Tribal Council under Article IV of the Constitution and By-laws of the Oneida Nation, as may be amended from time-to-time hereafter.

(y) “Oneida General Tribal Council” means the Nation’s governing body, as established by the Constitution and By-laws of the Oneida Nation and as may be amended from time-to-time hereafter.

(z) “Ordinance or ONGO” means the Oneida Nation Gaming Ordinance, as may be amended from time-to-time hereafter.

(aa) “Regulatory Incident” means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

(bb) “Remediation” means efforts taken to reduce the source and migration of environmental contaminants at a site.

(cc) “Reservation” means all lands 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.

(dd) “Senior Gaming Management” means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

(ee) “State” means the State of Wisconsin, along with its authorized officials, agents and representatives.

(ff) “Tribal Fee Land” means all land to which the Nation holds title in fee simple.

(gg) “Tribal Trust Land” means all land to which the United States holds title for the benefit of the Nation pursuant to federal law.

501.4. Jurisdiction

501.4-1. *Territorial Jurisdiction.* This Ordinance extends to all land within the exterior boundaries of the Reservation.

501.4-2. *Subject Matter Jurisdiction.* This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Nation as set forth in section 501.4-1.

501.4-3. *Personal Jurisdiction.* This Ordinance governs:

(a) The Nation;

(b) Members of the Nation; and

(c) Individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.

501.5. Oneida Business Committee: Powers and Duties

501.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

501.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

501.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the Nation, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67 of the Real Property law.

501.5-4. The Oneida Business Committee delegates to the Commission, in section 501.6-14 of this Ordinance, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and the enforcement of laws and regulations.

501.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not delegated by a specific provision of this Ordinance.

501.5-6. The Chairperson of the Nation ~~must~~shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

501.6. Oneida Gaming Commission

501.6-1. *Establishment and Purpose.* The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution without requiring amendment of this Ordinance.

501.6-2. *Location and Place of Business.* The Commission shall maintain its offices and principal place of business within the Reservation.

501.6-3. *Duration and Attributes.* The Commission will have perpetual existence and succession in its own name, unless dissolved by a law of the Nation. Operations of the Commission ~~must~~shall be conducted on behalf of the Nation for the sole benefit of the Nation and its members. The Nation reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the Nation, or on behalf of the Commission, whenever the Nation considers it necessary to protect the sovereignty, rights, and interests of the Nation or the Commission.

501.6-4. *Sovereign Immunity of the Nation.* All inherent sovereign rights of the Nation with respect to the existence and activities of the Commission are hereby expressly reserved.

(a) The Nation confers upon the Commission sovereign immunity from suit as set forth in the Nation's Sovereign Immunity law.

(b) Nothing in this Ordinance nor any action of the Commission may be construed to be:

(1) A waiver of the sovereign immunity of the Commission or the Nation;

(2) Consent by the Commission or the Nation to the jurisdiction of the Judiciary, the United States, a state or any other tribe; or

(3) Consent by the Nation to any suit, cause of action, case or controversy; or the levy of any judgment, lien, or attachment upon any property of the Commission or the Nation.

501.6-5. *Requirements of Commission Membership.*

(a) *Qualifications.* Candidates for election or appointment to the Commission ~~must~~shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment.

(1) Candidates for election to the Commission shall further meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 501.6-13 of this Ordinance:

(A) Be an enrolled member of the Nation;

- 219 (B) Have a minimum of three (3) years of education experience,
220 employment experience and/or regulatory experience in Gaming
221 Operations related to Gaming Activity, Gaming law, Gaming control or
222 regulation, or Gaming accounting or of any combination of the foregoing;
223 and
224 (C) Meet all other qualifications set forth in this Ordinance.
- 225 (b) *Conflict of Interest.* No person may be considered for election or appointment as a
226 Commissioner until the candidate has disclosed all conflicts of interest as defined in the
227 Nation's Conflict of Interest law.
- 228 (c) *Background Investigation.* No person may be considered for election or appointment
229 as a Commissioner until a preliminary Background Investigation has been completed and
230 the person has been found to meet all qualifications.
- 231 (1) Swearing into office is subject to a Background Investigation regarding the
232 qualifications set forth in sections 501.6-5 and 501.6-6 upon being elected or
233 appointed to office.
- 234 501.6-6. Unless pardoned for activities under subsections (a) and/or (d) by the Nation, or
235 pardoned for an activity under subsections (a) and/or (d) by another Federally-recognized Indian
236 Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or
237 pardoned for an activity under subsections (a) and/or (d) by the State or Federal government, no
238 individual may be eligible for election or appointment to, or to continue to serve on, the
239 Commission, who:
- 240 (a) Has been convicted of, or entered a plea of guilty or no contest to, any of the
241 following:¹
- 242 (1) Any gambling-related offense;
243 (2) Any offense involving Fraud or misrepresentation;
244 (3) Any offense involving a violation of any provision of Chapters 562 or 565 of
245 the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department
246 of Administration, Division of Gaming or any rule promulgated by the Wisconsin
247 Racing Board;
248 (4) A felony not addressed in paragraphs 1, 2 or 3 during the immediately
249 preceding ten (10) years; or
250 (5) Any offense involving the violation of any provision of the Nation's law
251 regulating the conduct of Gaming Activities, or any rule or regulation promulgated
252 pursuant thereto.
- 253 (b) Has been determined by the Nation to be a person whose prior activities, criminal
254 record, if any, or reputation, habits, and associations pose a threat to the public interest or
255 to the effective regulation and control of Gaming, or create or enhance the dangers of
256 unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or
257 the carrying on of the business and financial arrangements incidental thereto;
- 258 (c) Possesses a financial interest in or management responsibility for any Gaming
259 Activity or Gaming Services vendor;
- 260 (d) Has been convicted of a crime involving theft, Fraud, or conversion against the
261 Nation;

¹ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

(e) Has been removed from any office pursuant to the Nation's Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

501.6-7. *Term of Office.* Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office.

(a) Terms of office ~~must~~shall be staggered.

501.6-8. *Official Oath.* Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office.

(a) Upon being administered the oath of office, a Commissioner shall assume the duties of office and ~~must~~shall be issued a security card setting forth his or her title and term of office.

501.6-9. *Full-Time Status.* Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business.

(a) No Commissioner shall, during his or her tenure in office, be engaged in any other profession or business activity that may impede his or her ability to perform duties on behalf of the Commission or that competes with the Nation's interests.

(b) The Commission shall identify the appropriate work schedule for its members.

501.6-10. *Bylaws.* The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

501.6-11. *Budget and Compensation.* The Commission shall function pursuant to an annual budget.

(a) The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other budgets of the Nation.

(b) Compensation of Commissioners is not subject to the Nation's Boards, Committees and Commissions law, but ~~must~~shall be established by the Commission in a manner consistent with the Commission's internal rules and bylaws.

(1) The Commission shall adopt internal rules consistent with the Nation's existing accounting practices to verify its budgetary expenditures.

501.6-12. *Removal.* Removal of Commissioners ~~must~~shall be pursuant to the Nation's Removal Law.

501.6-13. *Vacancies.* Any vacancy in an unexpired term of office, however caused, ~~must~~shall be filled by appointment by the Oneida Business Committee, of a person qualified under sections 501.6-5 and 501.6-6 of this Ordinance, in accordance with the Nation's Boards, Committees and Commissions law.

501.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to, the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact.

(1) Unless otherwise indicated in this Ordinance, Commission regulation, or authorized by majority vote of the Commission, no Commissioner may act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty and fairness of the regulation

and administration of Gaming.

(c) Subject to review and adoption by the Oneida Business Committee, to draft and approve regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for the enforcement of such regulations consistent with the laws of the Nation.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided, the Rules of Play and Oneida Gaming Minimum Internal Controls require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management ~~must~~shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls are effective upon adoption by the Commission.

(4) The Commission shall provide notice of adoption of the Rules of Play and/or Oneida Gaming Minimum Internal Controls to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting following such adoption.

(A) If the Oneida Business Committee has any concerns and/or requested revisions upon review of the Rules of Play and Oneida Gaming Minimum Internal Controls, the Commission shall work with the Oneida Business Committee to address such concerns and/or requested revisions.

(i) Unless the Oneida Business Committee repeals the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect while the Commission and the Oneida Business Committee jointly work to amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(ii) Should the Oneida Business Committee repeal the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls that were in effect immediately previous to those repealed will be automatically reinstated and effective immediately upon the repeal of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(B) If the Commission does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect as adopted by the Commission.

(C) Should the Oneida Business Committee pursue amendments to the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the amendments ~~must~~shall be completed

354 through one (1) of the following actions within six (6) months from the date
355 the amendments are initiated by the Oneida Business Committee:

356 (i) if the Commission and the Oneida Business Committee reach an
357 agreement as to the content of the amendments, the Commission
358 ~~must~~shall adopt revised Rules of Play and/or the Oneida Gaming
359 Minimum Internal Controls that have been discussed with and
360 agreed upon by the Oneida Business Committee; or

361 (ii) if the Commission and the Oneida Business Committee do not
362 reach an agreement as to the content of the amendments, the Oneida
363 Business Committee may adopt revised Rules of Play and/or the
364 Oneida Gaming Minimum Internal Controls that incorporate the
365 amendments it deems necessary.

366 (D) If revised Rules of Play and/or Oneida Gaming Minimum Internal
367 Controls are not adopted by either the Commission or the Oneida Business
368 Committee within six (6) months from the date the amendments are initiated
369 by the Oneida Business Committee, the Rules of Play and/or the Oneida
370 Gaming Minimum Internal Controls originally adopted by the Commission
371 will remain in effect.

372 (e) To prepare proposals, including budgetary and monetary proposals, which might
373 enable the Nation to carry out the purpose and intent of this Ordinance, and to submit the
374 same for consideration by the Oneida Business Committee; provided, however, that no
375 such proposal shall have any force or effect unless it is approved by the Oneida Business
376 Committee.

377 (f) To monitor and enforce all laws and regulations governing the operation and conduct
378 of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this
379 Ordinance and/or regulations setting forth hearing or enforcement processes.

380 (g) To monitor and investigate all Gaming Operators for compliance with internal audits,
381 and external audits.

382 (h) To inspect, examine, and photocopy all papers, books, and records of Gaming
383 Activities and any other matters necessary to carry out the duties pursuant hereto; provided,
384 that all photocopies of documents ~~must~~shall be maintained in a confidential manner or in
385 the same manner as the original.

386 (i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming
387 Employees, Gaming Services vendors, and Gaming Operators.

388 (j) To conduct hearings relating to Licenses issued under this Ordinance by the
389 Commission.

390 (k) To review all vendors doing business with the Gaming Operator to verify that such
391 persons or entities hold a valid License, where required, to do business with a Gaming
392 Operator.

393 (l) To retain professional advisors such as attorneys, law enforcement specialists, and
394 Gaming professionals consistent with the Nation's laws and practices.

395 (m) To arbitrate, negotiate, or settle any dispute to which it is a party, and which relates
396 to its authorized activities.

397 (n) To act as the designated agent to receive all regulatory notices not included in section
398 501.5-6 of this Ordinance.

399 (o) To investigate all Regulatory Incidents.

- (p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.
- (q) To make determinations regarding suitability for licensing.
- (r) To establish an administrative structure by regulation to carry out its authority and responsibilities.
- (s) To establish, where needed, additional processes for conducting licensing hearings by regulation.
- (t) To establish and collect fees for processing License applications by regulation.
- (u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.
- (v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.
- (w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

501.6-15. *Reporting Requirements.* The Commission shall adhere to the following reporting requirements:

- (a) A true, complete and accurate record of all proceedings of the Commission ~~must~~shall be kept and maintained;
- (b) Complete and accurate minutes of all Commission meetings ~~must~~shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;
- (c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, ~~must~~shall be submitted to the Oneida Business Committee.

501.6-16. *Oneida Gaming Commission Personnel.* The Commission, ~~or designee,~~ shall ~~hire an Executive Director who is~~be responsible for ~~the~~ 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 fulfill~~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 ~~procedure~~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.

501.7. Gaming Surveillance: Powers, Duties and Limitations

501.7-1. *Purpose.* The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance.

- (a) Gaming Surveillance is a department within the Commission's administrative structure and supervision ~~must~~shall be identified within the organizational chart adopted

by the Commission; provided, nothing in the designation of supervisory responsibility may be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 501.7-3 of this Ordinance.

501.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

501.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

501.7-4. Gaming Surveillance shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.

(b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.

(c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.

(d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

501.8. [Reserved for future use.]

501.9. Gaming Security Department

501.9-1. *Purpose.* The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees.

501.9-2. *Reporting.* The Internal Security Director, Gaming General Manager and Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under this Ordinance.

(a) When investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority.

501.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

501.9-4. *Investigations.* This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

501.10. Background Investigations

501.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

501.10-2. Background Investigations ~~must~~shall be conducted on all persons or entities as specified under this Ordinance.

(a) All Background Investigations ~~must~~shall be conducted to ensure that the Nation in its Gaming Operations may not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming.

(1) The identity of any person interviewed in order to conduct a Background Investigation ~~must~~shall be confidential.

501.11. Licenses, Generally

501.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License.

(a) All Gaming Employees, Gaming Services vendors and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity.

(b) All Gaming Facilities ~~must~~shall be licensed by the Oneida Business Committee.

501.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant.

(a) A temporary license permits the Licensee to engage in such activities pursuant to any terms and conditions imposed and specified by the Commission.

(b) A temporary license is valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

501.11-3. *Revocable.* A License is revocable only in accordance with the procedures set forth in this Ordinance.

(a) A Licensee has only those rights and protections regarding a License granted in this Ordinance.

501.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the Nation and are subject to all applicable Oneida, Federal, and State laws, regulations and/or policies.

501.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

501.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend or condition a License.

501.11-7. *Commission Licensing Actions.* The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this

Ordinance.

(a) Authority to place conditions on a License may be exercised only upon promulgation of regulations.

501.11-8. *Noncompliance.* The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions.

(a) Such regulations ~~must~~shall include procedures for appeal of such notices and may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

501.12. Gaming Employee License

501.12-1. *Scope of Section.* This section applies only to Gaming Employee Licenses and licensing actions.

501.12-2. *License Application.* Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which ~~must~~shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference who was acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

- (l) A photograph.
- (m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h).
- (1) The Commission is the agency that takes the fingerprints.
- (n) Any other information the Commission deems relevant for a Gaming Employee License.
- (o) A statement that each Applicant has read and understands notices and the NIGC requirements relating to:
 - (1) The Privacy Act of 1974;
 - (2) Fraud and False Statements Act; and
 - (3) Fair Credit Reporting Act.

501.12-3. *License Qualifications.* No License may be granted if the Applicant:

- (a) Is under the age of eighteen (18).
- (b) Unless pardoned for activities under this subsection by the Nation, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:
 - (1) Any gambling-related offense;
 - (2) Any offense involving Fraud or misrepresentation;
 - (3) Any offense involving a violation of any provision of Chapters 562 or 565 of the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming, or any rule promulgated by the Wisconsin Racing Board;
 - (4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or
 - (5) Any offense involving the violation of any provision of the Nation's law that regulates the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.
- (c) Is determined to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.
- (d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Nation's Conflict of Interest law.
- (e) Each person licensed as a Gaming Employee has a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee.
 - (1) Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

501.12-4. *Initial Eligibility Determination.*

- (a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:

- 630 (1) Grant a temporary license, with or without conditions, to the Applicant; or
631 (2) Deny the License application and provide notice to the Applicant that he or
632 she may request a hearing regarding the decision consistent with subsection (b)
633 below.
- 634 (b) If the Commission determines that an Applicant is ineligible for a License, the
635 Commission shall notify the Applicant.
- 636 (1) The Commission shall set forth regulations for an Applicant to review any
637 information discovered during the preliminary Background Investigation prior to
638 scheduling a hearing under section 501.12-10 of this Ordinance.
- 639 (2) The suspension or revocation hearing provisions set forth at section 501.12-9
640 of this Ordinance do not apply to Initial Eligibility Determinations.
- 641 501.12-5. *Eligibility Determination and Notification to NIGC.* When a Gaming Employee begins
642 employment at a Gaming Operation, the Commission shall:
- 643 (a) Require the Gaming Employee to submit a completed application for employment
644 that contains the notices and information listed in section 501.12-2 of this Ordinance;
- 645 (b) Review the Background Investigation of the Gaming Employee;
- 646 (1) Within sixty (60) days after a Gaming Employee begins employment at a
647 Gaming Facility under a temporary license, the Commission shall make an
648 eligibility determination regarding whether the Gaming Employee may receive a
649 License based upon the results of the Background Investigation.
- 650 (c) Create an investigative report based on each Background Investigation performed;
- 651 (1) The investigative report ~~must~~shall include the steps in conducting the
652 Background Investigation, results obtained, conclusions reached and the basis for
653 those conclusions.
- 654 (d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the
655 Gaming Employee begins employment at a Gaming Facility, submit a notice of results of
656 the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual
657 Record System; and
- 658 (1) The notice of results ~~must~~shall include the following, provided that any
659 additional or alternate information ~~must~~shall be forwarded as directed in
660 regulations or rules adopted by the NIGC:
- 661 (A) The Gaming Employee's name, date of birth, and Social Security
662 Number;
- 663 (B) The date on which the Gaming Employee began employment;
- 664 (C) A summary of the information presented in the investigative report,
665 including:
- 666 (i) License(s) that have previously been denied;
- 667 (ii) Gaming licenses that have been revoked, even if subsequently
668 reinstated;
- 669 (iii) Every known criminal charge brought against the Gaming
670 Employee within the last ten (10) years of the date of the application;
671 and
- 672 (iv) Every felony of which the Gaming Employee has been
673 convicted or any ongoing prosecution.
- 674 (D) A copy of the eligibility determination made under section 501.12-5
675 (b) of this Ordinance.

(e) All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission ~~must~~shall be retained in the Commission's files for a period of at least three (3) years from the date the Gaming Employee's employment is terminated.

501.12-6. *License Issuance.* The Commission may issue a License to a Gaming Employee at any time after providing the NIGC with a notice of results as required under section 501.12-5(d) of this Ordinance; however, a Gaming Employee who does not have a License ninety (90) days after the start of employment ~~must~~shall have his or her employment terminated.

(a) The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

(b) Any Gaming Employee License issued under this section is effective from the date of issuance and ~~must~~shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective.

(1) If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License.

(c) The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

501.12-7. *Requirement to Wear License.* During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

501.12-8. *NIGC Review.*

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 501.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee.

(1) Such a request suspends the thirty (30) day period until the Chairman receives the additional information.

(b) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC.

(1) The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 501.12-9 of this Ordinance.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 501.12-9 of this Ordinance.

501.12-9. *Suspension or Revocation of Licenses.* Except as provided in section 501.12-8(d) or 501.12-9(c) of this Ordinance, no License may be suspended or revoked except after notice and opportunity for hearing.

722 (a) *Basis for Licensing Action.* The Commission may suspend, condition, or revoke any
723 License issued under this Ordinance if:

724 (1) After the issuance of a License, the Commission receives from the NIGC or
725 other source reliable information indicating that a Gaming Employee is not eligible
726 for a License under section 501.12-3 of this Ordinance; or such information would
727 justify the denial of the renewal of any License, the Commission shall issue a
728 written notice of suspension.

729 (2) The Commission issues a written notice of suspension demonstrating that the
730 Licensee:

731 (A) Has knowingly made a materially false or misleading statement in any
732 application for a License, in any amendment thereto, or in response to a
733 request by the Commission for supplemental information or in connection
734 with any investigation of the Commission;

735 (B) Has knowingly promoted, played, or participated in any Gaming
736 Activity operated in violation of the Compact, Oneida or federal law, and
737 this Ordinance;

738 (C) Has bribed, attempted to bribe, or has received a bribe from a
739 Commissioner or any other person in an attempt to avoid or circumvent any
740 applicable law;

741 (D) Has falsified any books or records relating to any transaction
742 connected with the operation of a Gaming Activity;

743 (E) Has refused to comply with any lawful directive of the Nation, Federal
744 government, or any court of competent jurisdiction; or

745 (F) Has been convicted of, or entered a plea of guilty or no contest to, a
746 crime involving the sale of illegal narcotics or controlled substances.

747 (b) *Suspension Notice.* The Commission's notice of suspension ~~must~~shall be in writing
748 and ~~must~~shall, at a minimum, notify the Licensee of the following:

749 (1) The Licensee's right to review a file prior to any hearing regarding the notice
750 of suspension, and to make copies of any documents contained in that file;

751 (2) The Licensee's right to request a hearing on the proposed licensing action, to
752 present documents and witness testimony at that hearing, and to be represented by
753 counsel;

754 (3) The specific grounds upon which the proposed licensing action is based,
755 including citations to relevant sections of this Ordinance, the IGRA and any
756 applicable regulations and/or the Compact; and

757 (4) The time and place set by the Commission for the Licensee's hearing.

758 (c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest and
759 effective regulation and control of Gaming Activities requires the immediate exclusion of
760 a Licensee, the Commission may immediately suspend a License prior to the conduct of a
761 hearing on the matter.

762 (1) Such an immediate suspension may take effect upon service of the notice of
763 immediate suspension.

764 (d) Any notice of suspension or notice of immediate suspension ~~must~~shall set forth the
765 times and dates for when the Licensee may review his or her file and the date for a hearing
766 on any proposed licensing action.

767 (e) Within fifteen (15) business days after a hearing, the Commission shall issue a final

written licensing decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License.

(1) If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section 501.12-8(d) or 501.12-9(a)(1) of this Ordinance, the Commission shall forward a copy of its decision to the NIGC within forty-five (45) days of receiving the NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Nation's Administrative Procedures Act shall apply.

501.12-10. *Original Hearing Body.* Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Licensee may file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.12-4 or 501.12-9(a) of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing.

(c) Those Commissioners serving on the original hearing body may not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled.

(d) The Commission may decide to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral arguments.

(e) The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.12-11. *Notice to Oneida Business Committee.* Prior to any suspension or revocation of a License of the Gaming General Manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

501.12-12. *Record of Proceedings.* The Commission shall maintain a complete and accurate record of all licensure proceedings.

501.12-13. Revocation of a License is solely limited to the licensing matter. Employment related processes resulting from revocation of a License are determined solely through the personnel processes and procedures of the Nation and are not licensing matters governed by this Ordinance.

501.13. Gaming Services Licensing and Non-Gaming Services Permitting

501.13-1. *Scope of Section.* This section applies to all individuals and entities providing Gaming Services.

(a) The requirements of this Section are in addition to, and do not alter or amend any

requirements imposed by the Nation's Vendor Licensing law.²

501.13-2. *Gaming Services License or Non-Gaming Services Permit Required.*

(a) *Gaming Services License.* Any Gaming Services vendor providing Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation shall possess a valid Gaming Services License.

(b) *Non-Gaming Services Permit.* Any vendor providing non-gaming related goods or services to the Gaming Operation shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section ~~must~~shall be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

501.13-3. *Approved Gaming Services Vendor List.* The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which is known as the Approved License and Permit List.

(a) Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

501.13-4. *Gaming Services License/Permit Application.* Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which ~~must~~shall provide and certify the following; provided, Non-Gaming Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year are only required to file a notice of doing business with the Commission:

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and bylaws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the State of Wisconsin Office of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;

(i) Whether the Applicant has been licensed in the State of New Jersey, Nevada or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such License;

(j) Whether the Applicant has been denied a License by any gaming jurisdiction and, if

² See also Appendix 1. Vendor Licensing/Permit.

so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any License held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the Nation to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on the application has or has had any business with the Nation or any business or personal relationship with any of the Nation's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and the NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

501.13-5. *Signature on Application.* Applications for Licenses or permits ~~must~~shall be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation or other person to whom the authority to execute the application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

501.13-6. *Incomplete Applications.* Applications that do not contain all information requested, including proper signatures, will be considered incomplete.

(a) Incomplete applications will not be considered by the Commission.

(b) The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application.

(1) If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

501.13-7. *Supplemental Information.* The Commission may, in its discretion, request supplemental information from the Applicant.

(a) Supplemental information requested by the Commission ~~must~~shall be promptly submitted by the Applicant.

(1) An Applicant's failure or refusal to submit supplemental information

requested by the Commission may constitute grounds for the denial of the application.

501.13-8. *Continuing Duty to Provide Information.* Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction.

(a) An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to him or her may constitute grounds to deny, suspend or revoke a License or permit.

501.13-9. *Background Investigations.* Background Investigations for Gaming Services vendors ~~must~~shall be conducted as follows:

(a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.

(b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation and shall conduct any necessary additional Background Investigation to ensure that the State background investigation is complete and current.

(c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications.

(1) The random selection process ~~must~~shall be identified by regulation of the Commission.

501.13-10. *Licensing Action in a Foreign Jurisdiction.* If the States of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction refuse to renew a License or permit, or conditions, suspends or revokes the License or permit of an Applicant, permittee or Licensee, such action may constitute grounds for similar action by the Commission.

501.13-11. *Claim of Privilege.* At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law.

(a) An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a License or permit.

501.13-12. *Withdrawal of an Application.* An Applicant may request to withdraw an application by submitting a written request to the Commission.

(a) The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal.

(b) An Applicant who withdraws an application is precluded from re-applying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

501.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* Except as provided in section 501.13-13(c) of this Ordinance, no License or permit may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing or Permitting Action.* The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

- (1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;
- (2) Knowingly promoted, played or participated in any Gaming Activity operated in violation of the Compact, any law of the Nation, or other applicable law;
- (3) Bribed or attempted to bribe a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;
- (4) Falsified any books or records relating to any transaction connected with operation of a Gaming Activity;
- (5) Refused to comply with a lawful directive of the Nation, the federal government, or any court of competent jurisdiction; or
- (6) Been convicted of or entered a plea of guilty or no contest to a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission shall provide a Licensee or permittee with written notice of suspension, which ~~must~~shall, at a minimum, notify the Licensee or permittee of the following:

- (1) The Licensee's or permittee's right to conduct a file review prior to any hearing regarding the notice of suspension, and to make copies of any documents in that file;
- (2) The Licensee's or permittee's right to present documents and witness testimony at the hearing and to be represented by counsel;
- (3) The specific grounds upon which the suspension is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or the Compact; and
- (4) The time and place set by the Commission for the Licensee's or permittee's file review and hearing.

(c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest and effective regulation and control of others require the immediate exclusion of a Licensee or permittee, the Commission may immediately suspend a License or permit prior to a hearing on the matter.

- (1) Such an immediate suspension takes effect upon service of the notice of immediate suspension.

(d) *File Review and Hearing.* Any notice of suspension or notice of immediate suspension ~~must~~shall set forth the time and date for the Licensee or permittee to conduct a file review and for a hearing.

(e) *Final Written Decision.* Within fifteen (15) business days after a hearing, the Commission shall issue a final written decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License or permit.

(f) *Default.* If a Licensee or permittee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed

on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Nation's Administrative Procedures Act shall apply.

501.13-14. *Original Hearing Body*. Any person aggrieved by a licensing or permitting decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Applicant, Licensee or permittee may file such request with the Commission in writing on or before the fifteenth (15th) day following the receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.13-9 or 501.13-13(a) of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing.

(1) Those Commissioners participating in the initial licensing or permitting decision may not participate in the original hearing.

(c) The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral arguments.

(d) The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.14. Gaming Facility License

501.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, ~~must~~shall be conducted in a manner which adequately protects the environment and the public health and safety, and ~~must~~shall comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

501.14-2. The Oneida Business Committee ~~must~~shall receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable health and safety standards of the Nation and Federal government.

(1) To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof ~~must~~shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable environmental standards of the Nation and Federal government.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof ~~must~~shall be submitted by Gaming Operator that Remediation of the Gaming Facility is being

actively sought which will place the Gaming Facility in compliance with the applicable standards.

501.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant.

(a) The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

501.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility.

(a) The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 501.14-2 of this Ordinance.

501.15. Gaming Operator License

501.15-1. *Consent to Jurisdiction.* The application for License and the conduct of Gaming within the jurisdiction of the Nation is considered consent to the jurisdiction of the Nation in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other laws of the Nation.

501.15-2. *License Required.* No Gaming Operator may conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.

501.15-3. *Types of Licenses.* The Commission may issue each of the following types of Gaming Operator Licenses:

(a) *Tribally-Owned or Tribally-Operated Class II.* This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.

(b) *Tribally-Owned or Tribally-Operated Class III.* This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.

501.15-4. *Gaming Operator License Qualifications.* The Commission shall issue a Gaming Operator License to any Gaming Operation if:

(a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;

(b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and

(c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

501.15-5. *Provisions of General Applicability to All Gaming Operators.*

(a) *Site and Gaming Operator Specified.* Each Gaming Operator License may be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.

(b) *License Not Assignable.* No Gaming Operator License may be sold, lent, assigned or otherwise transferred.

(c) *Regulations Posted or Available.* Each Gaming Operator ~~must~~shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

(d) *Display of License.* Each Gaming Operator ~~must~~shall prominently display its License at each Gaming Facility.

501.15-6. *Grandfathered Gaming Facilities.* All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

501.15-7. *License Application Fees and License Taxes.* No application fees or License taxes may be required by the Nation for a Gaming Operator License.

501.15-8. *Closure of a Gaming Operation.* If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee.

(a) The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

501.16. Games

501.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

501.16-2. *Gaming Procedures.* Games operated under this Ordinance ~~must~~shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

501.16-3. *Who May Not Play.* It is the policy of the Nation that particular Gaming Employees, employees of the Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations.

(a) At a minimum, members of the Oneida Business Committee, the Commission, the Gaming General Manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

(b) The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities.

(1) Such resolution ~~must~~shall be on file with the Commission.

(c) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities.

(1) The standard operating procedure and the list of positions ~~must~~shall be on file with the Commission.

501.17. Allocation of Gaming Funds

501.17-1. Net Gaming revenues may only be used for the following purposes:

(a) To fund government operations, programs, or services of the Nation;

(b) To provide for the general welfare of the Nation and its members; provided, that per capita payments may only be made pursuant to an approved revenue allocation plan;

(c) To promote economic development of the Nation;

(d) To contribute to charitable organizations;

(e) To assist in funding operations of other local governments;

(f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders; and

(g) For any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Oneida Nation Constitution

and IGRA.

501.18. Audits

501.18-1. *Annual Audit.* An annual audit of each Gaming Operation ~~must~~shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles.

(a) Copies of the annual audit ~~must~~shall be provided to the Oneida Business Committee, the Nation's Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(b) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section of the Ordinance.

(1) Contracts for legal services and accounting services are exempt from this requirement.

501.18-2. *Other Audits.* All audits, other than the annual audit under section 501.18-1 of this Ordinance, ~~must~~shall be conducted pursuant to the Nation's Internal Audit law or any other applicable law of the Nation, and other audits authorized under the Compact.

501.18-3. *Request for Audits.* Any audit, except the annual audit that is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Nation's Audit Committee.

501.19. Enforcement and Penalties

501.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

501.19-2. *Violations/Prosecutions.* Violators of this Ordinance may be subject to disciplinary action, as well as civil and/or criminal prosecutions.

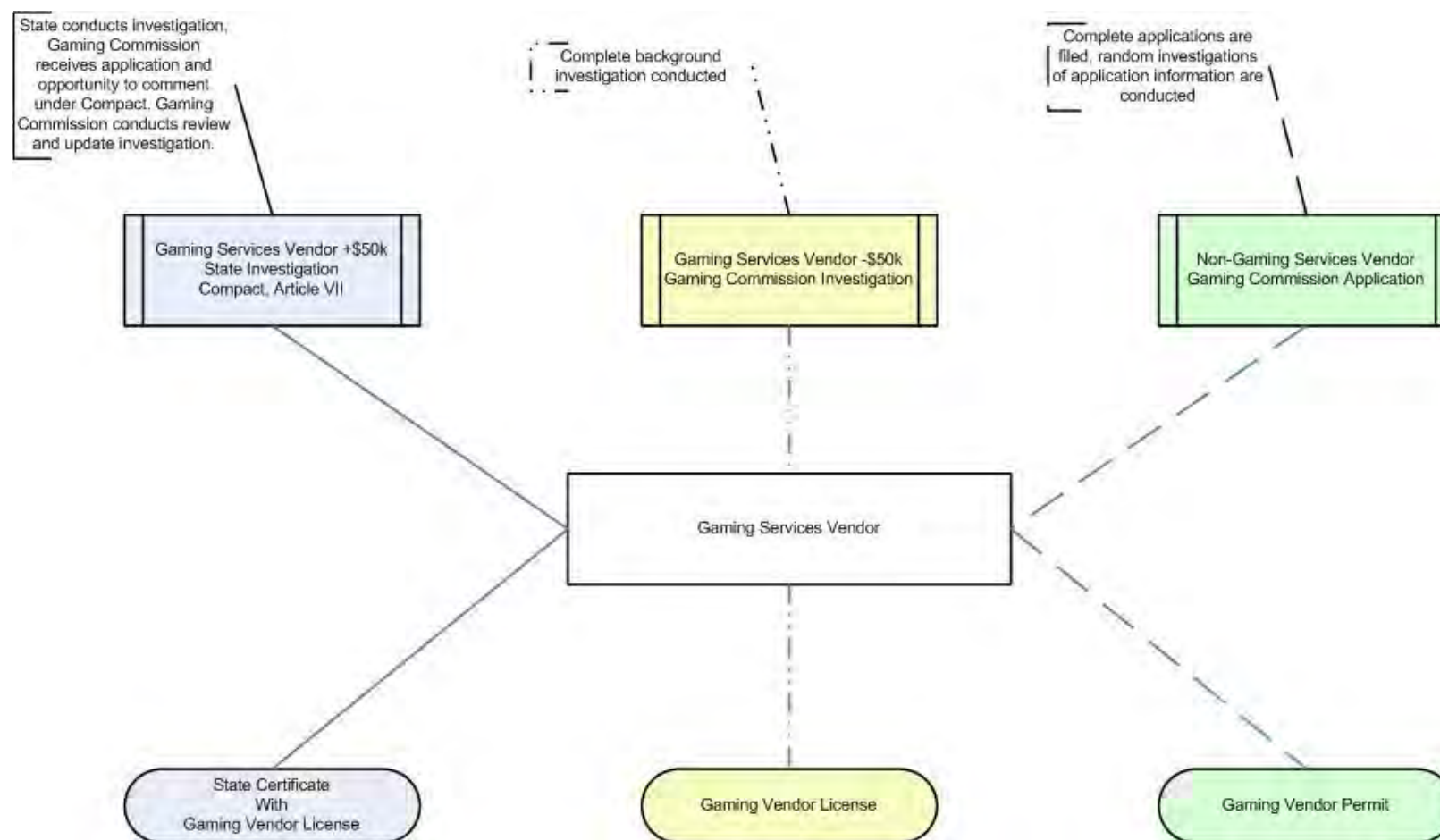
501.19-3. *Remedies.* The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.

End.

Adopted	GTC-7-05-04-A
Emergency Amended	BC-7-14-04-A
Amendment	BC-10-06-04-D
Emergency Amended	BC-11-03-04-A
Permanent Adoption	BC-3-23-05-C
Amended	BC-9-23-09-D
Amended	BC-06-25-14-C (effective 11 01 2014)
Emergency Amended	BC-10-08-14-C (effective 11 01 2014)
Amended	BC-09-09-15-A (effective 09 09 2015)
Emergency Amended	BC-05-12-21-D
Emergency Extended	BC-11-10-21-A
Amended	BC-__-__-__-__

Draft 2 (Redline to Draft 1)
2022 04 20

Appendix 1. Vendor License/Permit



Title 5. Business - Chapter 501
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Matters of interest to where they make the money
ONEIDA NATION GAMING ORDINANCE

501.1. Purpose and Policy	501.11. Licenses, Generally
501.2. Adoption, Amendment, Repeal	501.12. Gaming Employee License
501.3. Definitions	501.13. Gaming Services Licensing and Non-Gaming Services Permitting
501.4. Jurisdiction	501.14. Gaming Facility License
501.5. Oneida Business Committee: Powers and Duties	501.15. Gaming Operator License
501.6. Oneida Gaming Commission	501.16. Games
501.7. Gaming Surveillance: Powers, Duties and Limitations	501.17. Allocation of Gaming Funds
501.8. [Reserved for future use.]	501.18. Audits
501.9. Gaming Security Department	501.19. Enforcement and Penalties
501.10. Background Investigations	

501.1. Purpose and Policy

501.1-1. *Purpose.* The purpose of this Ordinance is to set forth the laws of the Oneida Nation regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

501.1-2. *Policy.* It is the policy of this Ordinance to ensure that the Oneida Nation is the primary beneficiary of its Gaming Operations and has the sole proprietary interest; that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly; and that all internal departments, enterprises, officials and employees of the Nation work cooperatively to advance the best interests of the Nation, to protect its gaming resources, to protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance, and to ensure fairness of all games offered to the Nation's gaming patrons.

501.2. Adoption, Amendment, Repeal

501.2-1. This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B, BC-09-09-15-A and BC-__-__-__-__.

501.2-2. This Ordinance may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

501.2-3. Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

501.2-4. In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control; provided, that this Ordinance repeals the following:

- (a) BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);
- (b) GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);

- (c) GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) BC-03-16-94-A (Comprehensive Gaming Ordinance Interpretation); and
- (f) BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

501.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Nation.

501.2-6. *Preemptive Authority.* The Oneida Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

501.3. Definitions

501.3-1. This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. All words or phrases not defined herein shall be used in their ordinary and everyday sense.

(a) “Applicant” means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

(b) “Background Investigation” means a standard and thorough investigation conducted by the Nation in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

(c) “Class I Gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

(d) “Class II Gaming” means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technological aids are used in connection therewith) in which:

(A) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(B) The holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined.

(C) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(2) Card games that:

(A) Are explicitly authorized by the laws of the State; or

(B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. Class II Gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

(e) “Class III Gaming” means all forms of Gaming that are not Class I or Class II Gaming.

- (f) “Commission” means the Oneida Gaming Commission as established by this Ordinance.
- (g) “Commissioner” means a duly elected member of the Oneida Gaming Commission.
- (h) “Compact” means the 1991 Tribe-State Gaming Compact between the Nation and the State of Wisconsin, as amended and including any future amendments or successor compact entered into by the Nation and the State of Wisconsin and approved by the Secretary of the United States Department of Interior.
- (i) “Compliance Certificate” means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.
- (j) “Environmental Assessment” means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 *et seq.*, and all related federal regulations.
- (k) “Fraud” means any act of trickery or deceit used to or intended to gain control or possession of the property of another.
- (l) “Games, Gaming or Gaming Activity” means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.
- (m) “Gaming Employee” means any person employed by a Gaming Operation.
- (n) “Gaming Facility or Gaming Facilities” means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted or operated. Gaming Facility or Gaming Facilities does not include the site of a fair, carnival, exposition or similar occasion.
- (o) “Gaming Operation” means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.
- (p) “Gaming Operator” means the Nation, an enterprise owned by the Nation, or such other entity of the Nation as the Nation may from time-to-time designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.
- (q) “Gaming Services” means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.
- (r) “Indian Gaming Regulatory Act or IGRA” means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, *et seq.*, as amended.
- (s) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (t) “License” means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. A License shall be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.
- (u) “Licensee” means a person or entity issued a valid License.
- (v) “Nation” means the Oneida Nation.
- (w) “NIGC” means the National Indian Gaming Commission.

(x) “Oneida Business Committee” means the elected governing body of the Nation that exercises the authority delegated it by the Oneida General Tribal Council under Article IV of the Constitution and By-laws of the Oneida Nation, as may be amended from time-to-time hereafter.

(y) “Oneida General Tribal Council” means the Nation’s governing body, as established by the Constitution and By-laws of the Oneida Nation and as may be amended from time-to-time hereafter.

(z) “Ordinance or ONGO” means the Oneida Nation Gaming Ordinance, as may be amended from time-to-time hereafter.

(aa) “Regulatory Incident” means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

(bb) “Remediation” means efforts taken to reduce the source and migration of environmental contaminants at a site.

(cc) “Reservation” means all lands 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.

(dd) “Senior Gaming Management” means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

(ee) “State” means the State of Wisconsin, along with its authorized officials, agents and representatives.

(ff) “Tribal Fee Land” means all land to which the Nation holds title in fee simple.

(gg) “Tribal Trust Land” means all land to which the United States holds title for the benefit of the Nation pursuant to federal law.

501.4. Jurisdiction

501.4-1. *Territorial Jurisdiction.* This Ordinance extends to all land within the exterior boundaries of the Reservation.

501.4-2. *Subject Matter Jurisdiction.* This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Nation as set forth in section 501.4-1.

501.4-3. *Personal Jurisdiction.* This Ordinance governs:

(a) The Nation;

(b) Members of the Nation; and

(c) Individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.

501.5. Oneida Business Committee: Powers and Duties

501.5-1. The Oneida Business Committee retains the power and duty to enter into agreements or compacts with the State under the Indian Gaming Regulatory Act.

501.5-2. The Oneida Business Committee retains the power and duty to enter into agreements with local governments and other Tribal governments for services or cooperative ventures for the Gaming Operations.

501.5-3. The Oneida Business Committee has the exclusive power and duty to enter into contracts and agreements affecting the assets of the Nation, except for those assets that were placed under the responsibility of the Oneida Land Commission under Chapter 67 of the Real Property law.

501.5-4. The Oneida Business Committee delegates to the Commission, in section 501.6-14 of this Ordinance, certain authorities and responsibilities for the regulation of Gaming Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities, Gaming Services, and the enforcement of laws and regulations.

501.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all funds generated by the Gaming Operations and all other authorities and responsibilities not delegated by a specific provision of this Ordinance.

501.5-6. The Chairperson of the Nation shall be the designated and registered agent to receive notice of violations, orders, or determinations which are issued pursuant to the Indian Gaming Regulatory Act and the Compact.

501.6. Oneida Gaming Commission

501.6-1. *Establishment and Purpose.* The Oneida Business Committee has established the Oneida Gaming Commission for the purpose of regulating all Gaming Activities. The Commission is an elected body comprised of four (4) members, provided that, the Oneida Business Committee may, upon request of the Commission, increase the number of Commissioners by resolution without requiring amendment of this Ordinance.

501.6-2. *Location and Place of Business.* The Commission shall maintain its offices and principal place of business within the Reservation.

501.6-3. *Duration and Attributes.* The Commission will have perpetual existence and succession in its own name, unless dissolved by a law of the Nation. Operations of the Commission shall be conducted on behalf of the Nation for the sole benefit of the Nation and its members. The Nation reserves unto itself the right to bring suit against any person or entity in its own right, on behalf of the Nation, or on behalf of the Commission, whenever the Nation considers it necessary to protect the sovereignty, rights, and interests of the Nation or the Commission.

501.6-4. *Sovereign Immunity of the Nation.* All inherent sovereign rights of the Nation with respect to the existence and activities of the Commission are hereby expressly reserved.

(a) The Nation confers upon the Commission sovereign immunity from suit as set forth in the Nation's Sovereign Immunity law.

(b) Nothing in this Ordinance nor any action of the Commission may be construed to be:

(1) A waiver of the sovereign immunity of the Commission or the Nation;

(2) Consent by the Commission or the Nation to the jurisdiction of the Judiciary, the United States, a state or any other tribe; or

(3) Consent by the Nation to any suit, cause of action, case or controversy; or the levy of any judgment, lien, or attachment upon any property of the Commission or the Nation.

501.6-5. *Requirements of Commission Membership.*

(a) *Qualifications.* Candidates for election or appointment to the Commission shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment.

(1) Candidates for election to the Commission shall further meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 501.6-13 of this Ordinance:

(A) Be an enrolled member of the Nation;

(B) Have a minimum of three (3) years of education experience,

employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

(C) Meet all other qualifications set forth in this Ordinance.

(b) *Conflict of Interest.* No person may be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined in the Nation's Conflict of Interest law.

(c) *Background Investigation.* No person may be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

(1) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 501.6-5 and 501.6-6 upon being elected or appointed to office.

501.6-6. Unless pardoned for activities under subsections (a) and/or (d) by the Nation, or pardoned for an activity under subsections (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsections (a) and/or (d) by the State or Federal government, no individual may be eligible for election or appointment to, or to continue to serve on, the Commission, who:

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:¹

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of Chapters 562 or 565 of the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2 or 3 during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of the Nation's law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the Nation to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the Nation;

(e) Has been removed from any office pursuant to the Nation's Removal Law within the

¹ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

501.6-7. *Term of Office.* Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office.

(a) Terms of office shall be staggered.

501.6-8. *Official Oath.* Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office.

(a) Upon being administered the oath of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

501.6-9. *Full-Time Status.* Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business.

(a) No Commissioner shall, during his or her tenure in office, be engaged in any other profession or business activity that may impede his or her ability to perform duties on behalf of the Commission or that competes with the Nation's interests.

(b) The Commission shall identify the appropriate work schedule for its members.

501.6-10. *Bylaws.* The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

501.6-11. *Budget and Compensation.* The Commission shall function pursuant to an annual budget.

(a) The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other budgets of the Nation.

(b) Compensation of Commissioners is not subject to the Nation's Boards, Committees and Commissions law, but shall be established by the Commission in a manner consistent with the Commission's internal rules and bylaws.

(1) The Commission shall adopt internal rules consistent with the Nation's existing accounting practices to verify its budgetary expenditures.

501.6-12. *Removal.* Removal of Commissioners shall be pursuant to the Nation's Removal Law.

501.6-13. *Vacancies.* Any vacancy in an unexpired term of office, however caused, shall be filled by appointment by the Oneida Business Committee, of a person qualified under sections 501.6-5 and 501.6-6 of this Ordinance, in accordance with the Nation's Boards, Committees and Commissions law.

501.6-14. *Authority and Responsibilities.* Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to, the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact.

(1) Unless otherwise indicated in this Ordinance, Commission regulation, or authorized by majority vote of the Commission, no Commissioner may act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty and fairness of the regulation and administration of Gaming.

(c) Subject to review and adoption by the Oneida Business Committee, to draft and

approve regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for the enforcement of such regulations consistent with the laws of the Nation.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided, the Rules of Play and Oneida Gaming Minimum Internal Controls require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management shall be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls are effective upon adoption by the Commission.

(4) The Commission shall provide notice of adoption of the Rules of Play and/or Oneida Gaming Minimum Internal Controls to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting following such adoption.

(A) If the Oneida Business Committee has any concerns and/or requested revisions upon review of the Rules of Play and Oneida Gaming Minimum Internal Controls, the Commission shall work with the Oneida Business Committee to address such concerns and/or requested revisions.

(i) Unless the Oneida Business Committee repeals the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect while the Commission and the Oneida Business Committee jointly work to amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(ii) Should the Oneida Business Committee repeal the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls that were in effect immediately previous to those repealed will be automatically reinstated and effective immediately upon the repeal of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(B) If the Commission does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect as adopted by the Commission.

(C) Should the Oneida Business Committee pursue amendments to the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the amendments shall be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:

(i) if the Commission and the Oneida Business Committee reach an agreement as to the content of the amendments, the Commission shall adopt revised Rules of Play and/or the Oneida Gaming Minimum Internal Controls that have been discussed with and agreed upon by the Oneida Business Committee; or

(ii) if the Commission and the Oneida Business Committee do not reach an agreement as to the content of the amendments, the Oneida Business Committee may adopt revised Rules of Play and/or the Oneida Gaming Minimum Internal Controls that incorporate the amendments it deems necessary.

(D) If revised Rules of Play and/or Oneida Gaming Minimum Internal Controls are not adopted by either the Commission or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls originally adopted by the Commission will remain in effect.

(e) To prepare proposals, including budgetary and monetary proposals, which might enable the Nation to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto; provided, that all photocopies of documents shall be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

(k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.

(l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with the Nation's laws and practices.

(m) To arbitrate, negotiate, or settle any dispute to which it is a party, and which relates to its authorized activities.

(n) To act as the designated agent to receive all regulatory notices not included in section 501.5-6 of this Ordinance.

(o) To investigate all Regulatory Incidents.

(p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum

Internal Controls, Rules of Play, IGRA, or this Ordinance.

(q) To make determinations regarding suitability for licensing.

(r) To establish an administrative structure by regulation to carry out its authority and responsibilities.

(s) To establish, where needed, additional processes for conducting licensing hearings by regulation.

(t) To establish and collect fees for processing License applications by regulation.

(u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.

(v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.

(w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

501.6-15. *Reporting Requirements.* The Commission shall adhere to the following reporting requirements:

(a) A true, complete and accurate record of all proceedings of the Commission shall be kept and maintained;

(b) Complete and accurate minutes of all Commission meetings shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;

(c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, shall be submitted to the Oneida Business Committee.

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

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

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

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

501.7. Gaming Surveillance: Powers, Duties and Limitations

501.7-1. *Purpose.* The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance.

(a) Gaming Surveillance is a department within the Commission's administrative structure and supervision shall be identified within the organizational chart adopted by the Commission; provided, nothing in the designation of supervisory responsibility may be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 501.7-3 of this Ordinance.

501.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services

vendors.

501.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

501.7-4. Gaming Surveillance shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.

(b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.

(c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.

(d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

501.8. [Reserved for future use.]

501.9. Gaming Security Department

501.9-1. *Purpose.* The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees.

501.9-2. *Reporting.* The Internal Security Director, Gaming General Manager and Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under this Ordinance.

(a) When investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority.

501.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

501.9-4. *Investigations.* This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

501.10. Background Investigations

501.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

501.10-2. Background Investigations shall be conducted on all persons or entities as specified under this Ordinance.

(a) All Background Investigations shall be conducted to ensure that the Nation in its Gaming Operations may not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming.

(1) The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

501.11. Licenses, Generally

501.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License.

(a) All Gaming Employees, Gaming Services vendors and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity.

(b) All Gaming Facilities shall be licensed by the Oneida Business Committee.

501.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant.

(a) A temporary license permits the Licensee to engage in such activities pursuant to any terms and conditions imposed and specified by the Commission.

(b) A temporary license is valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

501.11-3. *Revocable.* A License is revocable only in accordance with the procedures set forth in this Ordinance.

(a) A Licensee has only those rights and protections regarding a License granted in this Ordinance.

501.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the Nation and are subject to all applicable Oneida, Federal, and State laws, regulations and/or policies.

501.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

501.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend or condition a License.

501.11-7. *Commission Licensing Actions.* The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance.

(a) Authority to place conditions on a License may be exercised only upon promulgation of regulations.

501.11-8. *Noncompliance.* The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions.

(a) Such regulations shall include procedures for appeal of such notices and may include

the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

501.12. Gaming Employee License

501.12-1. *Scope of Section.* This section applies only to Gaming Employee Licenses and licensing actions.

501.12-2. *License Application.* Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference who was acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h).

(1) The Commission is the agency that takes the fingerprints.

(n) Any other information the Commission deems relevant for a Gaming Employee License.

(o) A statement that each Applicant has read and understands notices and the NIGC

requirements relating to:

- (1) The Privacy Act of 1974;
- (2) Fraud and False Statements Act; and
- (3) Fair Credit Reporting Act.

501.12-3. *License Qualifications.* No License may be granted if the Applicant:

- (a) Is under the age of eighteen (18).
- (b) Unless pardoned for activities under this subsection by the Nation, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:
 - (1) Any gambling-related offense;
 - (2) Any offense involving Fraud or misrepresentation;
 - (3) Any offense involving a violation of any provision of Chapters 562 or 565 of the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming, or any rule promulgated by the Wisconsin Racing Board;
 - (4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or
 - (5) Any offense involving the violation of any provision of the Nation's law that regulates the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.
- (c) Is determined to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.
- (d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Nation's Conflict of Interest law.
- (e) Each person licensed as a Gaming Employee has a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee.
 - (1) Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

501.12-4. *Initial Eligibility Determination.*

- (a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:
 - (1) Grant a temporary license, with or without conditions, to the Applicant; or
 - (2) Deny the License application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b) below.
- (b) If the Commission determines that an Applicant is ineligible for a License, the Commission shall notify the Applicant.
 - (1) The Commission shall set forth regulations for an Applicant to review any

information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 501.12-10 of this Ordinance.

(2) The suspension or revocation hearing provisions set forth at section 501.12-9 of this Ordinance do not apply to Initial Eligibility Determinations.

501.12-5. *Eligibility Determination and Notification to NIGC.* When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) Require the Gaming Employee to submit a completed application for employment that contains the notices and information listed in section 501.12-2 of this Ordinance;

(b) Review the Background Investigation of the Gaming Employee;

(1) Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(c) Create an investigative report based on each Background Investigation performed;

(1) The investigative report shall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Gaming Employee begins employment at a Gaming Facility, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System; and

(1) The notice of results shall include the following, provided that any additional or alternate information shall be forwarded as directed in regulations or rules adopted by the NIGC:

(A) The Gaming Employee's name, date of birth, and Social Security Number;

(B) The date on which the Gaming Employee began employment;

(C) A summary of the information presented in the investigative report, including:

(i) License(s) that have previously been denied;

(ii) Gaming licenses that have been revoked, even if subsequently reinstated;

(iii) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application; and

(iv) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.

(D) A copy of the eligibility determination made under section 501.12-5 (b) of this Ordinance.

(e) All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission shall be retained in the Commission's files for a period of at least three (3) years from the date the Gaming Employee's employment is terminated.

501.12-6. *License Issuance.* The Commission may issue a License to a Gaming Employee at any time after providing the NIGC with a notice of results as required under section 501.12-5(d) of this Ordinance; however, a Gaming Employee who does not have a License ninety (90) days after the

start of employment shall have his or her employment terminated.

(a) The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

(b) Any Gaming Employee License issued under this section is effective from the date of issuance and shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective.

(1) If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License.

(c) The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

501.12-7. *Requirement to Wear License.* During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

501.12-8. *NIGC Review.*

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 501.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee.

(1) Such a request suspends the thirty (30) day period until the Chairman receives the additional information.

(b) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC.

(1) The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 501.12-9 of this Ordinance.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 501.12-9 of this Ordinance.

501.12-9. *Suspension or Revocation of Licenses.* Except as provided in section 501.12-8(d) or 501.12-9(c) of this Ordinance, no License may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing Action.* The Commission may suspend, condition, or revoke any License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section 501.12-3 of this Ordinance; or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension.

(2) The Commission issues a written notice of suspension demonstrating that the Licensee:

(A) Has knowingly made a materially false or misleading statement in any application for a License, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any Gaming Activity operated in violation of the Compact, Oneida or federal law, and this Ordinance;

(C) Has bribed, attempted to bribe, or has received a bribe from a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(D) Has falsified any books or records relating to any transaction connected with the operation of a Gaming Activity;

(E) Has refused to comply with any lawful directive of the Nation, Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* The Commission's notice of suspension shall be in writing and shall, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to present documents and witness testimony at that hearing, and to be represented by counsel;

(3) The specific grounds upon which the proposed licensing action is based, including citations to relevant sections of this Ordinance, the IGRA and any applicable regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's hearing.

(c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee, the Commission may immediately suspend a License prior to the conduct of a hearing on the matter.

(1) Such an immediate suspension may take effect upon service of the notice of immediate suspension.

(d) Any notice of suspension or notice of immediate suspension shall set forth the times and dates for when the Licensee may review his or her file and the date for a hearing on any proposed licensing action.

(e) Within fifteen (15) business days after a hearing, the Commission shall issue a final written licensing decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License.

(1) If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section 501.12-8(d) or 501.12-9(a)(1) of this Ordinance, the Commission shall forward a copy of its decision to the NIGC within forty-five (45) days of receiving the NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the Nation's Administrative Procedures Act shall apply.

501.12-10. *Original Hearing Body.* Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Licensee may file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.12-4 or 501.12-9(a) of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing.

(c) Those Commissioners serving on the original hearing body may not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled.

(d) The Commission may decide to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral arguments.

(e) The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.12-11. *Notice to Oneida Business Committee.* Prior to any suspension or revocation of a License of the Gaming General Manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

501.12-12. *Record of Proceedings.* The Commission shall maintain a complete and accurate record of all licensure proceedings.

501.12-13. Revocation of a License is solely limited to the licensing matter. Employment related processes resulting from revocation of a License are determined solely through the personnel processes and procedures of the Nation and are not licensing matters governed by this Ordinance.

501.13. Gaming Services Licensing and Non-Gaming Services Permitting

501.13-1. *Scope of Section.* This section applies to all individuals and entities providing Gaming Services.

(a) The requirements of this Section are in addition to, and do not alter or amend any requirements imposed by the Nation's Vendor Licensing law.²

501.13-2. *Gaming Services License or Non-Gaming Services Permit Required.*

(a) *Gaming Services License.* Any Gaming Services vendor providing Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation shall possess a valid Gaming Services License.

(b) *Non-Gaming Services Permit.* Any vendor providing non-gaming related goods or

² See also Appendix 1. Vendor Licensing/Permit.

services to the Gaming Operation shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section shall be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

501.13-3. *Approved Gaming Services Vendor List.* The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which is known as the Approved License and Permit List.

(a) Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

501.13-4. *Gaming Services License/Permit Application.* Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which shall provide and certify the following; provided, Non-Gaming Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year are only required to file a notice of doing business with the Commission:

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and bylaws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the State of Wisconsin Office of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;

(i) Whether the Applicant has been licensed in the State of New Jersey, Nevada or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such License;

(j) Whether the Applicant has been denied a License by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any License held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the Nation to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on

the application has or has had any business with the Nation or any business or personal relationship with any of the Nation's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and the NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

501.13-5. *Signature on Application.* Applications for Licenses or permits shall be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation or other person to whom the authority to execute the application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

501.13-6. *Incomplete Applications.* Applications that do not contain all information requested, including proper signatures, will be considered incomplete.

(a) Incomplete applications will not be considered by the Commission.

(b) The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application.

(1) If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

501.13-7. *Supplemental Information.* The Commission may, in its discretion, request supplemental information from the Applicant.

(a) Supplemental information requested by the Commission shall be promptly submitted by the Applicant.

(1) An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

501.13-8. *Continuing Duty to Provide Information.* Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction.

(a) An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to him or her

- may constitute grounds to deny, suspend or revoke a License or permit.
- 501.13-9. *Background Investigations.* Background Investigations for Gaming Services vendors shall be conducted as follows:
- (a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.
 - (b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation and shall conduct any necessary additional Background Investigation to ensure that the State background investigation is complete and current.
 - (c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications.
 - (1) The random selection process shall be identified by regulation of the Commission.
- 501.13-10. *Licensing Action in a Foreign Jurisdiction.* If the States of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction refuse to renew a License or permit, or conditions, suspends or revokes the License or permit of an Applicant, permittee or Licensee, such action may constitute grounds for similar action by the Commission.
- 501.13-11. *Claim of Privilege.* At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law.
- (a) An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a License or permit.
- 501.13-12. *Withdrawal of an Application.* An Applicant may request to withdraw an application by submitting a written request to the Commission.
- (a) The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal.
 - (b) An Applicant who withdraws an application is precluded from re-applying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.
- 501.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* Except as provided in section 501.13-13(c) of this Ordinance, no License or permit may be suspended or revoked except after notice and opportunity for hearing.
- (a) *Basis for Licensing or Permitting Action.* The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:
 - (1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

- 949 (2) Knowingly promoted, played or participated in any Gaming Activity operated
950 in violation of the Compact, any law of the Nation, or other applicable law;
951 (3) Bribed or attempted to bribe a Commissioner or any other person in an
952 attempt to avoid or circumvent any applicable law;
953 (4) Falsified any books or records relating to any transaction connected with
954 operation of a Gaming Activity;
955 (5) Refused to comply with a lawful directive of the Nation, the federal
956 government, or any court of competent jurisdiction; or
957 (6) Been convicted of or entered a plea of guilty or no contest to a crime involving
958 the sale of illegal narcotics or controlled substances.
- 959 (b) *Suspension Notice.* The Commission shall provide a Licensee or permittee with
960 written notice of suspension, which shall, at a minimum, notify the Licensee or permittee
961 of the following:
- 962 (1) The Licensee's or permittee's right to conduct a file review prior to any
963 hearing regarding the notice of suspension, and to make copies of any documents
964 in that file;
965 (2) The Licensee's or permittee's right to present documents and witness
966 testimony at the hearing and to be represented by counsel;
967 (3) The specific grounds upon which the suspension is based, including citations
968 to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or
969 the Compact; and
970 (4) The time and place set by the Commission for the Licensee's or permittee's
971 file review and hearing.
- 972 (c) *Immediate Suspension.* If, in the judgment of the Commission, the public interest and
973 effective regulation and control of others require the immediate exclusion of a Licensee or
974 permittee, the Commission may immediately suspend a License or permit prior to a hearing
975 on the matter.
- 976 (1) Such an immediate suspension takes effect upon service of the notice of
977 immediate suspension.
- 978 (d) *File Review and Hearing.* Any notice of suspension or notice of immediate
979 suspension shall set forth the time and date for the Licensee or permittee to conduct a file
980 review and for a hearing.
- 981 (e) *Final Written Decision.* Within fifteen (15) business days after a hearing, the
982 Commission shall issue a final written decision and decide whether to suspend, uphold an
983 immediate suspension, revoke, or take other action concerning a License or permit.
- 984 (f) *Default.* If a Licensee or permittee fails to appear for his or her hearing before the
985 Commission, that right is deemed to have been waived and the Commission will proceed
986 on the proposed licensing action by default.
- 987 (g) Unless identified in this Ordinance or regulations of the Commission, the hearing
988 processes set forth in the Nation's Administrative Procedures Act shall apply.
- 989 501.13-14. *Original Hearing Body.* Any person aggrieved by a licensing or permitting decision
990 of the Commission may appeal the decision by filing a request for an original hearing before the
991 Commission.
- 992 (a) The Applicant, Licensee or permittee may file such request with the Commission in
993 writing on or before the fifteenth (15th) day following the receipt of the Commission's
994 decision.

(b) The Commission shall certify the record, developed in accordance with section 501.13-9 or 501.13-13(a) of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing.

(1) Those Commissioners participating in the initial licensing or permitting decision may not participate in the original hearing.

(c) The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral arguments.

(d) The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.14. Gaming Facility License

501.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, shall be conducted in a manner which adequately protects the environment and the public health and safety, and shall comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

501.14-2. The Oneida Business Committee shall receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable health and safety standards of the Nation and Federal government.

(1) To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable environmental standards of the Nation and Federal government.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof shall be submitted by Gaming Operator that Remediation of the Gaming Facility is being actively sought which will place the Gaming Facility in compliance with the applicable standards.

501.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant.

(a) The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

501.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper

authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility.

- (a) The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 501.14-2 of this Ordinance.

501.15. Gaming Operator License

501.15-1. Consent to Jurisdiction. The application for License and the conduct of Gaming within the jurisdiction of the Nation is considered consent to the jurisdiction of the Nation in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other laws of the Nation.

501.15-2. License Required. No Gaming Operator may conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.

501.15-3. Types of Licenses. The Commission may issue each of the following types of Gaming Operator Licenses:

- (a) *Tribally-Owned or Tribally-Operated Class II.* This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.

- (b) *Tribally-Owned or Tribally-Operated Class III.* This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.

501.15-4. Gaming Operator License Qualifications. The Commission shall issue a Gaming Operator License to any Gaming Operation if:

- (a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;
- (b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and
- (c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

501.15-5. Provisions of General Applicability to All Gaming Operators.

- (a) *Site and Gaming Operator Specified.* Each Gaming Operator License may be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.

- (b) *License Not Assignable.* No Gaming Operator License may be sold, lent, assigned or otherwise transferred.

- (c) *Regulations Posted or Available.* Each Gaming Operator shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

- (d) *Display of License.* Each Gaming Operator shall prominently display its License at each Gaming Facility.

501.15-6. Grandfathered Gaming Facilities. All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

501.15-7. License Application Fees and License Taxes. No application fees or License taxes may be required by the Nation for a Gaming Operator License.

501.15-8. Closure of a Gaming Operation. If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee.

- (a) The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

501.16. Games

501.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

501.16-2. *Gaming Procedures.* Games operated under this Ordinance shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

501.16-3. *Who May Not Play.* It is the policy of the Nation that particular Gaming Employees, employees of the Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations.

- (a) At a minimum, members of the Oneida Business Committee, the Commission, the Gaming General Manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

(b) The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities.

- (1) Such resolution shall be on file with the Commission.

(c) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities.

- (1) The standard operating procedure and the list of positions shall be on file with the Commission.

501.17. Allocation of Gaming Funds

501.17-1. Net Gaming revenues may only be used for the following purposes:

- (a) To fund government operations, programs, or services of the Nation;
- (b) To provide for the general welfare of the Nation and its members; provided, that per capita payments may only be made pursuant to an approved revenue allocation plan;
- (c) To promote economic development of the Nation;
- (d) To contribute to charitable organizations;
- (e) To assist in funding operations of other local governments;
- (f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders; and
- (g) For any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Oneida Nation Constitution and IGRA.

501.18. Audits

501.18-1. *Annual Audit.* An annual audit of each Gaming Operation shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles.

- (a) Copies of the annual audit shall be provided to the Oneida Business Committee, the Nation's Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(b) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section of the Ordinance.

(1) Contracts for legal services and accounting services are exempt from this requirement.

501.18-2. *Other Audits.* All audits, other than the annual audit under section 501.18-1 of this Ordinance, shall be conducted pursuant to the Nation's Internal Audit law or any other applicable law of the Nation, and other audits authorized under the Compact.

501.18-3. *Request for Audits.* Any audit, except the annual audit that is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Nation's Audit Committee.

501.19. Enforcement and Penalties

501.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

501.19-2. *Violations/Prosecutions.* Violators of this Ordinance may be subject to disciplinary action, as well as civil and/or criminal prosecutions.

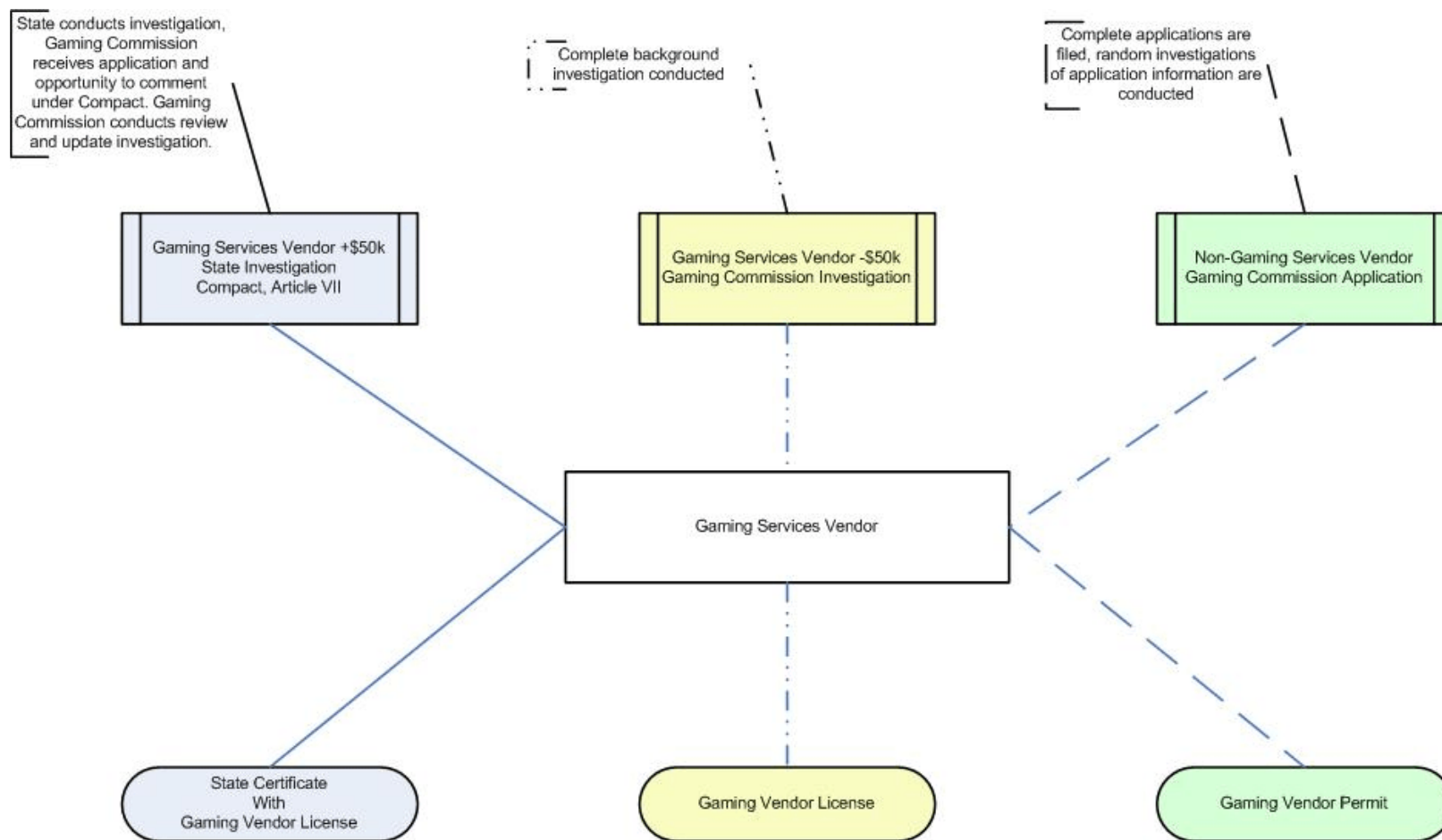
501.19-3. *Remedies.* The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.

End.

Adopted	GTC-7-05-04-A
Emergency Amended	BC-7-14-04-A
Amendment	BC-10-06-04-D
Emergency Amended	BC-11-03-04-A
Permanent Adoption	BC-3-23-05-C
Amended	BC-9-23-09-D
Amended	BC-06-25-14-C (effective 11 01 2014)
Emergency Amended	BC-10-08-14-C (effective 11 01 2014)
Amended	BC-09-09-15-A (effective 09 09 2015)
Emergency Amended	BC-05-12-21-D
Emergency Extended	BC-11-10-21-A
Amended	BC-__-__-__-__

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Appendix 1. Vendor License/Permit



Title 5. Business - Chapter ~~21~~501
~~Oneida Nation Gaming Ordinance~~

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ONEIDA NATION GAMING ORDINANCE

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21 501.10. Background Investigations	

~~21~~501.1. Purpose and Policy

~~21~~501.1-1. *Purpose.* -The purpose of this Ordinance is to set forth the laws of the Oneida ~~Tribe of Indians of Wisconsin~~~~Nation~~ regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance.- It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. -This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. -This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

~~21~~501.1-2. *Policy.* -It is the policy of this Ordinance to ensure that the Oneida ~~Tribe~~~~Nation~~ is the primary beneficiary of its Gaming Operations and has the sole proprietary interest,~~and;~~ that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly;~~;~~ and that all internal departments, enterprises, officials and employees of the ~~Oneida Tribe~~~~Nation~~ work cooperatively to advance the best interests of the ~~Oneida Tribe~~~~Nation~~, to protect ~~the Tribe's~~~~sits~~ gaming resources,~~to~~ protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance,~~;~~ and to ensure fairness of all games offered to the ~~Tribe's~~~~Nation's~~ gaming patrons.

~~21~~501.2. Adoption, Amendment, Repeal

~~21~~501.2-1. *Adoption.* -This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B ~~and,~~ BC-09-09-15-A; ~~and BC- - - -~~.

~~21~~501.2-2. *Amendment.* -~~_____~~ This Ordinance 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.

~~21~~501.2-3 ~~Severability.~~ -~~_____~~ Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

~~21~~501.2-4. ~~_____~~ In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control.~~—Provided; provided,~~ that; this Ordinance repeals the following:

- (a) ~~_____~~ BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);

- (b) ~~___~~ GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);
- (c) ~~___~~ GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) ~~___~~ GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) ~~___~~ BC-03-16-94-A; (Comprehensive Gaming Ordinance Interpretation); and
- (f) ~~___~~ BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

~~21501.2-5. This Ordinance is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.~~

~~21501.2-6. Name. This Ordinance is to be known as the Oneida Nation Gaming Ordinance or ONGO.~~

~~21.2.7. Preemptive Authority.~~ -The Oneida Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

~~21501.3. Jurisdiction~~

~~21.3-1. Territorial Jurisdiction. This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.~~

~~21.3-2. Subject Matter Jurisdiction. This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Oneida Tribe as set forth in section 21.3-1.~~

~~21.3-3. Personal Jurisdiction. This Ordinance governs:~~

- ~~(a) the Tribe;~~
- ~~(b) tribal members; and~~
- ~~(c) individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.~~

~~21.4. Definitions~~

~~21.4501.3-1.~~ 21501.3-1. This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. All words or phrases not defined herein shall be used in their ordinary and everyday sense.

(a) “Applicant” means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

(b) “Background Investigation” means a standard and thorough investigation conducted by the Oneida Tribe Nation in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

(c) “Class I Gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

(d) “Class II Gaming” means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) in which:

(A) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(B) The holder of the card covers such numbers or designations when

objects, similarly numbered or designated, are drawn or electronically determined.

(C) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(2) Card games that:

(A) Are explicitly authorized by the laws of the State; or

(B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. ~~Class II Gaming~~ does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

(e) “Class III Gaming” means all forms of Gaming that are not Class I or Class II Gaming.

(f) “Commission” means the Oneida Gaming Commission as established by this Ordinance.

(g) “Commissioner” means a duly elected member of the Oneida Gaming Commission.

(h) “Compact” means the 1991 Tribe-State Gaming Compact between the ~~Tribe~~Nation and the State of Wisconsin, as amended and including any future amendments or successor compact entered into by the ~~Tribe~~Nation and the State of Wisconsin and approved by the Secretary of the United States Department of Interior.

(i) “Compliance Certificate” means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.

(j) “Environmental Assessment” means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 *et seq.*, and all related ~~Federal~~federal regulations.

(k) “Fraud” means any act of trickery or deceit used to or intended to gain control or possession of the property of another.

(l) “Games, Gaming, or Gaming Activity” means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.

(m) “Gaming Employee” means any person employed by a Gaming Operation.

(n) “Gaming Facility or Gaming Facilities” means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility or Gaming Facilities does not include the site of a fair, carnival, exposition, or similar occasion.

(o) “Gaming Operation” means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.

(p) “Gaming Operator” means the ~~Tribe~~Nation, an enterprise owned by the ~~Tribe~~Nation, or such other entity of the ~~Tribe~~Nation as the ~~Tribe~~Nation may from time ~~to~~time

designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.

(q) “Gaming Services” means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.

(r) “Indian Gaming Regulatory Act or IGRA” means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, *et seq.*, as amended.

(s) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC ~~#1-01~~-07-13-B to administer the judicial authorities and responsibilities of the TribeNation.

(t) “License” means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. -A License ~~must~~shall be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.

(u) “Licensee” means a person or entity issued a valid License.

(v) “Nation” means the Oneida Nation.

(w) “NIGC” means the National Indian Gaming Commission.

~~(w-x)~~ “Oneida Business Committee” means the elected governing body of the Tribe exercising Nation that exercises the authority delegated ~~from it by~~ the Oneida General Tribal Council ~~of the Oneida Tribe of Indians of Wisconsin~~ under Article IV of the Constitution and By-laws ~~for of~~ the Oneida Tribe of Indians of Wisconsin, approved December 21, 1936 Nation, as ~~thereafter may be~~ amended from time-to-time hereafter.

~~(x-y)~~ “Oneida General Tribal Council” means the Nation’s governing body, as established by the Constitution and By-laws of the Oneida Tribe of Indians of Wisconsin as determined by the Tribe’s Constitution Nation and as may be amended from time-to-time hereafter.

~~(y-z)~~ “Ordinance or ONGO” means the Oneida Nation Gaming Ordinance, ~~as it~~ may be amended from time ~~to~~-time be amended hereafter.

~~(z-aa)~~ “Regulatory Incident” means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

~~(aa-bb)~~ “Remediation” means efforts taken to reduce the source and migration of environmental contaminants at a site.

~~(bb-cc)~~ “Reservation” means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(ee-dd)~~ “Senior Gaming Management” means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

~~(dd-ee)~~ “State” means the State of Wisconsin, along with its authorized officials, agents and representatives.

~~(ee)~~ Tribe means the Oneida Tribe of Indians of Wisconsin.

(ff) “Tribal Fee Land” means all land to which the TribeNation holds title in fee simple.

(gg) “Tribal Trust Land” means all land to which the United States holds title for the benefit of the TribeNation pursuant to federal law.

172
173 **501.4. Jurisdiction**

174 501.4-1. Territorial Jurisdiction. This Ordinance extends to all land within the exterior
175 boundaries of the Reservation.

176 501.4-2. Subject Matter Jurisdiction. This Ordinance applies to all Gaming conducted within
177 the territorial jurisdiction of the Nation as set forth in section 501.4-1.

178 501.4-3. Personal Jurisdiction. This Ordinance governs:

179 24(a) The Nation;

180 (b) Members of the Nation; and

181 (c) Individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land
182 on the Reservation and all Tribal Trust Land.

183
184 **501.5. Oneida Business Committee: Powers and Duties**

185 24501.5-1. The Oneida Business Committee retains the power and duty to enter into
186 agreements or compacts with the State under the Indian Gaming Regulatory Act.

187 24501.5-2. The Oneida Business Committee retains the power and duty to enter into
188 agreements with local governments and other Tribal governments for services or cooperative
189 ventures for the Gaming Operations.

190 24501.5-3. The Oneida Business Committee has the exclusive power and duty to enter into
191 contracts and agreements affecting the assets of the ~~Tribal~~Nation, except for those assets that were
192 placed under the responsibility of the Oneida Land Commission under Chapter 67; of the Real
193 Property ~~Law~~law.

194 24501.5-4. The Oneida Business Committee delegates to the Commission, ~~as set out~~ in section
195 24501.6-14 of this Ordinance, certain authorities and responsibilities for the regulation of Gaming
196 Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities,
197 Gaming Services, and the enforcement of laws and regulations, ~~as identified in this Ordinance~~.

198 24501.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all
199 funds generated by the Gaming Operations and all other authorities and responsibilities not
200 delegated by a specific provision of this Ordinance.

201 24501.5-6. The Chairperson of the ~~Tribal~~mustNation shall be the designated and registered
202 agent to receive notice of violations, orders, or determinations which are issued pursuant to the
203 Indian Gaming Regulatory Act and the Compact.

204
205 **24501.6. Oneida Gaming Commission**

206 24501.6-1. Establishment and Purpose. - The Oneida Business Committee has established the
207 Oneida Gaming Commission for the purpose of regulating all Gaming Activities. ~~The~~
208 Commission is an elected body comprised of four (4) members, provided that, the Oneida Business
209 Committee may, upon request of the Commission, increase the number of Commissioners by
210 resolution ~~without~~with-out requiring amendment of this Ordinance.

211 24501.6-2. Location and Place of Business. -The Commission shall maintain its offices and
212 principal place of business within the Reservation.

213 24501.6-3. Duration and Attributes. -The Commission will have perpetual existence and
214 succession in its own name, unless dissolved by ~~Tribal~~a law, ~~of the Nation~~. Operations of the
215 Commission ~~must~~shall be conducted on behalf of the ~~Tribal~~Nation for the sole benefit of the
216 ~~Tribal~~Nation and its members. -The ~~Tribal~~Nation reserves unto itself the right to bring suit against
217 any person or entity in its own right, on behalf of the ~~Tribal~~Nation, or on behalf of the Commission,

whenever the TribeNation considers it necessary to protect the sovereignty, rights, and interests of the TribeNation or the Commission.

21501.6-4. *Sovereign Immunity of the Tribe.*

~~(a)~~ Nation. All inherent sovereign rights of the TribeNation with ~~regard~~ respect to the existence and activities of the Commission are hereby expressly reserved.

~~(b)~~ a The TribeNation confers upon the Commission sovereign immunity from suit as set forth in the Tribe'sNation's Sovereign Immunity Ordinance ~~law~~.

~~(e)~~ b Nothing in this Ordinance nor any action of the Commission may be construed to be ~~a~~: (1) A waiver of ~~its~~ the sovereign immunity ~~or that~~ of the Tribe, Commission or ~~consent~~ the Nation;

(2) Consent by the Commission or the TribeNation to the jurisdiction of the Judiciary, the United States, ~~any~~ a state, or any other tribe; ~~or consent~~

(3) Consent by the TribeNation to any suit, cause of action, case or controversy; or the levy of any judgment, lien, or attachment upon any property of the Commission or the TribeNation.

21501.6-5. *Requirements of Commission Membership.*

(a) Qualifications. Candidates for election or appointment to the Commission ~~must~~ shall be at least twenty-one (21) years of age on the day of the election or on the day of appointment. ~~In addition, candidates~~

(1) Candidates for election to the Commission shall further meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 21501.6-13 of this Ordinance:

~~(1)~~ A Be an enrolled member of the TribeNation;

~~(2)~~ B Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

~~(3)~~ C Meet all other qualifications set forth in this Ordinance.

(b) Conflict of Interest. No person may be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined ~~by~~ in the OneidaNation's Conflict of Interest Policy ~~law~~.

(c) Background Investigation. No person may be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

~~(d)~~ (1) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 21501.6-5 and 21501.6-6 upon being elected or appointed to office.

21501.6-6. *Unless pardoned for activities under subsections subsections (a) and/or (d) by the TribeNation, or pardoned for an activity under subsection subsections (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsection subsections (a) and/or (d) by the State or Federal government, no individual may be eligible for election or appointment to, or to continue to serve on, the Commission, who:*

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:¹

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of ~~chs. Chapters~~ 562 or 565, ~~Wis. Stats., of the Wisconsin Statutes,~~ any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2, or 3, during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of ~~Tribe~~the Nation's law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the ~~Tribe~~Nation to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the ~~Tribe~~Nation;

(e) Has been removed from any office pursuant to the ~~Oneida~~Nation's Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

~~21~~501.6-7. Term of Office. Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office. ~~Terms of office must be staggered.~~

~~21~~ (a) Terms of office shall be staggered.

~~501.6-8. Official Oath.~~ Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office. ~~Upon being administered the oath of office, a Commissioner shall assume the duties of office and must be issued a security card setting forth his or her title and term of office.~~

~~21~~ (a) Upon being administered the oath of office, a Commissioner shall assume the duties of office and shall be issued a security card setting forth his or her title and term of office.

~~501.6-9. Full-time ~~Time~~ Status.~~ ~~The Commission shall identify the appropriate work schedule for its members.~~ Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business, ~~and may not.~~

(a) No Commissioner shall, during his or her tenure in office, be engaged in any other profession or business activity that may impede ~~the Commissioner's~~this or her ability to perform duties on behalf of the Commission or that competes with the ~~Tribe's~~Nation's interests.

¹ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

21 (b) The Commission shall identify the appropriate work schedule for its members.

501.6-10. *Bylaws.* -The Commission shall adopt bylaws subject to review and approval by the Oneida Business Committee.

21501.6-11. - *Budget and Compensation.* -The Commission shall function pursuant to an annual budget.

(a) The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other ~~Tribal budgets. Compensation of Commissioners is not subject to the Tribe's Comprehensive Policy Governing Boards, Committees, and Commissions, but must be established by the Commission in a manner consistent with the Commission's internal rules and bylaws. The Commission shall adopt internal rules consistent with the existing Tribal accounting practices to verify its budgetary expenditures.~~ budgets of the Nation.

21 (b) Compensation of Commissioners is not subject to the Nation's Boards, Committees and Commissions law, but shall be established by the Commission in a manner consistent with the Commission's internal rules and bylaws.

(1) The Commission shall adopt internal rules consistent with the Nation's existing accounting practices to verify its budgetary expenditures.

501.6-12. *Removal.* -Removal of Commissioners ~~must~~shall be pursuant to the ~~Oneida~~Nation's Removal Law.

21501.6-13. *Vacancies.* -Any vacancy in an unexpired term of office, however caused, ~~must~~shall be filled by appointment by the Oneida Business Committee, of a person qualified ~~pursuant to~~under sections 21501.6-5 and 21501.6-6 ~~pursuant to~~of this Ordinance, in accordance with the ~~Comprehensive Policy Governing~~Nation's Boards, Committees and Commissions law.

21501.6-14. *Authority and Responsibilities.* - Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to, the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact.

(1) Unless otherwise indicated in this Ordinance or, Commission regulation, or authorized by majority vote of the Commission, no Commissioner may act independently of the Commission. -Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty, and fairness of the regulation and administration of Gaming.

(c) ~~To draft and approve, subject~~ Subject to review and adoption by the Oneida Business Committee, to draft and approve regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for the enforcement of such regulations consistent with ~~Tribal law~~the laws of the Nation.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided ~~that, the~~ Rules of Play and Oneida Gaming Minimum Internal Controls require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

§ 53 (2) Comments received from Senior Gaming Management ~~must~~shall be included
354 in any submission to the Oneida Business Committee.

355 (3) Rules of Play and Oneida Gaming Minimum Internal Controls are effective
356 upon adoption by the Commission. -

357 (4) The Commission shall provide notice of adoption of the Rules of Play and/or
358 Oneida Gaming Minimum Internal Controls to the Oneida Business Committee at
359 the next available regularly scheduled Oneida Business Committee meeting
360 following such adoption. -

361 (A) If the Oneida Business Committee has any concerns and/or requested
362 revisions upon review of the Rules of Play and Oneida Gaming Minimum
363 Internal Controls, the Commission shall work with the Oneida Business
364 Committee to address such concerns and/or requested revisions.

365 (A) (i) Unless the Oneida Business Committee repeals the Rules of
366 Play and/or the Oneida Gaming Minimum Internal Controls adopted
367 by the Commission, they will remain in effect while the
368 Commission and the Oneida Business Committee jointly work to
369 amend the Rules of Play and/or the Oneida Gaming Minimum
370 Internal Controls adopted by the Commission.

371 (i) Should the Oneida Business Committee repeal the Rules of
372 Play and/or the Oneida Gaming Minimum Internal Controls adopted
373 by the Commission, the Rules of Play and/or the Oneida Gaming
374 Minimum Internal Controls that were in effect immediately previous
375 to those repealed will be automatically reinstated and effective
376 immediately upon the repeal of the Rules of Play and/or the Oneida
377 Gaming Minimum Internal Controls adopted by the Commission.

378 (B) If the Commission does not receive written notice from the Oneida
379 Business Committee of intent to repeal or amend the Rules of Play and/or
380 the Oneida Gaming Minimum Internal Controls within thirty (30) days of
381 the date the Oneida Business Committee is provided notice of the Rules of
382 Play and/or the Oneida Gaming Minimum Internal Controls adopted by the
383 Commission, they will remain in effect as adopted by the Commission.

384 (C) Should the Oneida Business Committee pursue amendments to the
385 Rules of Play and/or the Oneida Gaming Minimum Internal Controls
386 adopted by the Commission, the amendments ~~must~~shall be completed
387 through one (1) of the following actions within six (6) months from the date
388 the amendments are initiated by the Oneida Business Committee:

389 (i) if the Commission and the Oneida Business Committee reach an
390 agreement as to the content of the amendments, the Commission
391 ~~must~~shall adopt revised Rules of Play and/or the Oneida Gaming
392 Minimum Internal Controls that have been discussed with and
393 agreed upon by the Oneida Business Committee; or

394 (ii) if the Commission and the Oneida Business Committee do not
395 reach an agreement as to the content of the amendments, the Oneida
396 Business Committee may adopt revised Rules of Play and/or the
397 Oneida Gaming Minimum Internal Controls that incorporate the
398 amendments it deems necessary.

(D) If revised Rules of Play and/or Oneida Gaming Minimum Internal Controls are not adopted by either the Commission or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls originally adopted by the Commission will remain in effect.

~~-(e)~~ To prepare proposals, including budgetary and monetary proposals, which might enable the ~~Tribe~~Nation to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto;~~;~~; provided~~,~~, that~~,~~, all photocopies of documents ~~must~~shall be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

(k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.

(l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with ~~Tribal law~~the Nation's laws and practices.

(m) To arbitrate, negotiate, or settle any dispute to which it is a party~~,~~, and which relates to its authorized activities.

(n) To act as the designated agent to receive all regulatory notices not included in section ~~24~~501.5-6 ~~of this Ordinance.~~

(o) To investigate all Regulatory Incidents.

(p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.

(q) To make determinations regarding suitability for licensing.

(r) To establish an administrative structure by regulation to carry out its authority and responsibilities.

(s) To establish, where needed, additional processes for conducting licensing hearings by regulation.

(t) To establish and collect fees for processing License applications by regulation.

(u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.

(v) To establish and impose a fine system for findings of regulatory violations by any

Gaming Services vendor or permittee by regulation.

(w) To approve procedures that provide for the fair and impartial resolution of patron complaints.

21501.6-15. Reporting Requirements. ~~The Commission shall adhere to the following reporting requirements:~~

(a) A true, complete and accurate record of all proceedings of the Commission ~~must~~shall be kept and maintained;

(b) Complete and accurate minutes of all Commission meetings ~~must~~shall be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;

(c) Quarterly, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, ~~must~~shall be submitted to the Oneida Business Committee.

21501.6-16. Oneida Gaming Commission Personnel. ~~The Commission, or designee, shall hire an Executive Director who is~~ be responsible for the hiring and managing theof any personnel of the Commission.

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

(b) All personnel of the Commission mustshall be hired through the Tribe'sNation's regular personnel procedureprocedures and are subject to its personnel policies and salary schedules. The Executive Director and

(1) All personnel of the Commission shall meet the requirements set forth in section 21501.12-3 of this Ordinance at hiring and during employment.

21501.7. Gaming Surveillance: Powers, Duties and Limitations

21501.7-1. Purpose. ~~The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance.~~

(a) Gaming Surveillance is a department within the Commission's administrative structure and supervision ~~must~~shall be identified within the organizational chart adopted by the Commission; provided that, nothing in the designation of supervisory responsibility may be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 21501.7-3 of this Ordinance.

21501.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

21501.7-3. Surveillance personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

21501.7-4. Gaming Surveillance shall:

(a) Develop, implement and maintain written policies and procedures for the conduct

and integrity of the Surveillance Department.

(b) Develop, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.

(c) Work cooperatively with the Gaming Security Department to carry out its official duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.

(d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

21501.8. [Reserved for future use.]

21501.9. Gaming Security Department

21501.9-1. Purpose. The Gaming Security Department is a department within the Oneida Police Department. The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees and report these activities to the Oneida Police Department for further review and/or investigation. Provided that, all reports of the Gaming Security Department must be copied to the Commission.

21501.9-2. Reporting. The Oneida Police Department Internal Security Director, Gaming General Manager and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, which describes describing their responsibilities and reporting requirements under this Ordinance.

21 (a) When investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority.

501.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

21501.9-4. Investigations. This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

21501.10. Background Investigations

21501.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

21501.10-2. Background Investigations mustshall be conducted on all persons or entities as specified under this Ordinance. -

(a) All Background Investigations mustshall be conducted to ensure that the TribeNation in its Gaming Operations may not employ or contract with persons whose prior activities,

or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming. ~~The identity of any person interviewed in order to conduct a Background Investigation must be confidential.~~

21 (1) The identity of any person interviewed in order to conduct a Background Investigation shall be confidential.

501.11. Licenses, Generally

21501.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License.

(a) All Gaming Employees, Gaming Services vendors, and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity. All Gaming Facilities must be licensed by the Oneida Business Committee.

21 (b) All Gaming Facilities shall be licensed by the Oneida Business Committee.

501.11-2. *Temporary License.*— All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant. ~~Such~~

(a) A temporary license, as defined in this section, permits the Licensee to engage in such activities and pursuant to any terms and conditions imposed and specified by the Commission. The

(b) A temporary license is valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

21501.11-3. *Revocable.*— A License is revocable only in accordance with the procedures set forth in this Ordinance.

(a) A Licensee has only those rights and protections regarding a License granted in this Ordinance.

21501.11-4. *All Applicants:*

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the ~~Tribe~~Nation and are subject to all applicable ~~Tribal~~Oneida, Federal, and State laws, regulations, and/or policies.

21501.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

21501.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend, or condition a License.

21501.11-7. *Commission Licensing Actions.*— The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance. ~~Authority to place conditions on a License may be exercised only upon promulgation of regulations.~~

21 (a) Authority to place conditions on a License may be exercised only upon promulgation of regulations.

501.11-8. *Noncompliance.*— The Commission may issue a notice of noncompliance when the

Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions.

~~(a)~~ Such regulations ~~must~~shall include procedures for appeal of such notices. Regulations and may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

~~21501~~.12. Gaming Employee License

~~21501~~.12-1. *Scope of Section.* -This section applies only to Gaming Employee Licenses and licensing actions.

~~21501~~.12-2. *License Application.* - Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which ~~must~~shall certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference, who ~~were~~was acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections~~sub-sections~~ (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). ~~The Commission is the agency that takes the fingerprints.~~

(1) The Commission is the agency that takes the fingerprints.

(n) Any other information the Commission deems relevant for a Gaming Employee License.

(o) A statement that each Applicant has read and understands notices and the NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) Fraud and False Statements Act; and

(3) Fair Credit Reporting Act.

21501.12-3. License Qualifications. ~~No~~ License may be granted if the Applicant:

(a) Is under the age of eighteen (18).

(b) Unless pardoned for activities under this subsection by the TribeNation, or pardoned for activities under this subsection by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for activities under this subsection by the state or Federal government, has been convicted of, or entered a plea of guilty or no contest to, any of the following:

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of ~~chs. Chapters~~ 562 or 565, Wis. Stats., of the Wisconsin Statutes, any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming, or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of ~~Tribe~~the Nation's law ~~regulating~~that regulates the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(c) Is determined to be a person whose prior activities, criminal record, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of Gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming Activities or the carrying on of the business and financial arrangements incidental thereto.

(d) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor, or he or she has any personal, business, or legal relationship which places him or her in a conflict of interest as defined in this Ordinance or the Nation's Conflict of Interest ~~Policy~~law.

(e) Each person licensed as a Gaming Employee has a continuing obligation to inform the Commission immediately upon the existence of any circumstance or the occurrence of any event which may disqualify him or her from being licensed as a Gaming Employee.

(1) Failure to report any such occurrence may result in suspension or revocation of the Gaming Employee's License.

21501.12-4. Initial Eligibility Determination.

(a) Based on the results of the preliminary Background Investigation, the Commission shall make an initial determination regarding an Applicant's eligibility and either:

(1) Grant a temporary license, with or without conditions, to the Applicant; or

(2) Deny the License application and provide notice to the Applicant that he or she may request a hearing regarding the decision consistent with subsection (b)

below.

(b) If the Commission determines that an Applicant is ineligible for a License, the Commission shall notify the Applicant.

(1) The Commission shall set forth regulations for an Applicant to review any information discovered during the preliminary Background Investigation prior to scheduling a hearing under section 21.12-10. The suspension or revocation hearing provisions set forth at section 21.12-9 do not apply to Initial Eligibility Determinations. 501.12-10 of this Ordinance.

21 (2) The suspension or revocation hearing provisions set forth at section 501.12-9 of this Ordinance do not apply to Initial Eligibility Determinations.

501.12-5. Eligibility Determination and Notification to NIGC. -When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) Require the Gaming Employee to submit a completed application for employment that contains the notices and information listed in section 21.12-2 of this Ordinance;

(b) Review the Background Investigation of the Gaming Employee-;

(1) Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(c) Create an investigative report based on each Background Investigation performed-;

(1) The investigative report mustshall include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Gaming Employee begins employment at a Gaming Facility, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System. The notice of results must include the following, provided that any additional or alternate information must be forwarded as directed in regulations or rules adopted by NIGC-; and

(1)- The notice of results shall include the following, provided that any additional or alternate information shall be forwarded as directed in regulations or rules adopted by the NIGC:

(A) The Gaming Employee's name, date of birth, and social security number. Social Security Number;

(2)- (B) The date on which the Gaming Employee began employment-;

(3)- (C) A summary of the information presented in the investigative report, including:

(A)- (i) License(s) that have previously been denied;

(B)- ii) Gaming licenses that have been revoked, even if subsequently reinstated;

(C) iii) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application; and

(D) iv) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.

(4)- a (D) A copy of the eligibility determination made under section 21.12-

5 ~~(b)~~ (c) of this Ordinance.

(e) ~~-~~ All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission ~~must~~ shall be retained in the Commission's files for a period of at least three (3) years from the date the Gaming Employee's employment is terminated.

21501.12-6. License Issuance. ~~-~~ The Commission may issue a License to a Gaming Employee at any time after providing the NIGC with a notice of results as required under section 21501.12-5(d) ~~(c)~~ of this Ordinance; however, a Gaming Employee who does not have a License ninety (90) days after the start of employment ~~must~~ shall have his or her employment terminated.

(a) The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

~~(a)-b)~~ Any Gaming Employee License issued under this section is effective from the date of issuance and ~~must~~ shall contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective.

(1) If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License.

(c) The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

21501.12-7. Requirement to Wear License. ~~-~~ During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

21501.12-8. NIGC Review.

(a) ~~-~~ During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 21501.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee.

(1) Such a request suspends the thirty (30) day period until the Chairman receives the additional information.

(b) ~~-~~ If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) ~~-~~ If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC.

(1) The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 21501.12-9 of this Ordinance.

(d) ~~-~~ Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 21501.12-9 of this Ordinance.

21501.12-9. Suspension or Revocation of Licenses. ~~-~~ Except as provided in section 21501.12-8(d) or 21501.12-9(c) ~~(c)~~ of this Ordinance, no License may be suspended or revoked except after notice

and opportunity for hearing.

(a) *Basis for Licensing Action.* -The Commission may suspend, condition, or revoke any License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section ~~24~~501.12-3 of this Ordinance; or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension;

(2) The Commission issues a written notice of suspension demonstrating that the Licensee:

(A) Has knowingly made a materially false or misleading statement in any application for a License, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any ~~gaming activity~~Gaming Activity operated in violation of the Compact, ~~Tribal Oneida~~ or federal law, and this Ordinance;

(C) ~~Has bribed or~~ attempted to bribe, or has received a bribe from, a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(D) Has falsified any books or records relating to any transaction connected with the operation of a Gaming Activity;

(E) Has refused to comply with any lawful directive of the ~~Tribal~~Tribe, ~~the Nation~~, Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* -The Commission's notice of suspension ~~must~~shall be in writing and ~~must~~shall, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to present documents and witness testimony at that hearing, and to be represented by counsel;

(3) The specific grounds upon which the proposed licensing action is based, including citations to relevant sections of this Ordinance, the IGRA, and any applicable ~~Regulations~~regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's hearing.

(c) *Immediate Suspension.* -If, in the judgment of the Commission, the public interest, and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee, the Commission may immediately suspend a License prior to the conduct of a hearing on the matter.

(1) Such an immediate suspension may take effect upon service of the notice of immediate suspension.

(d) Any notice of suspension or notice of immediate suspension ~~must~~shall set forth the times and dates for when the Licensee may review his or her file and the date for a hearing on any proposed licensing action.

(e) Within fifteen (15) business days after a hearing, the Commission shall issue a final written licensing decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License. -

(1) If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section ~~21501.12-8(d)~~ or ~~21501.12-9(a)(1)~~ of this Ordinance, the Commission shall forward a copy of its decision to the NIGC within forty-five (45) days of receiving the NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Tribe's administrative procedures law~~ Nation's Administrative Procedures Act shall apply.

~~21501.12-10.~~Original Hearing Body. - Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Licensee may file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section ~~21501.12-4~~ or ~~21501.12-9(a)~~ of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing. The

(c) Those Commissioners serving on the original hearing body may not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled.

(d) The Commission may ~~determine~~decide to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration. -

(1) The Commission may also, in its sole discretion, grant oral ~~argument.~~ arguments.

(e) The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing. ~~The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.~~

~~21~~(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

~~501.12-11.~~Notice to Oneida Business Committee. -Prior to any suspension or revocation of a License of the ~~gaming general manager~~Gaming General Manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

~~21501.12-12.~~Record of Proceedings. -The Commission shall maintain a complete and accurate record of all licensure proceedings.

~~21501.12-13.~~Revocation of a License is solely limited to the licensing matter.- Employment related processes resulting from revocation of a License are determined solely through the personnel processes and procedures of the ~~Tribe~~Nation and are not licensing matters governed by this Ordinance.

21501.13. Gaming Services Licensing and Non-Gaming Services Permitting

21501.13-1. *Scope of Section.* This section applies to all individuals and entities providing Gaming Services.

(a) The requirements of this Section are in addition to, and do not alter or amend any requirements imposed by the ~~Oneida~~Nation's Vendor Licensing Law².

21501.13-2. *Gaming Services License or Non-Gaming Services Permit Required.*

(a) *Gaming Services License.*— Any Gaming Services vendor providing Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation shall possess a valid Gaming Services License.

(b) *Non-Gaming Services Permit.*— Any vendor providing non-gaming related goods or services to the Gaming Operation shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section ~~must~~shall be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

21501.13-3. *Approved Gaming Services Vendor List.*— The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which is known as the Approved License and Permit List.

(a) Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

21501.13-4. *Gaming Services License/Permit Application.*— Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which ~~must~~shall provide and certify the following: ~~Provided that;~~ provided, Non-Gaming Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year are only required to file a notice of doing business with the Commission.;

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and ~~by laws~~bylaws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the ~~state~~State of Wisconsin Office

² See also Appendix 1. Vendor Licensing/Permit.

of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;
(i) Whether the Applicant has been licensed in the ~~state~~State of New Jersey, Nevada, or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such License;

(j) Whether the Applicant has been denied a License by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any License held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the ~~Tribe~~Nation to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on the application has or has had any business with the ~~Tribe~~Nation or any business or personal relationship with any of the ~~Tribe's~~Nation's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and ~~the~~ NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

~~21501.13-5.~~ Signature on Application. ~~Applications for Licenses or permits ~~must~~shall be signed by the following person:~~

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation, or ~~another~~other person to whom the authority to execute the ~~Application~~application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

~~21501.13-6.~~ Incomplete Applications.— Applications that do not contain all information requested, including proper signatures, will be considered incomplete. -

(a) Incomplete applications will not be considered by the Commission.

(b) The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application.

(1) If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

21501.13-7. *Supplemental Information.* –The Commission may, in its discretion, request supplemental information from the Applicant.

(a) Supplemental information requested by the Commission ~~must~~shall be promptly submitted by the Applicant.

(1) An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

21501.13-8. *Continuing Duty to Provide Information.* – Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction.

(a) An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to ~~the Applicant~~him or her may constitute grounds to deny, suspend or revoke a License or permit.

21501.13-9. *Background Investigations.* –Background Investigations for Gaming Services vendors ~~must~~shall be conducted as follows:

(a) *Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* –The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.

(b) *Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually.* –The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation; and shall conduct any necessary additional Background Investigation to ensure that the ~~state~~State background investigation is complete and current.

(c) *Other Non-Gaming Related Goods and/or Services Gaming Services Vendors.* – The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications. ~~The random selection process must be identified by regulation of the Commission.~~

21 (1) The random selection process shall be identified by regulation of the Commission.

501.13-10. *Licensing Action in a Foreign Jurisdiction.* –If the ~~states~~States of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction ~~refuses~~refuse to renew a License or permit, or conditions, suspends, or revokes the License or permit of an Applicant, permittee, or Licensee, such action may constitute grounds for similar action by the Commission.

21501.13-11. *Claim of Privilege.* – At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law.

(a) An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a License or permit.

21501.13-12. *Withdrawal of an Application.* – An Applicant may request to withdraw an application by submitting a written request to the Commission.

(a) The Commission retains the right, in its exclusive discretion, to grant or deny a

request for withdrawal.

(b) An Applicant who withdraws an application is precluded from ~~reapplying~~ re-applying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

21501.13-13. *Suspension or Revocation of Gaming Services Licenses or Permits.* ~~Except as provided in section 21501.13-13(c),~~ of this Ordinance, no License or permit may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing or Permitting Action.* - The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

(1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(2) Knowingly promoted, played, or participated in any Gaming Activity operated in violation of the Compact, ~~or any Tribal~~ law of the Nation, or other applicable law;

(3) Bribed or attempted to bribe a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(4) Falsified any books or records relating to any transaction connected with operation of a Gaming Activity;

(5) Refused to comply with a lawful directive of the ~~Tribal~~ Nation, the federal government, or any court of competent jurisdiction; or

(6) Been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* -The Commission shall provide a Licensee or permittee with written notice of suspension, which ~~must~~ shall, at a minimum, notify the Licensee or permittee of the following:

(1) The Licensee's or permittee's right to conduct a file review prior to any hearing regarding the notice of suspension, and to make copies of any documents in that file;

(2) The Licensee's or permittee's right to present documents and witness testimony at the hearing and to be represented by counsel;

(3) The specific grounds upon which the suspension is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's or permittee's file review and hearing.

(c) *Immediate Suspension.* -If, in the judgment of the Commission, the public interest, and effective regulation and control of others require the immediate exclusion of a Licensee or permittee, the Commission may immediately suspend a License or permit prior to a hearing on the matter. ~~Such an immediate suspension takes effect upon service of the notice of immediate suspension.~~

(1) Such an immediate suspension takes effect upon service of the notice of

immediate suspension.

(d) File Review and Hearing. –Any notice of suspension or notice of immediate suspension ~~must~~shall set forth the time and date for the Licensee or permittee to conduct a file review and for a hearing.

(e) Final Written Decision.– Within fifteen (15) business days after a hearing, the Commission shall issue a final written decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License or permit.

(f) Default.– If a Licensee or permittee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Oneida Nation's~~ Administrative Procedures Act ~~shall~~ apply.

21501.13-14. Original Hearing Body.– Any person aggrieved by a licensing or permitting decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Applicant, Licensee or permittee may file such request with the Commission in writing on or before the fifteenth (15th) day following the receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 21501.13-9 or 21501. 13 -13(a),) of this Ordinance, within thirty (30) days of the date of the filing ~~on~~of the request for an original hearing. ~~The~~

(1) Those Commissioners participating in the initial licensing or permitting decision may not participate in the original hearing.

(c) The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral ~~argument.~~ arguments.

(d) The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing. ~~The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.~~

21 (1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.14. Gaming Facility License

21501.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, must~~shall~~be conducted in a manner which adequately protects the environment and the public health and safety, and must~~shall~~comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

21501.14-2. The Oneida Business Committee must~~shall~~receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable ~~Federal and Tribal~~ health and safety standards of the Nation and Federal government.

(1) To show compliance with applicable health and safety standards, Gaming

Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof ~~must~~shall be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable ~~federal and Tribal~~ environmental standards of the Nation and Federal government.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof ~~must~~shall be submitted by Gaming Operator that Remediation of the Gaming Facility is being actively sought which will place the Gaming Facility in compliance with the applicable standards.

21501.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant.

(a) The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

21501.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility.

(a) The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 21501.14-2 of this Ordinance.

21501.15. Gaming Operator License

21501.15-1. Consent to Jurisdiction. ~~The application for License and the conduct of Gaming within the jurisdiction of the ~~Tribal~~Nation is considered consent to the jurisdiction of the ~~Tribal~~Nation in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other ~~Tribal~~laws of the Nation.~~

21501.15-2. License Required. ~~No Gaming Operator may conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.~~

21501.15-3. Types of Licenses. ~~The Commission may issue each of the following types of Gaming Operator Licenses:~~

(a) Tribally-Owned or Tribally-Operated Class II. ~~This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.~~

(b) Tribally-Owned or Tribally-Operated Class III. ~~This License is required ~~for~~of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.~~

21501.15-4. Gaming Operator License Qualifications. ~~The Commission shall issue a Gaming Operator License to any Gaming Operation if:~~

(a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;

(b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and

(c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

21501.15-5. Provisions of General Applicability to All Gaming Operators.

(a) Site and Gaming Operator Specified.— Each Gaming Operator License may be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.

(b) License Not Assignable.—No Gaming Operator License may be sold, lent, assigned or otherwise transferred.

(c) Regulations Posted or Available.—Each Gaming Operator ~~must~~shall have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.

(d) Display of License.—Each Gaming Operator ~~must~~shall prominently display its License at each Gaming Facility.

21501.15-6. Grandfathered Gaming Facilities.— All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

21501.15-7. License Application Fees and License Taxes.—No application fees or License taxes may be required by the ~~Tribe~~Nation for a Gaming Operator License.

21501.15-8. Closure of a Gaming Operation.— If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee.

(a) The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

21501.16. Games

21501.16-1. Class II and Class III Games are hereby authorized by this Ordinance.

21501.16-2. Gaming Procedures.—Games operated under this Ordinance ~~must~~shall be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

21501.16-3. Who May Not Play.—It is the policy of the ~~Tribe~~Nation that particular Gaming Employees, employees of the Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations.

(a) At a minimum, members of the Oneida Business Committee, the Commission, the ~~gaming general manager~~Gaming General Manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

~~(a)–(b)~~ The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities. ~~Such resolution must be on file with the Commission.~~

~~(b)–~~ (1) Such resolution shall be on file with the Commission.

(c) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities. ~~The standard operating procedure and the list of positions must be on file with the Commission.~~

21 (1) The standard operating procedure and the list of positions shall be on file with the Commission.

501.17. Allocation of Gaming Funds

21501.17-1. Net Gaming revenues may only be used for the following purposes:

- (a) To fund Tribal government operations, programs, or services of the Nation;
- (b) To provide for the general welfare of the TribeNation and its members; provided, that per capita payments may only be made pursuant to an approved revenue allocation plan;
- (c) To promote Tribal economic development of the Nation;
- (d) To contribute to charitable organizations;
- (e) To assist in funding operations of other local governments;
- (f) To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders; and
- (g) Any For any other purpose as determined by the Oneida General Tribal Council or the Oneida Business Committee which is not inconsistent with the Oneida Nation Constitution of the Tribe and IGRA.

21501.18. Audits

21501.18-1. Annual Audit. ~~An annual audit of each Gaming Operation must~~shall be conducted by an independent, certified public accounting firm according to generally accepted accounting principles. ~~Copies of the annual audit must be provided to the Oneida Business Committee, the Oneida Audit Committee, the Commission, and the NIGC by said certified public accounting firm.~~

~~(a)~~ (a) Copies of the annual audit shall be provided to the Oneida Business Committee, the Nation's Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(b) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section. Contracts for legal services and accounting services are exempt from this requirement of the Ordinance.

21 (1) Contracts for legal services and accounting services are exempt from this requirement.

501.18-2. Other Audits. ~~All audits, other than the annual audit under section 21501.18-1, must of this Ordinance, shall~~ be conducted pursuant to the OneidaNation's Internal Audit Lawlaw or any other applicable law of the TribeNation, and other audits authorized under the Compact.

21501.18-3. Request for Audits. ~~Any audit, except the annual audit whichthat is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the OneidaNation's Audit Committee.~~

21501.19. Enforcement and Penalties

21501.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

21501.19-2. Violations/Prosecutions. ~~Violators of this Ordinance may be subject to disciplinary action and, as well as~~ civil and/or criminal prosecutions.

21501.19-3. Remedies. ~~The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting~~

1224 from violations of this Ordinance.

1225

1226 *End.*

~~1227~~

1229 Adopted GTC-7-05-04-A

1230 Emergency Amended BC-7-14-04-A

1231 Amendment BC-10-06-04-D

1232 Emergency Amended BC-11-03-04-A

1233 Permanent Adoption BC-3-23-05-C

1234 Amended BC-9-23-09-D

1235 Amended BC-06-25-14-C (effective 11 01 2014)

1236 Emergency Amended BC-10-08-14-C (effective 11 01 2014)

~~1237~~ Amended BC-09-09-15-A (effective 09 09 2015)

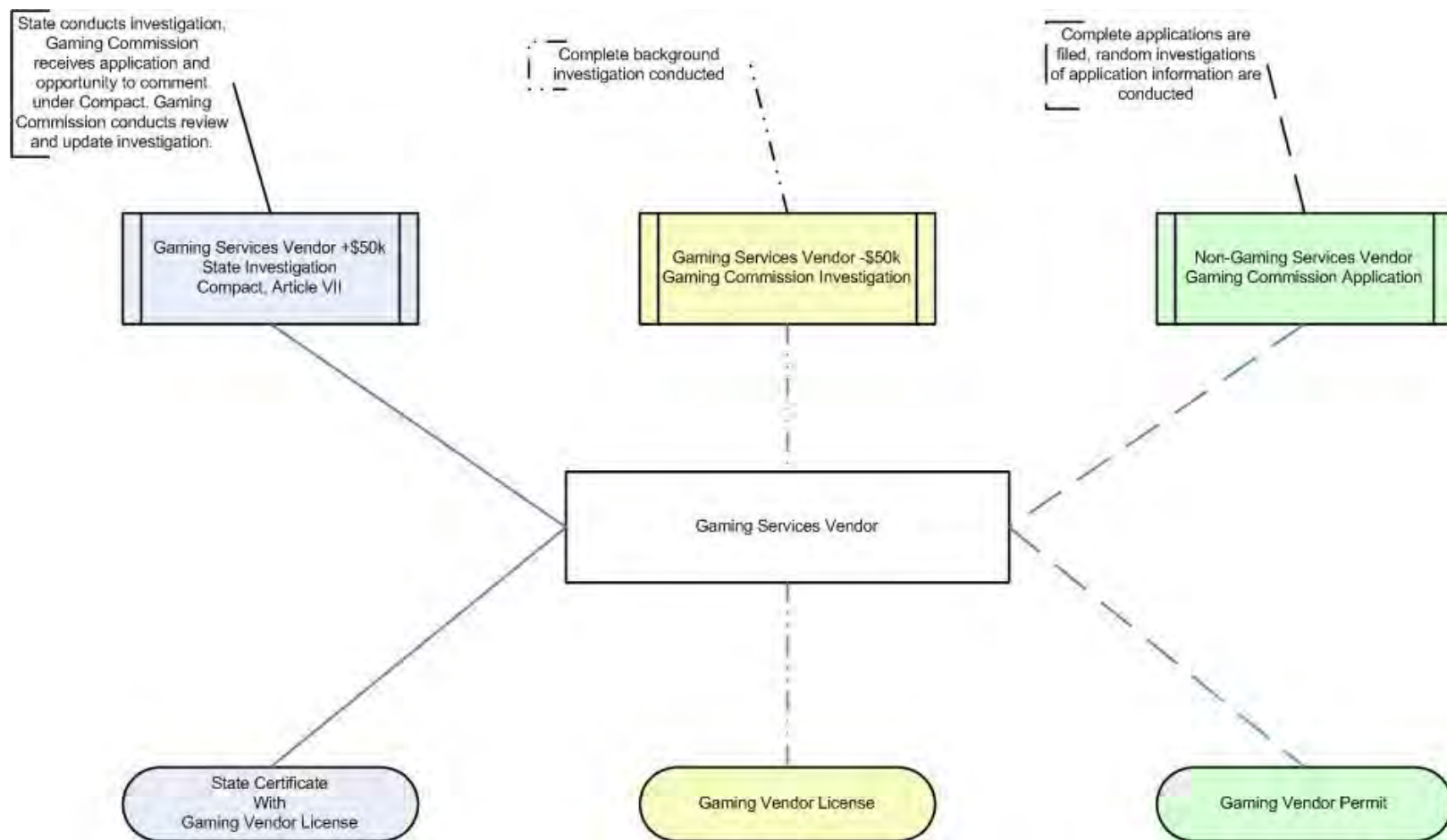
1238 Emergency Amended BC-05-12-21-D

1239 Emergency Extended BC-11-10-21-A

1240 Amended BC- - - -

Draft 2 (Redline to Last Permanent Draft BC-09-09-15-A)
2022 04 20

Appendix 1. Vendor License/Permit





EMERGENCY AMENDMENTS TO ONEIDA NATION GAMING ORDINANCE LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ To remove the legal risks associated with the Oneida Nation Gaming Ordinance's placement of the Gaming Security Department ("Security") under the Oneida Police Department within the Nation's organizational structure; ▪ Eliminate the Executive Director position within the Oneida Gaming Commission and instead provide that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of personnel of the Commission; and ▪ To make non-material changes to certain language within the Oneida Nation Gaming Ordinance that will bring it up to date with the Nation's current drafting practices.
Purpose	<ul style="list-style-type: none"> ▪ The Oneida Nation Gaming Ordinance was established to govern: <ul style="list-style-type: none"> • all Gaming Activities that occur on lands under the jurisdiction of the Nation; • all individuals or entities that engage in said Gaming Activities; and • those who provide goods or services to such individuals or entities engaged in said Gaming Activities [5 O.C. 501.1-1].
Affected Entities	Internal Security Department; Oneida Police Department, Oneida Gaming Commission, Oneida Gaming Management, Oneida Business Committee.
Related Legislation	Legislative Procedures Act, Removal Law, Administrative Procedures Act, Internal Audit law, Vendor Licensing law.
Public Meeting	A public comment period was held open until April 13, 2022. A public meeting was not held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Fiscal Impact	A fiscal impact statement has not yet been developed.
Expiration of Emergency Amendments	Emergency amendments to ONGO expire on May 12, 2022. [1 O.C. 109.9-5(b)].

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Background.** The Oneida Nation Gaming Ordinance ("ONGO") was adopted by the Oneida General Tribal Council through resolution GTC-07-05-04-A and subsequently amended by the Oneida Business Committee through resolutions BC-10-06-04-D, BC-03-23-05-C, BC-09-23-09-D, BC-06-24-14-B and BC-09-09-15-A. [5 O.C. 501.2-1]. ONGO regulates all Gaming Activities under the jurisdiction of the Oneida Nation and is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies, including, but not limited to:
- All Gaming Activities occurring on lands under the jurisdiction of the Nation;

- All individuals or entities engaged in Gaming Activities occurring on lands under the jurisdiction of the Nation; and
- All individuals or entities providing goods or services to any individual or entity who is engaged in Gaming Activities occurring on lands under the jurisdiction of the Nation. [5 O.C. 501.1-1].

B. *Emergency Amendments Adopted through Resolution BC-05-12-21-D.* On December 2, 2020, the Legislative Operating Committee added ONGO to the Active Files List per a November 10, 2020, directive from the Oneida Business Committee that it be added to address a concern raised by the Oneida Law Office over the placement of the Gaming Security Department (“Security”) within the Nation’s organizational structure under section 501.9-2 of ONGO. More specifically, the concern is that the placement of Security under the Oneida Police Department has given rise to certain legal claims that could expose the Nation to unnecessary litigation costs, regardless of merit or prevailing party, if not disposed of in an expeditious manner. Based on this concern, the Legislative Operating Committee decided to bring forward emergency amendments to section 501.9-2 of ONGO by temporarily re-assigning Security to the Oneida Business Committee, while a more appropriate permanent placement is developed and vetted within the period of time allotted for emergency amendments to be in effect under the Nation’s Legislative Procedures Act. The emergency amendments to ONGO were adopted by the Oneida Business Committee through the adoption of resolution BC-05-12-21-D. These emergency amendments to ONGO were set to expire on November 12, 2021.

C. *Emergency Amendments Extended through Resolution BC-11-10-21-A.* On November 10, 2021, the Oneida Business Committee adopted resolution BC-11-10-21-A which extended the emergency amendments to ONGO adopted through resolution BC-05-12-21-D for an additional six (6) month period effective on November 12, 2021. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the ONGO was requested to provide additional time for the Legislative Operating Committee to process the adoption of permanent amendments to the ONGO. The emergency amendments to the ONGO will now expire on May 12, 2022.

D. The Legislative Operating Committee is now seeking the permanent adoption of this amendment to the ONGO.

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of the amendments to ONGO and this legislative analysis:

- Oneida Law Office;
- Oneida Police Department;
- Internal Security Department;
- Oneida Gaming Commission;
- Gaming Management; and
- Oneida Police Commission.

B. The following laws of the Nation and bylaws were reviewed in the drafting of this analysis:

- Oneida Nation Constitution and Bylaws;
- Legislative Procedures Act;

- Oneida Gaming Commission Bylaws; and
- Internal Audit law.

SECTION 4. PROCESS

A. The amendments to ONGO have followed the process set forth in the Legislative Procedures Act:

- On December 2, 2020, the Legislative Operating Committee added ONGO to its Active Files List.
- On May 12, 2021, the Oneida Business Committee adopted an emergency amendment to ONGO through the adoption of resolution BC-05-12-21-D to address the organization of Security.
- On November 10, 2021, the Oneida Business Committee extended the emergency amendments to the Law for an additional six (6) month period through the adoption of resolution BC-11-10-21-A.
- On March 16, 2022, the Legislative Operating Committee approved the draft of permanent amendments to ONGO and the legislative analysis, and directed that a public comment period be held open for the proposed amendments to ONGO until April 13, 2022.
- On April 13, 2022, the public comment period for the ONGO amendments closed. One (1) submission of written comments was received during the public comment period.
- On April 20, 2022, the Legislative Operating Committee accepted the public comments and the public comment review memorandum and deferred these items to a work meeting for further consideration. Later that morning the Legislative Operating Committee reviewed and considered the public comments received.

B. The following work meetings were held by the Legislative Reference Office in the development of the emergency amendments to ONGO:

- January 7, 2021: Work meeting with Oneida Law Office.
- January 14, 2021: LOC work meeting.
- February 19, 2021: LOC work meeting with Oneida Gaming Commission, Oneida Police Department, Internal Security Department, Gaming Management, Oneida Law Office, and Oneida Police Commission.
- February 25, 2021: LOC work meeting.
- March 11, 2021: LOC work meeting with Oneida Law Office.
- April 7, 2021: LOC work meeting.
- April 29, 2021: LOC work meeting.
- May 19, 2021: LOC work meeting.
- June 20, 2021: Work meeting with Oneida Gaming Commission, Oneida Police Department, Internal Security Department, Oneida Law Office.
- September 1, 2021: LOC work meeting.
- October 6, 2021: LOC work meeting.
- October 22, 2021: Work meeting with Oneida Gaming Commission, Oneida Police Department, Oneida Police Commission.
- December 9, 2021: LOC work meeting.
- December 15, 2021: LOC work meeting.
- December 21, 2021: LOC work meeting with the Oneida Police Department and Conservation.
- January 28, 2022: Work meeting with Oneida Police Commission
- March 10, 2022: LOC work meeting.
- April 20, 2022: LOC work meeting.

95 **C. COVID-19 Pandemic's Effect on the Legislative Process.** The world is currently facing a pandemic
96 of COVID-19. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well
97 as vast economic impacts including effects on the stock market and the closing of all non-essential
98 businesses. A public meeting for the proposed amendments to the Law will not be held due to the
99 COVID-19 pandemic, but a public comment period for the submission of written comments will be
100 held open.

101 ▪ *Declaration of a Public Health State of Emergency.*

102 ▪ On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State*
103 *of Emergency*” regarding the COVID-19 pandemic which declared a Public Health State
104 of Emergency for the Nation until April 12, 2020, and set into place the necessary authority
105 for action to be taken and allows the Nation to seek reimbursement of emergency
106 management actions that may result in unexpected expenses.

107 ▪ The Public Health State of Emergency has since been extended until March 24, 2022, by
108 the Oneida Business Committee through the adoption of resolutions BC-03-28-20-A, BC-
109 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-
110 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-
111 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-
112 F, and BC-01-12-22-B.

113 ▪ *COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the*
114 *Legislative Procedures Act.*

115 ▪ On March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a
116 “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which
117 suspended the Legislative Procedures Act's requirement to hold a public meeting during
118 the public comment period, but allows members of the community to still participate in the
119 legislative process by submitting written comments, questions, data, or input on proposed
120 legislation to the Legislative Operating Committee via e-mail during the public comment
121 period.

122 ▪ *Oneida Business Committee Resolution BC-12-8-21-B, Updating Public Gathering Guidelines*
123 *During Public Health State of Emergency - COVID-19.*

124 ▪ On December 8, 2021, the Oneida Business Committee adopted resolution BC-12-08-21-
125 B, *Updating Public Gathering Guidelines During Public Health State of Emergency -*
126 *COVID-19*, which superseded Oneida Business Committee resolution BC-08-13-21-A,
127 *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-*
128 *19*, and provides updated guidelines on holding meetings both indoors and outdoors.

129 ▪ This resolution provides that when the following levels are met, indoor meetings of the
130 Nation are feasible, provided that all organizers and participants should consider additional
131 health safety measures when attending such as wearing a face mask, washing hands
132 frequently, and social distancing:

133 ▪ When COVID-19 Case Activity rates are at or below low in Brown and Outagamie
134 Counties, or the county in which the activity is being held, as identified on the
135 Wisconsin Department of Health Services website for the most recent period.

136 ▪ When COVID-19 Percent Positive rates are at or below low in Brown and
137 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 designated ZIP Codes 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.

- *Conclusion.*

- At the point in time the public comment period was scheduled, the conditions for holding an indoor public gather provided for in resolution BC-12-08-21-B had not been met. Although a public meeting was not held on the proposed amendments to ONGO, a public comment period was still held open until April 13, 2022, in accordance with resolution BC-12-08-21-B and the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Removal of Security from the Oneida Police Department. Previously, section 501.9-1 of ONGO provided that the Gaming Security Department is a department within the Oneida Police Department. The proposed amendment to section 501-9-1 of ONGO will remove the statement that the Gaming Security Department is a department of the Oneida Police Department. [5 O.C. 501.9-1]. Although ONGO will no longer provide that the Security Department is a department within the Oneida Police Department, with respect to the Oneida Police Department, ONGO will now provide that when investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority. [5 O.C. 501.9-2(a)]. The requirement that all reports of the Gaming Security Department must be copied to the Oneida Gaming Commission previously found in section 501.9-1 was removed from ONGO due to concerns raised by the Oneida Police Department regarding confidentiality of on-going investigations. Reference to the Oneida Police Department in section 501.9-2 was also removed and replaced with the Security Director in regard to the responsibility to collaborate with the Gaming General Manager and Oneida Gaming Commission to enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under ONGO. [5 O.C. 501.9-2].

- *Effect.* The proposed amendments will remove the legal risks associated with Security's placement under the Oneida Police Department. The emergency amendments previously made to ONGO through resolutions BC-05-12-21-D and BC-11-10-21A provided that the Oneida Business Committee shall be responsible for the supervision, as well as oversight, of the Gaming Security Department and the Gaming Security Department shall report directly to the Oneida Business Committee per the process and schedule set by the Oneida Business Committee. It is the intent of the Legislative Operating Committee that the adopting resolution for these proposed amendments will include a provision that the Oneida Business Committee remain as the body responsible for supervision and oversight of the Security Department until such a time as the Oneida Nation Law

Enforcement Ordinance can be amended to expand and transition the Oneida Police Commission to a Public Safety Commission which will oversee the Security Department along with the Oneida Police Department, Conservation Wardens, and any other safety focused department in the future.

B. *Oneida Gaming Commission Personnel.* Previously, section 501.6-16 of ONGO provided that the Oneida Gaming Commission shall hire Executive Director who is responsible for hiring and managing the personnel of the Commission. The proposed amendments to ONGO remove the requirement that the Oneida Gaming Commission have an Executive Director, and instead provides that the Oneida Gaming Commission, or designee, shall be responsible for the hiring and managing of any personnel of the Commission. [5 O.C. 501.6-16].

- *Effect.* The proposed amendment to ONGO allows for more flexibility in evaluating the personnel needs of the Oneida Gaming Commission. The Executive Director position was furloughed in March 2020 during the Nation's initial COVID-19 shutdown. The Oneida Gaming Commission's initial request to bring back the Executive Director from furlough was denied. In the absence of the Executive Director, the Oneida Gaming Commission has since performed the Executive Director's responsibilities. The removal of the Executive Director position ONGO will allow the Oneida Gaming Commission the ability to evaluate the personnel needs of the Gaming Commission and hire as necessary, without any concerns with compliance with ONGO if an Executive Director is not hired.

C. *Minor Drafting Changes.* Additional non-material drafting and formatting changes have been made throughout the Law to update the language and drafting style in ONGO to be consistent with the Nation's current drafting practices.

SECTION 6. EXISTING LEGISLATION

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

- *Oneida Nation Law Enforcement Ordinance.* The purpose of the Oneida Nation Law Enforcement Ordinance is to regulate the conduct of the Nation's law enforcement personnel according to the highest professional standards . [3 O.C. 301.1-1].
 - The Legislative Operating Committee is currently developing amendments to the Oneida Nation Law Enforcement Ordinance to expand and transition the Oneida Police Commission to a broader Oneida Public Safety Commission. It is the intent that the Oneida Public Safety Commission would oversee the Oneida Police Department, the Security Department, the Conservation Wardens and any future safety focused departments of the Nation.

SECTION 7. OTHER CONSIDERATIONS

A. *Deadline for Permanent Adoption of Amendments.* The emergency amendments to ONGO will expire on May 12, 2022. There is no more opportunity for an extension of these emergency amendments.

- *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of permanent amendments to ONGO prior to May 12, 2022.

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 has not yet requested that a fiscal impact statement for the amendments to ONGO be developed.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54255-0365
Oneida-nsn.gov



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: April 20, 2022
RE: Oneida Nation Gaming Ordinance Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Oneida Nation Gaming Ordinance. 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 April 20, 2022, the Legislative Operating Committee approved the final draft of the proposed amendments to the Oneida Nation Gaming Ordinance. Therefore, the LOC is directing the Finance

Department to provide a fiscal impact statement on the proposed amendments to the Oneida Nation Gaming Ordinance by May 3, 2022.

The current emergency amendments to the Oneida Nation Gaming Ordinance expire on May 12, 2022. Therefore, the Legislative Operating Committee intends to bring the proposed amendments to the Oneida Nation Gaming Ordinance to the Oneida Business Committee for consideration on May 11, 2022. In order to meet that deadline, the adoption materials for the Oneida Nation Gaming Ordinance amendments will need to be included on the May 4, 2022, Legislative Operating Committee meeting agenda for approval. The Legislative Operating Committee intends to include the fiscal impact statement for the Oneida Nation Gaming Ordinance amendments as a handout for the May 4, 2022, Legislative Operating Committee meeting. Your effort in assisting the Legislative Operating Committee in meeting these deadlines is greatly appreciated.

A copy of the proposed amendments to the Oneida Nation Gaming Ordinance, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed amendments to the Oneida Nation Gaming Ordinance by May 3, 2022.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
Oneida-nsn.gov


















Legislative Operating Committee FY2022 Second Quarter Report

Work completed January 1, 2022 – March 31, 2022

Active Files List As of 3/31/2022

Name of Legislation	Development	Public Input	GTC/OBC Consideration or Adoption
Audit Committee Bylaws Amendments			
Budget Management and Control Law Amendments			
Business Corporations Law			
Children's Code Amendments			
Code of Ethics Law Amendments			
Community Support Fund Law Amendments			
Credit Collections Law Amendments			
Drug and Alcohol-Free Law for Elected and Appointed Officials			
Early Return to Work Law Emergency Amendments <i>Emerg. Expired 11/12/21</i>			
Election Law Emergency Amendments <i>Emerg. Expired 10/28/21</i>			
Elder Assistance Program Law			
Emergency Management and Homeland Security Law Amendments			
Endowments Law			
Environmental Review Law			
Fire Signs Law			
Furlough Law Amendments			
GTC Meeting Stipends Payment Policy Emergency Amendments <i>Emerg. Expired 4/8/21</i>			
Guardianship Law			
Industrial Hemp Law			
Investigative Leave Policy Amendments			
Law Enforcement Ordinance Amendments			
Layoff Policy Amendments			
Local Land Use Regulation Reimbursement Policy Repeal			
Marijuana Law			
Misappropriations of Funds Law			
Oneida General Welfare Law			
Oneida Higher Education Pandemic Relief Fund Law Emergency Amendments <i>Emerg. Expired 8/24/21</i>			
Oneida Land Trust Law			
Oneida Nation Arts Board Bylaws Amendments			
Oneida Nation Emergency Planning Committee Bylaws			
Oneida Nation Gaming Ordinance Amendments <i>Emerg. Expires 5/12/21</i>			
Oneida Nation Veterans Affairs Committee Bylaws Amendments			

Oneida Personnel Policies and Procedures Amendments <i>Emerg. Expires 5/12/22</i>	
Oneida Worker's Compensation Law Emergency Amendments <i>Emerg. Expires 11/12/21</i>	
Oneida Trust Enrollment Committee Bylaws	
Pandemic Relief Assistance Law <i>Emerg. Expired 5/24/21</i>	
Pardon and Forgiveness Law Emergency Amendments <i>Emerg. Expires 4/28/22</i>	
Pardon and Forgiveness Screening Committee Bylaws Amendments	
Public Peace Law	
Real Property Law Amendments	
Recycling and Solid Waste Disposal Law Amendments	
Sanctions and Penalties Law	
Taxation Law	
Traffic Law	
Tribal Sovereignty in Data Research Law	
Wellness Court Law	
Workplace Violence Law Amendments	

Legislative Operating Committee Action on Legislative Requests

During the FY22 Second Quarter the Legislative Operating Committee added two (2) legislative items to its Active Files List. No requests were denied during the FY22 Second Quarter.

Items Added to the Active Files List by the Legislative Operating Committee

On February 16, 2022, the Legislative Operating Committee added the Oneida Nation Veterans Affairs Committee bylaws amendments to its Active Files List.

Then on March 16, 2022, the Legislative Operating Committee added the Oneida Nation Emergency Planning Committee bylaws amendments to its Active Files List.

FY21 Second Quarter Legislative Accomplishments

The Legislative Operating Committee brought forward the following legislation for adoption or amendment during the FY22 Second Quarter:

Furlough Law Amendments

The purpose of the Furlough law is to enable the Nation to implement a furlough as a tool to remedy an operating deficit when a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave is identified. [2 O.C. 205.1-1; 2 O.C. 205.1-2]. The amendments to the Furlough law:

- Incorporated Indian preference into the Law and require that it be applied to the Nation's furlough programs in accordance therewith [2 O.C. 205.1-1(c)];
- Added priority levels to govern the order for placing into furlough status and recalling back to work those employees who remain after the application of Indian preference [2 O.C. 205.7-3];
- Clarified the process for preparing, initiating and implementing a furlough program by, in pertinent part:

- Setting conditions and clear procedures, as well as express prohibitions, for when and how a furlough program may be initiated by the OBC [2 O.C. 205.5];
- Setting conditions and clear procedures for how a furlough program will be implemented by the Nation, once initiated [2 O.C. 205.6]; and
- Assigning responsibilities to specific persons/entities for carrying out certain activities in accordance with the Law [2 O.C. 205.10].
- Required that a furlough be initiated as either an emergency or administrative program and then carried out in accordance therewith [2 O.C. 205.6-3];
- Allow the OBC to establish an ad hoc committee, made up of employees of the Nation, to assist in the implementation of a furlough program [2 O.C. 205.6-2]; and
- Added more due process to the Law by:
 - Specifying how notice must be provided to employees of the Nation who are subject to a furlough program [2 O.C. 205.6-3];
 - Requiring the Human Resources Department to add training on Indian preference to its employee orientation program that includes, at a minimum:
 - The history behind Indian preference, including the role the Bureau of Indian Affairs (“BIA”) had in its development;
 - 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 for Indian preference; and
 - Examples of how Indian preference would apply to a furlough program using methods such as hypotheticals and charting [2 O.C. 205.4-4].
 - Requiring Direct Report Level positions/supervisors, who are responsible under the Law for carrying out some or all of a furlough program, to undergo training on the application of the Law every two (2) years [2 O.C. 205.10-1]; and
 - Broadening the scope of claims that an employee placed in furlough status can bring on appeal under the Law [2 O.C. 205.11].

The LOC developed the amendments to the Law through collaboration with representatives from the Human Resources Department, General Manager – Retail, Employee Relations Department and Gaming Employee Services. The LOC held sixteen (16) work meetings on the development of this Law.

The Oneida Business Committee adopted the amendments to the Furlough law on February 9, 2020, through the adoption of resolution BC-02-09-22-A.

FY22 Second Quarter Administrative Accomplishments

The Legislative Operating Committee did not bring forward any administrative items during the FY22 Second Quarter.

FY22 Second Quarter Legislative Highlights

The Legislative Operating Committee would like to highlight its work on the following legislative items during the FY22 Second Quarter:

Budget Management and Control Law Amendments

The Legislative Operating Committee held five (5) work meetings during the FY22 Second Quarter on the development of amendments to the Budget Management and Control law. The work meetings were held in collaboration with the Assistant Chief Financial Officer and Budget Analyst. The public comment period for the proposed amendments to the Budget Management and Control law was held open until February 2, 2022, for the submission of written comments. One (1) submission of written comments was received during the public comment period. On February 16, 2022, the Legislative Operating Committee accepted the public comments and the public comment review memorandum and deferred these items to a work meeting for further consideration. The Legislative Operating Committee then reviewed and considered the public comments received that same day. On March 16, 2022, the Legislative Operating Committee accepted the updated public comment review memorandum, approve the updated draft and legislative analysis with noted change to section 121.8-2 of the Law, and approved the fiscal impact statement request memorandum and forwarded to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by April 14, 2022.

Children's Code Amendments

The Legislative Operating Committee held one (1) work meeting during the FY22 Second Quarter on the proposed amendments to the Children's Code. The work meeting was held in collaboration with the Oneida Law Office.

Elder Assistance Program Law

The Legislative Operating Committee held seven (7) work meetings during the FY22 Second Quarter on the proposed Elder Assistance Program law. These work meeting were held in collaboration with the Oneida Law Office, Trust Enrollments Department, Chief Financial Officer, Oneida Trust Enrollment Committee, and Oneida Business Committee. On March 2, 2022, the Legislative Operating Committee accepted the draft of the Elder Assistance Program law and deferred to a work meeting for further discussion. Then on March 16, 2022, the Legislative Operating Committee approved the updated draft of the Elder Assistance Program law and directed that a legislative analysis be developed.

Law Enforcement Ordinance Amendments

The Legislative Operating Committee held one (1) work meetings during the FY22 Second Quarter on the proposed amendments to the Law Enforcement Ordinance. This work meeting was held in collaboration with the Oneida Police Commission.

Oneida Nation Gaming Ordinance Amendments

The Legislative Operating Committee held two (2) work meetings during the FY22 Second Quarter on the amendments to the Oneida Nation Gaming Ordinance (ONGO). The work meetings were held in collaboration with the Oneida Police Commission. On March 16, 2022, the Legislative Operating Committee approved the draft and legislative analysis of the amendments to ONGO and directed that a public comment period be held open for the proposed amendments to ONGO until April 13, 2022.

Oneida Personnel Policies and Procedures Emergency Amendments

The Legislative Operating Committee held two (2) work meetings during the FY22 Second Quarter on the permanent amendments to the Oneida Personnel Policies and Procedures. The work meetings were held in collaboration with the Human Resources Department.

Healing to Wellness Court Law

The Legislative Operating Committee held four (4) work meetings during the FY22 Second Quarter on the Healing to Wellness Court law. The work meetings were held in collaboration with the Oneida Nation Trial Court, Wellness Court Coordinator, and Oneida Police Department. On February 16, 2022, the Legislative Operating Committee approved the draft of the Healing to Wellness Court law and directed that a legislative analysis be developed. On March 16, 2022, the Legislative Operating Committee approved the legislative analysis for the Healing to Wellness Court law.

FY22 Second Quarter Legislative Operating Committee Meetings

Typically, all Legislative Operating Committee meetings are open to the public and held on the first and third Wednesday of each month, at 9:00 a.m. in the Norbert Hill Center's Business Committee Conference Room.

Due to the COVID-19 pandemic and the Nation's Public Health State of Emergency, the Legislative Operating Committee meetings were closed to the public during the FY22 Second Quarter. Oneida Business Committee resolution BC-12-08-21-B, *Updating Public Gathering Guidelines during Public Health State of Emergency - COVID-19*, requires that Legislative Operating Committee meetings be closed to the public due to the Nation's Public Health State of Emergency 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.

Employees of the Nation are provided the opportunity to attend the Legislative Operating Committee meeting through Microsoft Teams. An audio recording of the Legislative Operating Committee meeting is made available on the Nation's website after the meeting concludes. Any non-employee who would like to access the Legislative Operating Committee meeting through Microsoft Teams can provide their name, phone number or e-mail address to LOC@oneidanation.org by the close of business the day before a meeting of the Legislative Operating Committee to receive the link to the Microsoft Teams meeting. Additionally, any individual who has comments or questions regarding open session items on a Legislative Operating Committee meeting agenda may submit the comments or questions to LOC@oneidanation.org no later than the close of business the day prior to any Legislative Operating Committee meeting. Any

comments received are noticed to the Legislative Operating Committee.

The Legislative Operating Committee held the following meetings during the FY22 Second Quarter:

- January 19, 2022 – Regular meeting;
- February 2, 2022 – Regular meeting;
- February 16, 2022 – Regular meeting;
- March 2, 2022 – Regular meeting;
- March 16, 2022 – Regular meeting.

The January 5, 2022, Legislative Operating Committee meeting was canceled.

Goals for FY22 Third Quarter

During the FY22 Third Quarter the Legislative Operating Committee will focus its legislative efforts on the following matters:

1. Adoption of the Budget Management and Control law;
2. Adoption of the amendments to the Oneida Nation Gaming Ordinance;
3. Extension of emergency amendments to the Oneida Personnel Policies and Procedures;
4. Public meeting for the amendments to the Children's Code;
5. Public meeting for the Healing to Wellness Court law; and
6. Public meeting for the Elder Assistance Program law.

Legislative Reference Office

The Legislative Reference Office's mission is to provide support for the Legislative Operating Committee in developing clear and consistent legislation that reflects the Nation's values, builds upon the Nation's strong foundation, and reaffirms our inherent sovereignty. During the FY22 Second Quarter the Legislative Reference Office was staffed by the following individuals:

- Clorissa N. Santiago, Senior Legislative Staff Attorney;
- Kristen Hooker, Legislative Staff Attorney; and
- Carmen Vanlanen, Legislative Analyst.

Legislative Operating Committee Contact Information

Feel free to contact the LOC at LOC@oneidanation.org with any questions or comments, or individual LOC members at the following:

- David Jordan, LOC Chairman
djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice-Chairman
kmetox@oneidanation.org
- Jennifer Webster, LOC Member
jwebste1@oneidanation.org
- Daniel Guzman King, LOC Member
dguzman@oneidanation.org
- Marie Summers, LOC Member
esummer1@oneidanation.org



FY-2022 Semi-Annual Report

HANDOUT

For Boards, Committees, and Commissions

Legislative Operating Committee

Purpose:

The Legislative Operating Committee's mission is to enhance the capability of the Oneida Nation to fulfill its sovereign authority to review and enact its laws in a planned and orderly manner. The Legislative Reference Office is the support office for the Legislative Operating Committee.

LOC Members

David P. Jordan, Chairman

Kirby Metoxen, Vice-Chairman

Jennifer Webster, Member

Marie Summers , Member

Daniel Guzman King, Member

Budget

Funding Sources for FY-2022

TRIBAL CONTRIBUTION: 0%

GRANTS: 0%

OTHER SOURCES:

N/A

Status as of 3/31/22

Total Budget: \$0 – the Legislative Operating Committee does not have a budget. Historically, there had been an LOC budget. However, 100% of the budget was managed and spent by the Legislative Reference Office (LRO). The LOC budget was renamed “LRO” to reflect accurately that the LOC does not have a budget, but that the LRO does. Refer to the LRO’s annual report for budget information.

Budget as of 3/31/22: \$0

Expenditures as of 3/31/22: \$0

Variance Explanation: N/A

Employees, if any

NUMBER OF EMPLOYEES TOTAL:

THE LEGISLATIVE REFERENCE OFFICE IS THE SUPPORT STAFF OF THE LEGISLATIVE OPERATING COMMITTEE AND HAS 3 EMPLOYEES. SEE LEGISLATIVE REFERENCE OFFICE ANNUAL REPORT FOR MORE INFORMATION ON EMPLOYEES.

NUMBER OF EMPLOYEES WHO ARE ENROLLED ONEIDA:

Stipends

Regular Stipend Amount: \$0 per meeting. The Legislative Operating Committee members do not receive a stipend.

	For each month, ENTER TOTAL DOLLAR amount paid	For each month, enter NUMBER of meetings, of each type.		
		Regular	Special/Emergency	Hearings/Other
October 2022	\$0	2	0	0
November 2022	\$0	2	0	0
December 2022	\$0	2	0	0
January 2022	\$0	1	0	0
February 2022	\$0	2	0	0
March 2022	\$0	2	0	0

Update on up to Three (3) Strategic Goals for FY-2022

GOAL 1

Prepare for and conduct Legislative Operating Committee meetings.

Advancing On^yote?a.ka Principles

Update on Goal: Eleven (11) Legislative Operating Committee meetings were held during the first half of FY22. Due to the COVID-19 pandemic, the Legislative Operating Committee meetings were closed to the public in the beginning of FY22 in accordance with Oneida Business Committee resolution BC-12-08-21-B, *Updating Public Gathering Guidelines during Public Health State of Emergency - COVID-19*. The Legislative Operating Committee allowed employees of the Nation and the community to still access and participate in the

Legislative Operating Committee meetings through Microsoft Teams. Additionally, any individual who had comments or questions regarding open session items on a Legislative Operating Committee meeting agenda could submit comments or questions to LOC@oneidanation.org no later than the close of business the day prior to any Legislative Operating Committee meeting, and those comments received would then be noticed to the Legislative Operating Committee. Legislative Operating Committee meetings have since been opened again to the public.

GOAL 2

Research, analyze, and draft proposed laws and amendments to existing laws.

Exercising Sovereignty

Update on Goal: During the first half of FY22 the Legislative Operating Committee has successfully completed legislative actions on six (6) items. The Legislative Operating Committee brought forward the Oneida General Welfare law for adoption, and the Furlough law for amendments. The Legislative Operating Committee brought forward emergency amendments to the Oneida Personnel Policies and Procedures, and extended the emergency amendments to the Pardon and Forgiveness law, Oneida Nation Gaming Ordinance, and the Budget Management and Control law. During the first half of FY22 the Legislative Operating Committee has been actively working on ten (10) other legislative items and currently has thirty-two (32) legislative items on its Active Files List. A complete list of what the Legislative Operating Committee is working on can be found on the Nation's webpage at <https://oneida-nsn.gov/government/business-committee/standing-committees/legislative-operating-committee/#What-is-the-LOC-working-on>.

GOAL 3

Gather input from community and stakeholders during the legislative process.

Promoting Positive Community Relations

Update on Goal: During the first half of FY22 the Legislative Operating Committee held fifty-four (54) work meetings, many of which were held in collaboration with various departments or areas within the Nation's organization that have an interest or are affected by legislation such as: Oneida Business Committee, Treasurer, Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Budget Analyst, Oneida Law Office, Oneida Nation Judiciary, Oneida Trust Enrollment Committee, Oneida Trust Enrollment Department, Oneida Police Department, Oneida Police Commission, Oneida Gaming Commission, Tribal Action Plan, Human Resources Department, Retail, Oneida Behavioral Health, Conservation Wardens, and the Environmental, Health, Safety, Land and Agriculture Division. There were also four (4) public comment periods held open. In person public meetings did not occur during the first half of FY22 due to the COVID-19 pandemic and Oneida Business Committee resolution BC-12-08-21-B, which prohibited indoor public meetings unless certain conditions were met. Public comment periods where individuals could submit written comments, questions, data, or input on proposed legislation to the LOC via e-mail still occurred in accordance with the COVID-19 Core

Decision Making Team's declaration, *Suspension of Public Meetings under the Legislative Procedures Act*. At this point in time the Legislative Operating Committee is back to scheduling in-person public meetings in accordance with the Legislative Procedures Act.

Meetings

Held every 1st and 3rd Wednesday of the month.

Meeting Location: Norbert Hill Center, N7210 Seminary Road, Oneida, WI – Business Committee Conference Room

Meeting Time: 9:00 a.m.

Meetings are OPEN.

Contact

MAIN CONTACT: David P. Jordan

MAIN CONTACT TITLE: Legislative Operating Committee Chairman

MAIN PHONE: (920) 869-4483

MAIN EMAIL: LOC@oneidanation.org

MAIN WEBSITE: www.oneida-nsn.gov/LOC and www.oneida-nsn.gov/Register

Pictures



Legislative Operating Committee

From Left to Right:

Kirby Metoxen, Jennifer Webster,
David Jordan, Daniel Guzman
King, Marie Summers

FY-2022 Semi-Annual Report

HANDOUT

For Departments which report to a Board, Committee, or Commission

Legislative Operating Committee

Legislative Reference Office

Purpose:

Provide support for the Legislative Operating Committee in developing clear and consistent legislation that reflects Onáyoṭeʔa:ka values, builds upon the Nation's strong foundation, and reaffirms our inherent sovereignty.

Budget

Funding Sources for FY-2022

TRIBAL CONTRIBUTION: 100%

GRANTS: 0%

OTHER SOURCES:

N/A

Status as of 3/31/22

Total Budget: \$553,729

Budget as of 3/31/22: \$391,074

Expenditures as of 3/31/22: \$162,655

Variance Explanation: Positive variance of \$228,419 due to the Legislative Reference Office not being fully staffed during the first six (6) months of FY22, and savings on supplies and materials and other costs.

Employees

NUMBER OF EMPLOYEES TOTAL: 3

NUMBER OF EMPLOYEES WHO ARE ENROLLED ONEIDA: 0 ENROLLED - 1 DESCENDENT

Who we serve

The Legislative Reference Office serves and supports the Legislative Operating Committee, who then serve any area within the Nation's organization and the Oneida community at-large.

Contact

MAIN CONTACT: Clorissa N. Santiago

MAIN CONTACT TITLE: Senior Staff Attorney

MAIN PHONE: (920) 869-4417

MAIN EMAIL: csantia1@oneidanation.org or LOC@oneidanation.org

MAIN WEBSITE: www.oneida-nsn.gov/LOC and www.oneida-nsn.gov/Register

May 2022

May 2022

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2022

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
May 1	2	3	4 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting (BC_Conf_Room) 12:15pm PUBLIC MEETING:	5	6	7
8	9	10	11	12 1:30pm LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	13	14
15	16	17	18 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting (BC_Conf_Room) 12:15pm PUBLIC MEETING:	19	20	21
22	23	24	25	26 9:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	27	28
29	30	31	Jun 1	2	3	4