



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA REVISED

Business Committee Conference Room - 2nd Floor Norbert Hill Center
December 7, 2022
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
 - 1. November 2, 2022 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 - 1. Drug and Alcohol Free Workplace Law Amendments (pg. 4)
 - 2. Oneida Personnel Policies and Procedures Amendments (pg. 26)
- IV. New Submissions**
 - 1. Emergency Gift Card Law (pg. 120)
 - 2. Audit Committee Bylaws Amendments (pg. 124)
 - 3. Election Law Emergency Amendments (pg. 142)
 - 4. Amendments to Address the Dissolution of ERB and Transition of Responsibilities (pg. 158)
 - 5. Petition: M. Cornelius – Chief Financial Officer Position (pg. 276)
 - 6. Petition: N. Barton – \$2,500 GWA Payment for Three (3) Years (pg. 278)
- V. Additions**
- VI. Administrative Updates**
 - 1. E-Poll Results: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures (pg. 280)
- VII. Executive Session**
- VIII. Recess/Adjourn**



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

Present: David P. Jordan, Marie Cornelius (Microsoft Teams), Kirby Metoxen

Excused: Jennifer Webster, Daniel Guzman King

Others Present: Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Lawrence Barton, Bonnie Pigman, Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams), Michelle Myers (Microsoft Teams), Kaylynn Gresham (Microsoft Teams), Rae Skenandore (Microsoft Teams), Eric Boulanger (Microsoft Teams), Matt Denny (Microsoft Teams)

I. Call to Order and Approval of the Agenda

David P. Jordan called the November 2, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Cornelius to adopt the agenda as is; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

1. October 19, 2022 LOC Meeting Minutes

Motion by Marie Cornelius to approve the October 19, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business

1. Oneida Nation Assistance Fund Law

Motion by Kirby Metoxen to approve the Oneida Nation Assistance Fund law adoption packet and forward to the Oneida Business Committee for consideration; seconded by Marie Cornelius. Motion carried unanimously.

2. Back Pay Law Amendments

Motion by Kirby Metoxen to approve the public meeting packet and forward the Back Pay law amendments to a public meeting to be held on December 13, 2022; seconded by Marie Cornelius. Motion carried unanimously.



3. Emergency Management Law Amendments

Motion by Kirby Metoxen to approve the public meeting packet and forward the Emergency Management law amendments to a public meeting to be held on December 13, 2022; seconded by Marie Cornelius. Motion carried unanimously.

IV. New Submissions**V. Additions****VI. Administrative Items****1. E-Poll Results: Emergency Amendments to the Budget and Finances Law**

Motion by Marie Cornelius to enter into the record the results of the October 20, 2022, e-poll entitled, Emergency Amendments to the Budget and Finances Law; seconded by Kirby Metoxen. Motion carried unanimously.

2. E-Poll Results: Approval of the LOC and LRO FY23 Annual Reports

Motion by Marie Cornelius to enter into the record the results of the October 20, 2022, e-poll entitled, Approval of the LOC and LRO FY23 Annual Reports; seconded by Kirby Metoxen. Motion carried unanimously.

3. Legislative Operating Committee Fiscal Year 2022 Fourth Quarter Report

Motion by Kirby Metoxen to approve the Legislative Operating Committee Fiscal Year 2022 Fourth Quarter Report and forward to the Oneida Business Committee; seconded by Marie Cornelius. Motion carried unanimously.

VII. Executive Session**VIII. Adjourn**

Motion by Marie Cornelius to adjourn at 9:20 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee
December 7, 2022

Drug and Alcohol Free Workplace Law Amendments

Submission Date: 9/7/22	Public Meeting: N/A
LOC Sponsor: Kirby Metoxen	Emergency Enacted: N/A

Summary: *On August 30, 2022, the Legislative Operating Committee received a request from the Human Resources Department to add the Drug and Alcohol Free Workplace law amendments to its Active Files List. It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. HRD indicated that with the Benton – Pre-Employment Drug Testing petition currently pending – which requests to remove or lower THC from the pre-employment drug testing requirements - they were directed by the Oneida Business Committee to work with the Oneida Law Office on potential proposed language to address this petition. HRD is requesting that the LOC now add this legislative item to the Active Files List so that the HRD can collaborate with the LOC on the consideration of potential amendments moving forward. The Legislative Operating Committee added this item to its Active Files List on September 7, 2022.*

9/7/22 LOC: Motion by Marie Summers to add the Drug and Alcohol Free Workplace law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

10/31/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Carl Artman, Peggy Van Gheem, Todd Vandenheuvell, Matt Denny, Nic Reynolds, Josh Cottrell, Wendy Alvarez, Louise Cornelius, Lucy Neville, Brenda Mendolla-Buckley, Fawn Rasmussen, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting is to begin the consideration of potential amendments to the Drug and Alcohol Free Workplace law by reviewing and discussing the options for amendments provided by the Oneida Law Office.

11/15/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Carl Artman, Peggy Van Gheem, Todd Vandenheuvell, Matt Denny, Nic Reynolds, Josh Cottrell, Wendy Alvarez, Lucy Neville, Lorna Skenandore, Chad Fuss, Fawn Rasmussen, Mary Cornelissen, Kristal Hill. The purpose of this work meeting was to continue the consideration of potential amendments to the Drug and Alcohol Free Workplace law by deciding on an option for amendments provided by the Oneida Law Office.

12/1/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated proposed language for the amendments, as well as the Waiver of Exemption of Positive THC Test Results for Pre-Employment Drug Testing resolution.

Next Steps:

- Approve the draft of the Drug and Alcohol Free Workplace law amendments and direct that a legislative analysis be completed.

Title 2. Employment – Chapter 202

DRUG AND ALCOHOL FREE WORKPLACE

202.1. Purpose and Policy
 202.2. Adoption, Amendment, Repeal
 202.3. Definitions
 202.4. Application
 202.5. Shared Responsibility
 202.6. Prohibited Behavior
 202.7. Reasonable Suspicion
 202.8. Drug and Alcohol Testing

202.9. Refusal to Test
 202.10. Reasonable Suspicion Testing Waiting Period
 202.11. Consequences for Prohibited Behavior
 202.12. Re-hire
 202.13. Other Potential Consequences
 202.14. Confidentiality
 202.15. Communication

202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by resolutions BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F-~~and~~, BC-04-12-17-C~~, and BC-~~ - - - - .

202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(d) “EHN” means the Oneida Employee Health Nursing Department.

(e) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to; an individual employed by any program or enterprise of the Nation, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this law, individuals employed under an employment contract as a limited term employee are employees of the Nation, not consultants.

(f) “External applicant” means a person who is applying for a position and not currently employed by the Nation.

(g) “HRD” means the Human Resources Department and/or representatives performing Human Resources functions applicable to this law.

(h) “Internal applicant” means a person who is applying for a position who is currently employed by the Nation, this includes those employed under a temporary status.

(i) “MRO” means Medical Review Officer who is a licensed physician who is responsible for receiving and reviewing laboratory test results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

(j) “Nation” means the Oneida Nation.

(k) “NHTSA” means the National Highway Traffic Safety Administration.

(l) “ONEAP” means the Oneida Nation Employee Assistance Program which is a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation’s employees and family members.

(m) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(n) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor and signed by the employee and the ONEAP counselor, and the referring supervisor, which sets out the actions the employee needs to complete in order to return to work and remain employed.

(o) “SAMHSA” means the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

(p) “Supervisor” means the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.

(q) “Work-related accident” means an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

(1) results in an injury to the employee or another person that may require medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,

(2) results in death of the employee or another person, or

(3) involves any property damage.

83 **202.4. Application**

84 202.4-1. This law applies to all applicants for employment, whether external or internal, and all
85 employees during working hours, when on-call, and when operating a vehicle owned by the Nation
86 or a vehicle rented by the Nation.

87 202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working
88 hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the
89 Nation.

90 202.4-3. An employee is prohibited from the use of intoxicants while on official business travel
91 while the conference or meeting is in session.

92 202.4-4. An employee is not exempted from this law if they travel to another state, territory or
93 country where the use of certain drugs is legal.

94 **202.5. Shared Responsibility**

95 202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation
96 and shared responsibility between the employer and an employee.

97 202.5-2. *Employee.* It is the employee's responsibility to:

98 (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or
99 when scheduled to be on-call.

100 (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any
101 prohibited drugs while working.

102 (c) Comply with drug and alcohol testing if directed to do so upon the request of an
103 appropriate authority.

104 (d) Confidentially report suspicious behavior of an employee immediately to the supervisor
105 of the employee in question.

106 (e) Cooperate with the requests made by EHN and the MRO. The employee shall return the
107 call of the MRO within twenty-four (24) hours of the call being made to the employee. An
108 employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours
109 of receiving contact shall not receive back pay for any time between the date the MRO placed
110 the call until the time the employee does return the call of the MRO.

111 (f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate
112 authority.

113 (g) Provide the appropriate information to EHN in the event a medical condition prevents
114 the employee from properly completing drug and alcohol testing so alternative drug and
115 alcohol testing measures can be taken by EHN.

116 202.5-3. *Supervisor.* It is the supervisor's responsibility to:

117 (a) Be familiar with this law and any related policies and procedures.

118 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
119 person who reported the suspicious behavior.

120 (c) Promptly intervene with an employee who is believed to be under the influence of
121 prohibited drugs and/or alcohol.

122 (d) Monitor the employee under the influence of prescription and/or over-the-counter
123 medications that could compromise the safety of the employee, fellow employees, or the
124 public.

125 (e) Send the employee through the contracted transportation service for reasonable suspicion
126 drug and alcohol testing.

(f) Take appropriate action as outlined by this law.

(g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor that was developed by ONEAP.

(h) Send a copy of the consent to submit to drug and alcohol testing form signed by the employee to EHN.

202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the responsibilities of the supervisor or employee under this law may be subject to disciplinary action or other consequences as explained in section 202.13.

202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol may result in continued impairment during on-duty hours, which shall then constitute a violation of this law. It is the employee's responsibility to understand the consequences of off-duty use, and take steps to avoid the possibility of on-duty impairment. An employee who is called in for emergency or unplanned work, excluding those on-call, and has been using prohibited drugs or drinking alcoholic beverages prior to such a call, shall inform the employee's supervisor they cannot report, and shall continue to decline to report until the effects of the prohibited drugs or alcohol have left the employee's system. Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise from such refusal.

202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee who is taking or is under the influence of any controlled substances during working hours, including prescription medication or over the counter medication, which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation have the following obligations:

(a) The employee shall notify the employee's immediate supervisor about the use of the substance and possible work-related effects prior to commencing work.

(b) Upon request, the employee may be required to obtain a written statement of any work restrictions or impact on performance or safety relating to the legal substances from the employee's physician or pharmacist.

(c) An employee shall not sell or share his or her prescribed medications with any other person, and shall not take medications that are prescribed to another person.

(d) It may be necessary for the employee's supervisor, area manager or EHN to consult with the employee's personal physician, pharmacist or an MRO, with the employee's approval or written authorization, to determine if the medication might impact the employee's ability to perform the employee's job, or pose a hazard to other employees or to the general public.

(e) The employee's duties may be temporarily modified for up to one hundred eighty (180) days. Any modification of duties shall result in the appropriate modification of pay as established by the Human Resources Department.

202.6. Prohibited Behavior

202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

(a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught using, possessing or selling prohibited drugs shall be immediately terminated from employment with the Nation.

(b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation.

(c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.

(d) Refuses to test.

(e) Has a confirmed positive test result after completing a drug and/or alcohol test through EHN or a medical facility, or has a confirmatory test come back as positive.

202.7. Reasonable Suspicion

202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by personal observation and/or secondary reported observation that an employee may be under the influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee has taken or possess prohibited drugs or prescription medication that is not specifically prescribed to that employee. In order to make a reasonable suspicion determination, the supervisor shall evaluate the following:

(a) Specific observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse.

(b) The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

202.7-2. The supervisor shall document his or her observations and discuss the matter with the employee. During this discussion, the supervisor may ask the employee for proof of a prescription. The employee shall comply with this request. If after a discussion with the employee, the supervisor continues to suspect the employee may currently still be under the influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee for reasonable suspicion drug and alcohol testing.

202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol testing of an employee is final. An employee shall not appeal or challenge a supervisor's determination for reasonable suspicion drug and alcohol testing.

202.8. Drug and Alcohol Testing

202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize conditions of employment as described in this law. To ensure the accuracy and fairness of this law, all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal Workplace Drug Testing Programs.

202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices, operated by technicians whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices.

(a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory which is certified by the U.S. Department of Health and Human Services using its confirmation methods and established cut-off levels. Laboratory-confirmed results shall undergo the verification process by a MRO.

(b) Confirmation breath alcohol testing shall be performed using an NHTSA certified evidential breath testing device.

(c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA certified saliva test.

202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his or her supervisor of the accident.

202.8-4. ~~Each employee, as a condition of employment,~~ All external applicants shall ~~participate in pre-employment, reasonable suspicion, and follow-up drug testing upon the request of an appropriate authority.~~ A negative drug test result shall be required for employment eligibility.

(a) Exemption for Positive THC Test Result. An external applicant's confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for employment eligibility in the following circumstances:

(1) External Applicants for Gaming Positions. An external applicant receiving a confirmed positive test result for THC may qualify for employment if:

(A) the position mandates a background check in accordance with 5 O.C. 501.10;

(B) the position mandates licensing in accordance with 5 O.C. 501.11; and

(C) the position does not require a commercial driver's license or job-related driving.

(2) External Applicants for Non-Gaming Positions. An external applicant receiving a confirmed positive test result for THC may qualify for employment if the position has not been identified as an employee position which waived the exemption for positive THC test results.

(A) The Oneida Business Committee shall adopt through resolution a list of all the non-gaming employment positions that waive the exemption for positive THC test results.

202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. A negative test result is required for unimpeded employment eligibility.

202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the test result requires that the applicant or employee shall be given a confirmed positive test result, while a negative dilute of the test result requires retesting. EHN shall notify the applicant or employee of the required retesting.

(a) If the re-test results in a negative-dilute, the applicant or employee shall be given a negative test result.

(b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a positive test result.

202.9. Refusal to Test

202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries the same consequences as a confirmed positive test result. Examples of refusal to test include, but are not limited to:

(a) Substituting, adulterating (falsifying), or diluting the specimen.

(b) Refusal to sign the required forms.

(c) Refusal to cooperate in the testing process in such a way that prevents completion of accurate testing and as directed by the collector.

(d) Failing to remain at the testing site until the testing process is complete.

- (e) Providing an insufficient sample of urine or breath.
- (f) Failing to test or to re-test.
- (g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing.
- (h) Behaving in a confrontational or discourteous manner that disrupts the collection process.

202.10. Reasonable Suspicion Testing Waiting Period

202.10-1. This section applies only to current employees who meet the reasonable suspicion standard. It does not apply to applicants of the Nation.

202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be immediately removed from duty without pay at the time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection until the employer is notified by EHN of negative results on both the drug and alcohol tests, or MRO-verified negative test results.

202.10-3. When confirmation of test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date if the test was confirmed negative, or applicable consequences if the test was confirmed positive. If the employee is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the employee fails to return to work on the assigned reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws, rules and policies governing employment, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

202.11. Consequences for Prohibited Behavior

202.11-1. Either an internal applicant or an external applicant may decline the position at any time before being directed to EHN or other designated testing site for the applicant's drug and alcohol testing.

202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 202.6 that has been documented, the employment offer shall be withdrawn. An external applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the date of the urine drug screening test.

202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and subject to respective consequences of this law. The applicant shall not be eligible for hiring consideration in a different position for one hundred eighty (180) days from the date of the urine drug screening test.

202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days (which shall be deemed thereafter as a definite positive test), the employee shall be removed from duty and subject to the respective consequences of this law.

202.11-5. *Consequences.*

307 (a) *First Violation.*

308 (1) Any employee who engages in prohibited behavior as defined in section 202.6
309 for the first time shall be removed from duty without pay and shall receive a
310 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine
311 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up
312 testing is required, the testing shall be at the employee's expense.

313 (2) The employee shall sign a Return-to-Work Agreement and submit the agreement
314 to his or her supervisor within ten (10) days or the employee shall be terminated and
315 ineligible for re-hire for one (1) year.

316 (A) When the supervisor signs the Return-to-Work Agreement the employee
317 shall be placed back on the work schedule by the next regularly scheduled
318 workday.

319 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
320 employee being terminated and ineligible for re-hire for one (1) year.

321 (b) *Second Violation.*

322 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
323 second time within his or her lifetime of employment with the Nation shall be
324 removed from duty without pay and shall receive a mandatory referral to ONEAP for
325 an assessment.

326 (2) The employee shall sign a Return-to-Work Agreement and submit it to the
327 employee's supervisor for signature within ten (10) days or the employee shall be
328 terminated and ineligible for re-hire for one (1) year. After a second violation the
329 employee shall not be placed back on the work schedule until:

330 (A) The employee receives approval from the ONEAP that they have
331 demonstrated sufficient progress in a treatment program that would indicate
332 the employee is drug and alcohol free within thirty (30) days of the employee
333 being removed from duty; and

334 (B) The employee completes a return-to-duty drug screening and alcohol test
335 at a SAMHSA-certified facility at their own expense, which shall be negative
336 within thirty (30) days of the employee being removed from duty;

337 (C) The ONEAP notifies the supervisor of the employee's eligibility to return
338 to work.

339 (3) As a condition of continuing employment, the employee shall participate in
340 follow-up testing with continued negative results as directed by the ONEAP and
341 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
342 employee's expense.

343 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall
344 result in the employee being terminated and ineligible for re-hire for one (1) year.

345 (c) *Third Violation.*

346 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
347 third time in his or her lifetime of employment with the Nation shall be terminated.
348 The employee shall not be eligible for employment unless he or she receives a
349 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives
350 forgiveness shall not be eligible for re-hire for one (1) year after the date of
351 termination.

202.12. Re-hire

202.12-1. A former employee that was terminated due to violations of this law shall provide, along with the former employee's application for employment, the following:

- (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at the former employee's own expense.

202.13. Other Potential Consequences

202.13-1. The violation of this law may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

- (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result of a violation of this law may be ineligible for unemployment benefits.
- (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a work-related accident that occurred while engaged in a violation of this law may have any workers compensation benefits reduced.
- (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.
- (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an accident may be held personally responsible for losses associated with the accident, and the employee may be required to pay for those losses.

202.14. Confidentiality

202.14-1. Information related to the application of this law is confidential. Access to this information is limited to those who have a legitimate "need to know" in compliance with relevant laws and personnel policies and procedures.

202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential records which are separate from the employee's clinical and personnel files. The employee may request a copy of the employee's records. The records may be requested by a third party in accordance with the Oneida Nation's laws, rules and policies governing employment.

202.15. Communication

202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of their role in supporting this law:

- (a) All employees shall be given information on how to access this law.
- (b) This law shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.
- (c) All employees shall sign an acknowledgment form stating they have received a copy of this law, have read and understand it, and agree to follow this law.

End.

See GTC-01-31-94-B
Adopted – BC-08-17-94

398 Emergency Amended - BC-04-20-95-C
399 Adopted - BC-10-25-95-A (repealed previous versions)
400 Amended - BC-10-20-99-A
401 Amended - BC-12-05-07-B
402 Amended - BC-12-11-13-F
403 Emergency Amended - BC-10-26-16-D
404 Amended - BC-04-12-17-C
405 Amended – BC- - - -
406

Title 2. Employment – Chapter 202

DRUG AND ALCOHOL FREE WORKPLACE

202.1. Purpose and Policy
 202.2. Adoption, Amendment, Repeal
 202.3. Definitions
 202.4. Application
 202.5. Shared Responsibility
 202.6. Prohibited Behavior
 202.7. Reasonable Suspicion
 202.8. Drug and Alcohol Testing

202.9. Refusal to Test
 202.10. Reasonable Suspicion Testing Waiting Period
 202.11. Consequences for Prohibited Behavior
 202.12. Re-hire
 202.13. Other Potential Consequences
 202.14. Confidentiality
 202.15. Communication

202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by resolutions BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F, BC-04-12-17-C, and BC-__-__-__-__.

202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(d) “EHN” means the Oneida Employee Health Nursing Department.

(e) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to; an individual employed by any program or enterprise of the Nation, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this law, individuals employed under an employment contract as a limited term employee are employees of the Nation, not consultants.

(f) “External applicant” means a person who is applying for a position and not currently employed by the Nation.

(g) “HRD” means the Human Resources Department and/or representatives performing Human Resources functions applicable to this law.

(h) “Internal applicant” means a person who is applying for a position who is currently employed by the Nation, this includes those employed under a temporary status.

(i) “MRO” means Medical Review Officer who is a licensed physician who is responsible for receiving and reviewing laboratory test results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

(j) “Nation” means the Oneida Nation.

(k) “NHTSA” means the National Highway Traffic Safety Administration.

(l) “ONEAP” means the Oneida Nation Employee Assistance Program which is a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation’s employees and family members.

(m) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(n) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor and signed by the employee and the ONEAP counselor, and the referring supervisor, which sets out the actions the employee needs to complete in order to return to work and remain employed.

(o) “SAMHSA” means the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

(p) “Supervisor” means the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.

(q) “Work-related accident” means an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

(1) results in an injury to the employee or another person that may require medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,

(2) results in death of the employee or another person, or

(3) involves any property damage.

83 **202.4. Application**

84 202.4-1. This law applies to all applicants for employment, whether external or internal, and all
85 employees during working hours, when on-call, and when operating a vehicle owned by the Nation
86 or a vehicle rented by the Nation.

87 202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working
88 hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the
89 Nation.

90 202.4-3. An employee is prohibited from the use of intoxicants while on official business travel
91 while the conference or meeting is in session.

92 202.4-4. An employee is not exempted from this law if they travel to another state, territory or
93 country where the use of certain drugs is legal.

94 **202.5. Shared Responsibility**

95 202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation
96 and shared responsibility between the employer and an employee.

97 202.5-2. *Employee.* It is the employee's responsibility to:

98 (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or
99 when scheduled to be on-call.

100 (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any
101 prohibited drugs while working.

102 (c) Comply with drug and alcohol testing if directed to do so upon the request of an
103 appropriate authority.

104 (d) Confidentially report suspicious behavior of an employee immediately to the supervisor
105 of the employee in question.

106 (e) Cooperate with the requests made by EHN and the MRO. The employee shall return the
107 call of the MRO within twenty-four (24) hours of the call being made to the employee. An
108 employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours
109 of receiving contact shall not receive back pay for any time between the date the MRO placed
110 the call until the time the employee does return the call of the MRO.

111 (f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate
112 authority.

113 (g) Provide the appropriate information to EHN in the event a medical condition prevents
114 the employee from properly completing drug and alcohol testing so alternative drug and
115 alcohol testing measures can be taken by EHN.

116 202.5-3. *Supervisor.* It is the supervisor's responsibility to:

117 (a) Be familiar with this law and any related policies and procedures.

118 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
119 person who reported the suspicious behavior.

120 (c) Promptly intervene with an employee who is believed to be under the influence of
121 prohibited drugs and/or alcohol.

122 (d) Monitor the employee under the influence of prescription and/or over-the-counter
123 medications that could compromise the safety of the employee, fellow employees, or the
124 public.

125 (e) Send the employee through the contracted transportation service for reasonable suspicion
126 drug and alcohol testing.

(f) Take appropriate action as outlined by this law.

(g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor that was developed by ONEAP.

(h) Send a copy of the consent to submit to drug and alcohol testing form signed by the employee to EHN.

202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the responsibilities of the supervisor or employee under this law may be subject to disciplinary action or other consequences as explained in section 202.13.

202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol may result in continued impairment during on-duty hours, which shall then constitute a violation of this law. It is the employee's responsibility to understand the consequences of off-duty use, and take steps to avoid the possibility of on-duty impairment. An employee who is called in for emergency or unplanned work, excluding those on-call, and has been using prohibited drugs or drinking alcoholic beverages prior to such a call, shall inform the employee's supervisor they cannot report, and shall continue to decline to report until the effects of the prohibited drugs or alcohol have left the employee's system. Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise from such refusal.

202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee who is taking or is under the influence of any controlled substances during working hours, including prescription medication or over the counter medication, which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation have the following obligations:

(a) The employee shall notify the employee's immediate supervisor about the use of the substance and possible work-related effects prior to commencing work.

(b) Upon request, the employee may be required to obtain a written statement of any work restrictions or impact on performance or safety relating to the legal substances from the employee's physician or pharmacist.

(c) An employee shall not sell or share his or her prescribed medications with any other person, and shall not take medications that are prescribed to another person.

(d) It may be necessary for the employee's supervisor, area manager or EHN to consult with the employee's personal physician, pharmacist or an MRO, with the employee's approval or written authorization, to determine if the medication might impact the employee's ability to perform the employee's job, or pose a hazard to other employees or to the general public.

(e) The employee's duties may be temporarily modified for up to one hundred eighty (180) days. Any modification of duties shall result in the appropriate modification of pay as established by the Human Resources Department.

202.6. Prohibited Behavior

202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

(a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught using, possessing or selling prohibited drugs shall be immediately terminated from employment with the Nation.

(b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Nation.

(c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.

(d) Refuses to test.

(e) Has a confirmed positive test result after completing a drug and/or alcohol test through EHN or a medical facility, or has a confirmatory test come back as positive.

202.7. Reasonable Suspicion

202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by personal observation and/or secondary reported observation that an employee may be under the influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee has taken or possess prohibited drugs or prescription medication that is not specifically prescribed to that employee. In order to make a reasonable suspicion determination, the supervisor shall evaluate the following:

(a) Specific observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse.

(b) The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

202.7-2. The supervisor shall document his or her observations and discuss the matter with the employee. During this discussion, the supervisor may ask the employee for proof of a prescription. The employee shall comply with this request. If after a discussion with the employee, the supervisor continues to suspect the employee may currently still be under the influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee for reasonable suspicion drug and alcohol testing.

202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol testing of an employee is final. An employee shall not appeal or challenge a supervisor's determination for reasonable suspicion drug and alcohol testing.

202.8. Drug and Alcohol Testing

202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize conditions of employment as described in this law. To ensure the accuracy and fairness of this law, all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal Workplace Drug Testing Programs.

202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices, operated by technicians whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices.

(a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory which is certified by the U.S. Department of Health and Human Services using its confirmation methods and established cut-off levels. Laboratory-confirmed results shall undergo the verification process by a MRO.

(b) Confirmation breath alcohol testing shall be performed using an NHTSA certified evidential breath testing device.

(c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA certified saliva test.

202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his or her supervisor of the accident.

202.8-4. All external applicants shall participate in pre-employment drug testing. A negative drug test result shall be required for employment eligibility.

(a) *Exemption for Positive THC Test Result.* An external applicant's confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for employment eligibility in the following circumstances:

(1) *External Applicants for Gaming Positions.* An external applicant receiving a confirmed positive test result for THC may qualify for employment if:

(A) the position mandates a background check in accordance with 5 O.C. 501.10;

(B) the position mandates licensing in accordance with 5 O.C. 501.11; and

(C) the position does not require a commercial driver's license or job-related driving.

(2) *External Applicants for Non-Gaming Positions.* An external applicant receiving a confirmed positive test result for THC may qualify for employment if the position has not been identified as an employee position which waived the exemption for positive THC test results.

(A) The Oneida Business Committee shall adopt through resolution a list of all the non-gaming employment positions that waive the exemption for positive THC test results.

202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the request of an appropriate authority. A negative test result is required for unimpeded employment eligibility.

202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the test result requires that the applicant or employee shall be given a confirmed positive test result, while a negative dilute of the test result requires retesting. EHN shall notify the applicant or employee of the required retesting.

(a) If the re-test results in a negative-dilute, the applicant or employee shall be given a negative test result.

(b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a positive test result.

202.9. Refusal to Test

202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries the same consequences as a confirmed positive test result. Examples of refusal to test include, but are not limited to:

(a) Substituting, adulterating (falsifying), or diluting the specimen.

(b) Refusal to sign the required forms.

(c) Refusal to cooperate in the testing process in such a way that prevents completion of accurate testing and as directed by the collector.

(d) Failing to remain at the testing site until the testing process is complete.

(e) Providing an insufficient sample of urine or breath.

(f) Failing to test or to re-test.

(g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing.

(h) Behaving in a confrontational or discourteous manner that disrupts the collection process.

202.10. Reasonable Suspicion Testing Waiting Period

202.10-1. This section applies only to current employees who meet the reasonable suspicion standard. It does not apply to applicants of the Nation.

202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be immediately removed from duty without pay at the time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection until the employer is notified by EHN of negative results on both the drug and alcohol tests, or MRO-verified negative test results.

202.10-3. When confirmation of test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date if the test was confirmed negative, or applicable consequences if the test was confirmed positive. If the employee is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the employee fails to return to work on the assigned reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws, rules and policies governing employment, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

202.11. Consequences for Prohibited Behavior

202.11-1. Either an internal applicant or an external applicant may decline the position at any time before being directed to EHN or other designated testing site for the applicant's drug and alcohol testing.

202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 202.6 that has been documented, the employment offer shall be withdrawn. An external applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the date of the urine drug screening test.

202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and subject to respective consequences of this law. The applicant shall not be eligible for hiring consideration in a different position for one hundred eighty (180) days from the date of the urine drug screening test.

202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days (which shall be deemed thereafter as a definite positive test), the employee shall be removed from duty and subject to the respective consequences of this law.

202.11-5. *Consequences.*

(a) *First Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 for the first time shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment. The ONEAP shall also determine if the employee shall be subject to return-to-duty/follow-up testing. If follow-up testing is required, the testing shall be at the employee's expense.

(2) The employee shall sign a Return-to-Work Agreement and submit the agreement to his or her supervisor within ten (10) days or the employee shall be terminated and ineligible for re-hire for one (1) year.

(A) When the supervisor signs the Return-to-Work Agreement the employee shall be placed back on the work schedule by the next regularly scheduled workday.

(3) Failure to comply with the signed Return-to-Work Agreement shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(b) *Second Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 a second time within his or her lifetime of employment with the Nation shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment.

(2) The employee shall sign a Return-to-Work Agreement and submit it to the employee's supervisor for signature within ten (10) days or the employee shall be terminated and ineligible for re-hire for one (1) year. After a second violation the employee shall not be placed back on the work schedule until:

(A) The employee receives approval from the ONEAP that they have demonstrated sufficient progress in a treatment program that would indicate the employee is drug and alcohol free within thirty (30) days of the employee being removed from duty; and

(B) The employee completes a return-to-duty drug screening and alcohol test at a SAMHSA-certified facility at their own expense, which shall be negative within thirty (30) days of the employee being removed from duty;

(C) The ONEAP notifies the supervisor of the employee's eligibility to return to work.

(3) As a condition of continuing employment, the employee shall participate in follow-up testing with continued negative results as directed by the ONEAP and listed in the Return-to-Work Agreement. All follow-up testing shall be at the employee's expense.

(4) Failure to comply with the Return-to-Work agreement or follow up testing shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(c) *Third Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6 a third time in his or her lifetime of employment with the Nation shall be terminated. The employee shall not be eligible for employment unless he or she receives a forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives forgiveness shall not be eligible for re-hire for one (1) year after the date of termination.

202.12. Re-hire

202.12-1. A former employee that was terminated due to violations of this law shall provide, along with the former employee's application for employment, the following:

- (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at the former employee's own expense.

202.13. Other Potential Consequences

202.13-1. The violation of this law may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

- (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result of a violation of this law may be ineligible for unemployment benefits.
- (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a work-related accident that occurred while engaged in a violation of this law may have any workers compensation benefits reduced.
- (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.
- (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an accident may be held personally responsible for losses associated with the accident, and the employee may be required to pay for those losses.

202.14. Confidentiality

202.14-1. Information related to the application of this law is confidential. Access to this information is limited to those who have a legitimate "need to know" in compliance with relevant laws and personnel policies and procedures.

202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential records which are separate from the employee's clinical and personnel files. The employee may request a copy of the employee's records. The records may be requested by a third party in accordance with the Oneida Nation's laws, rules and policies governing employment.

202.15. Communication

202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of their role in supporting this law:

- (a) All employees shall be given information on how to access this law.
- (b) This law shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.
- (c) All employees shall sign an acknowledgment form stating they have received a copy of this law, have read and understand it, and agree to follow this law.

End.

See GTC-01-31-94-B

Adopted – BC-08-17-94

Emergency Amended - BC-04-20-95-C

398 Adopted - BC-10-25-95-A (repealed previous versions)
399 Amended - BC-10-20-99-A
400 Amended - BC-12-05-07-B
401 Amended - BC-12-11-13-F
402 Emergency Amended - BC-10-26-16-D
403 Amended - BC-04-12-17-C
404 Amended – BC- __ - __ - __ - __
405



Legislative Operating Committee
December 7, 2022

Oneida Personnel Policies and Procedures Amendments

Submission Date: 2/6/19	Public Meeting: N/A
LOC Sponsor: Marie Summers	Emergency Enacted: 11/24/21, 5/11/22, 11/7/22

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. The Oneida Business Committee adopted additional emergency amendments to the Oneida Personnel Policies and Procedures to clarify inconsistencies that arose as a result of the last emergency amendments on May 11, 2022, through the adoption of resolution BC-05-11-22-A. The emergency amendments will now expire on November 11, 2022. The Oneida Business Committee extended the emergency amendments to the Oneida Personnel Policies and Procedures for an additional six (6) month period on November 7, 2022, through the adoption of resolution BC-11-07-22-A. The emergency amendments to the Oneida Personnel Policies and Procedures will now expire on May 11, 2023.*

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 brining minor additional emergency amendments to the Oneida Personnel Policies and Procedures to the May 4, 2022, LOC meeting.
- 5/4/22 LOC:** Motion by Marie Summers to approve the 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.
- 5/11/22 OBC:** Motion by Jennifer Webster to adopt resolution entitled 05-11-22-A Additional Emergency Amendments to the Oneida Personnel Policies and Procedures - Selection Policy, seconded by Lisa Liggins. Motion carried.
- 6/8/22 OBC:** Motion by Kirby Metoxen to support the designation of June 19 as an Oneida Nation paid holiday for the Juneteenth National Independence Day and forward to the Legislative Operating Committee for review, seconded by David P. Jordan. Motion carried.

6/15/22 LOC: Motion by Kirby Metoxen to accept the request as information to be discussed during the current development of amendments to the Oneida Personnel Policies and Procedures; seconded by Jennifer Webster. Motion carried unanimously.

7/15/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Grace Elliot, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review two options for how to approach the permanent amendments to the Oneida Personnel Policies and Procedures.

8/31/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Clorissa N. Santiago, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue the discussion of permanent amendments to the Oneida Personnel Policies and Procedures and identify other areas within the law that should be amended in addition to Section III.

10/19/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, Marie Cornelius, Clorissa N. Leeman, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the draft of proposed permanent amendments to the Oneida Personnel Policies and Procedures.

11/2/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa N. Leeman, Todd Vandenheuvel, Nic Reynolds, Matthew Denny, Wendy Alvarez, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to continue reviewing the draft of proposed permanent amendments to the Oneida Personnel Policies and Procedures.

11/3/22: *E-Poll Conducted.* This e-poll was titled, “Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures.” The requested action of this e-poll was to approve the Oneida Personnel Policies and Procedures emergency amendments extension packet and forward to the Oneida Business Committee for consideration. This e-poll was approved by David P. Jordan, Kirby Metoxen, Marie Cornelius, Jennifer Webster, and Daniel Guzman King.

11/7/22: *OBC E-Poll Conducted.* This e-poll was titled, “Adopt the resolution entitled Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures.” The requested action of this e-poll was to adopt the resolution entitled, Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures. This e-poll was approved by Daniel Guzman King, David P. Jordan, Kirby Metoxen, Brandon Stevens, Jennifer Webster.

11/23/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Todd Vandenheuvel, Matthew Denny, Josh Cottrell, Whitney Wheelock, Grace Elliott, Carolyn Salutz. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated draft of proposed permanent amendments to the Oneida Personnel Policies and Procedures.

12/1/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss

potential timelines for bringing the proposed amendments to the General Tribal Council for consideration.

Next Steps:

- Approve the draft of the Oneida Personnel Policies and Procedures amendments, the legislative analysis, and the public meeting notice, and forward the Oneida Personnel Policies and Procedures amendments to a public meeting to be held on January 12, 2023.



ONEIDA NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

Table of Contents (Last update ~~12/06/19~~ / /)

<u>SECTION I INTRODUCTION</u>	2
<u>SECTION II - RECRUITING</u>	3
<u>SECTION III – SELECTION POLICY</u>	6
<u>SECTION IV – COMPENSATION AND BENEFITS</u>	13
<u>SECTION V – EMPLOYEE RELATIONS</u>	19
<u>SECTION VI – SAFETY AND HEALTH</u>	28
<u>SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS</u>	29
<u>SECTION VIII - RECORDKEEPING</u>	30
<u>SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS</u>	31

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

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~~ [Human Resources](#)
153 [Executive Director](#), or elected official of 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.

- 174 h. All temporary employees are subject to lay-off based upon department job needs
175 and budgets. [\(HR Interpretation – 11-25-13\)](#)
176 i. Supervisors are required to do proficient planning within their respective span of
177 control; as such they must also enforce separation dates and will be monitored by
178 HRD for compliance.
179 j. Supervisors must select the most appropriate category of classification for the job.
180 1) Moving from one classification to another is prohibited.
- 181 4. Benefits
- 182 a. The following employee classifications will be eligible for benefits as defined in the
183 section of the Personnel Policies and Procedures as medical, dental, vacation and
184 personal accrual, holiday pay, premium pay.
185 1) Limited Term
186 2) Seasonal
- 187 b. The following employee classifications will be eligible for benefits as defined in this
188 section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday
189 pay.
190 1) Emergency/Temporary
191 2) Substitute/Relief
192 3) Seasonal Worker (only during their first season)
- 193 c. The following employee classifications will be eligible for benefits as defined in this
194 section of the Personnel Policies and Procedures as Mandatory Benefits.
195 1) Youth Worker
196 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 both training upon hiring and periodic retraining 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~~employees of the Nation and to shield those employees from inconsistent and unfair treatment by:

a) Protecting against issues of nepotism;

b) Enforcing Oneida and Indian preference.

~~2)~~2) The Personnel Commission is directed to:

- 308 i. ~~Seek out~~Participate in the best-matched applicants for each available
309 position;
- 310 ii. ~~Consider only job-related factors (such as education, experience, past job~~
311 ~~performance, skills and abilities, and compatibility with the position and~~
312 ~~potential co-workers) when selecting candidates.~~
- 313 c. ~~Identification of Vacancies and Development of Job Descriptions~~^(Work Standard, 11-16-11)
- 314 1) ~~Supervisors may inform the HRD Office of pending vacancies as soon as they are~~
315 ~~identified.~~
- 316 2) ~~For existing positions, the HRD Manager (or designate), the supervisor and the~~
317 ~~Area Manager (at his/her option) will review the~~hiring selection process,
318 including job description pre-screens and interviews, to ensure compliance with:
- 319 a) ~~The~~the Nation's job structure;
- 320 b) ~~The needs~~laws and requirements of the job.
- 321 3) ~~For new positions, the HRD Manager, the appropriate Area Manager, and the~~
322 ~~supervisor shall develop the job description.~~^(HR Interpretation, 12-8-16)
- 323 a) ~~The new job description shall conform to the Oneida Nation job structure.~~
- 324 b) ~~The new job description will be reviewed by the General Manager.~~
- 325 4) ~~All job descriptions shall contain the following information:~~
- 326 a) ~~Job title, division/department, location, supervisor's title;~~
- 327 b) ~~Posting date, application deadline, preferred starting date, date of job,~~
328 ~~description review;~~
- 329 c) ~~Pay level (grade, step, hourly rate);~~
- 330 d) ~~A brief job summary;~~
- 331 e) ~~Duties and responsibilities;~~
- 332 f) ~~Qualifications;~~
- 333 g) ~~Inquiry address;~~
- 334 h) ~~Statement of compliance with EEO and Indian Preference policies.~~
- 335 d. ~~Applications~~
- 336 1) ~~All inquiries for job vacancies will be responded to with an Oneida Nation~~
337 ~~Application Form which will consist of:~~
- 338 a) ~~Job vacancy title;~~
- 339 b) ~~Applicant biographical data;~~
- 340 c) ~~A request for a resume (where applicable).~~
- 341 2) i. ~~The Application Form shall be accompanied by a Statement of Policy~~
342 ~~regarding Oneida Preference and Indian Preference.~~the following
343 subject matters:
- 344 3) ~~Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on~~
345 ~~the deadline date; mailed applications must be postmarked on or before the~~
346 ~~deadline date.~~
- 347 4) ~~All applications will be acknowledged.~~
- 348 e. ~~Advertising~~
- 349 1) ~~Position vacancies will be advertised as widely as possible including:~~
- 350 a) ~~The Kalihwisaks;~~

- b) ~~Statewide, through print and electronic media and public employment agencies;~~
- c) ~~Through targeted recruiting efforts including:~~
- i. ~~Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)~~
 - ii. ~~1. The Bureau of Oneida and Indian Affairs~~preference:
 - iii. ~~The Oneida Higher Education Office.~~
 - 2. Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD OfficeNepotism:
 - 3. Conflicts of interest;
 - 4. Veteran status; and
 - 5. Physical capacity requirements.
- d) ~~Comply with the advice and consent of the affected department.~~
- 2) ~~Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.~~
- 3) ~~The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled Oneida Nation member. (HR Interpretation 8-9-11)~~
- 4) ~~All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.~~
- f. ~~Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12).~~
- 1) ii. A Screening Committee consisting of the HRD Manager (or designate), the position supervisor, the Area Manager (at his/her option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:Bylaws.
- a) ~~Verify that all applications are complete, are accurate~~Hiring and were submitted on time.
 - i. ~~Applications that are incomplete, inaccurate, or were not submitted on or before the posted deadline date may be screened out.~~
 - b) ~~Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and Area Manager to be essential to the job. (T.O.E. WS-5-6-13)~~
 - c) ~~Screen verified applications~~
- d) c. Recommend a list of applicants to be interviewed.Selection Rules.
- 2) ~~The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications~~be delegated rulemaking authority in the general recruiting pool.
 - 3) ~~The HRD Office will arrange for interviews~~accordance with the ~~listed candidates.~~
- g. ~~Candidate Interviews~~

2022 12 07

- 393 1) ~~An Interview Committee will be convened and will consist of the members of the~~
394 ~~Screening Committee except that the HRD Manager will be replaced with a~~
395 ~~second member of the Personnel Commission. The Interview Committee will:~~
396 a) ~~Construct an interview format consisting of:~~
397 ~~i. A set of questions related to the screening criteria qualifications;~~
398 ~~ii. An interview rating scale designed to objectively evaluate each~~
399 ~~candidate's qualifications.~~
400 b) ~~Interview candidates and evaluate each individually.~~
401 2) ~~The HRD Manager (or designee) will total the evaluation rating scale to rank~~
402 ~~order of the candidates.~~
403 h. ~~Selection~~ ~~(HR Interpretation - Disqualification of Applicant 10-24-13)~~
404 1) ~~The supervisor shall select one of the top two (2) candidates as ranked through~~
405 ~~the rating scale.~~ ~~(HR Interpretation - 10-17-12)~~
406 a) ~~The supervisor may conduct an additional personal interview with the top~~
407 ~~two (2) candidates.~~
408 b) ~~The~~ Administrative Rulemaking law to develop rules regarding procedures
409 for the hiring and ~~selection decision shall be governed by the Oneida~~
410 ~~Preference and Indian Preference Policy.~~ ~~(HR Interpretation - 6-6-11)~~
411 c) ~~The HRD Office will notify the selected candidate and offer the candidate the~~
412 ~~job within five (5) working days of the selection decision by the supervisor.~~
413 ~~i. Should the supervisor's first choice refuse the offer, the HRD Office will~~
414 ~~offer the job to the second ranked candidate.~~
415 2) ~~Should both of the top two ranked candidates refuse the job offer, the~~
416 ~~supervisor may:~~
417 a) ~~Repeat the process outlined in B.2.h.1. above; or~~
418 b) ~~Re post the position.~~
419 3) ~~The HRD Office will notify those candidates interviewed but not selected of the~~
420 ~~decision to hire the best qualified candidate.~~
421 4) 1) All newly hired ~~of~~ employees will be listed in ~~of~~ the HR newsletter Nation.

- 422
423 C. ~~TRANSFERS AND PROMOTIONS POLICY~~ INTERNAL POSITION POSTING - The Oneida Nation
424 encourages ~~transfers and promotions~~ movement within and among units in order to make
425 the best possible use of human resources to meet the Oneida ~~Nation~~ Nation's goals and
426 objectives. Supervisors and employees are encouraged to work together to create an
427 environment in which employees constantly strive to improve their skills and abilities and
428 ~~mangers~~ managers constantly seek to provide challenging and rewarding work
429 experiences.

430 1. Procedure

431 a. 1. Internal Position Posting and Bidding Reassignment Rules.

- 432 1) ~~Open positions as determined by a supervisor and his/her Area Manager will be~~
433 ~~posted internally~~ The HRD Office shall be delegated rulemaking authority in
434 accordance with the Administrative Rulemaking law to develop rules regarding

- ~~procedures~~ for five (5) working days. This internal ~~position~~ posting ~~will be~~
~~concurrent with the external (public) posting and reassignment of positions.~~
- ~~a) Positions will be posted in prominent locations in each Oneida Nation building~~
- ~~2)a. Oneida Nation employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office of the Nation.~~
- ~~a) The HRD Manager will inform all affected Area Managers of each transfer bid.~~
- ~~3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a conference with the open position's supervisor and the Area Manager.~~
- ~~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) Employees who are transferred or promoted will not lose any benefits; however:~~
- ~~a) An employee may be required to continue serving in his/her present position until a replacement can be found;~~
- ~~b) An employee who is transferred to a position lower on the Oneida Nation Job Structure will be paid at the grade level corresponding to the new position;~~
- ~~c) An employee must have completed one year of service to the Nation before being eligible for a promotion or transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the Nation);~~
- ~~d) The newly transferred or promoted employee shall be required to complete a three (3) month probation period (all conditions of the Nation's Probation Policy shall apply).~~
- ~~b. Applicant Pool Process~~
- ~~1) New and vacant positions will be advertised through the Tribal Applicant Pool.~~
- ~~2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.~~
- ~~a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal members who wish to be considered for employment by the Nation.~~
- ~~b) Advertising through the Tribal Applicant Pool will follow the format and time conditions set forth in the Hiring Policy.~~

2. ~~Reassignments~~

a. ~~Title Reassignments~~

1) ~~Title Reassignments may be made by supervisors to:~~

a) ~~More accurately describe or define an existing job; or~~

b) ~~Make minor adjustments in jobs within a unit or operating division.~~

2) ~~Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager.~~

b. ~~Job Reassignments~~

1) ~~Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.~~

2) ~~Job Reassignments may be supervisor initiated or employee initiated but must be made in the best interests of the operating unit.~~

3) ~~Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.~~

c. ~~Interim Job Reassignments~~ ~~(Work Standard 7-11-13)~~

D. ORIGINAL PROBATION

1. ~~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 him/her/them by the supervisor by completing an employee evaluation.

a. ~~At the end of the three- (3) month probation period, a second performance evaluation will~~ shall be conducted. This evaluation will ~~shall~~ recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.

2. 1. ~~Status as a Probationary Employee~~

a. ~~Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.~~

1) ~~New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.~~

b. a. ~~Probationary employees will~~ shall accrue vacation ~~and~~ personal days during the probation period and will ~~shall~~ receive holiday pay.

c. 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.~~

~~This termination is subject to appeal. (BC Action 3-20-92)~~

3. ~~Completion~~ Termination of Probation Period

a. ~~Satisfactory completion of probation will result in the~~ an employee ~~receiving the regular salary for the position.~~

- b. ~~Employees who are terminated~~cause during ~~the probation~~their original probationary period ~~will receive credit for accrued vacation/personal days in their final paycheck.~~
- c. ~~Extensions of probation periods will~~shall not affect accrual of or use of benefits as explained under D.2.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~~Human Resources Executive Director 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.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forty (40) hour requirements.
- e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.
- f. Exempt employees are not eligible for overtime.
 - 1) The HRD Office will maintain a list of exempt employees.

4. Holidays [\(Work Standard, 11-7-14\)](#)

- a. Tribal holidays consist of the following:
 - 1) One-half Day Christmas Eve
 - 2) Christmas Day
 - 3) New Year's Day
 - 4) Memorial Day
 - 5) Veteran's Day
 - 6) Independence Day
 - 7) Labor Day

- 604 8) Indigenous Peoples' Day
605 9) Thanksgiving Day
606 10) Indian Day (day after Thanksgiving)
607 11) One-half day Good Friday
608 12) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
609 (BC Resolution – 12-11-13A)
- b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.
- c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.
- d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a Sunday will be observed on the following Monday. [\(2019 Holiday Observance Calendar\)](#)
[\(2018 Holiday Observance Calendar\)](#)
- e. The Oneida Nation acknowledges its responsibility to make a reasonable accommodation to employees who wish time off to observe religious holidays. Requests for such time off will be granted where possible, based on the scheduling and staffing needs of affected departments. Employees wishing to take time off work for religious observances should inform their supervisor as early as possible. Employees may use personal time for such requests if eligible; otherwise the time off will be treated as unpaid leave.
5. Vacation/Personal Days
- a. Every 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.

2022 12 07

- 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~~ hours. 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~~Human Resources Executive Director 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)~~five (5) 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)~~Five (5) 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~~three (3) hours 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~~shall be approved by the Supervisor, ~~Area Manager, HRD Manager and General Manager.~~ (HR Interpretation, 12-9-16).
- ii. Requests ~~must~~shall 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.
- 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.

2022 12 07

- 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.
- 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.

- 863 4. Satisfactory evaluations may result in the employee receiving an increase in pay within
 864 their grade level provided that the employee has not attained the highest step within the
 865 grade.
 866 a. Unsatisfactory evaluations will result in probation status for the employee. The
 867 supervisor shall provide documentation to the Area Manager and to the employee
 868 detailing the deficiency(s). A repeat evaluation will be conducted three (3) months
 869 after the unsatisfactory evaluation. This second evaluation will result in the
 870 employee:
 871 1) Being removed from probation and receiving a salary increase if the second
 872 evaluation results in an overall satisfactory rating; or
 873 2) Receiving appropriate disciplinary actions if the second evaluation also results in
 874 an unsatisfactory rating.
 875 b. Employees may appeal unsatisfactory evaluations to the ~~HRD Manager. The HRD~~
 876 ~~Manager~~ Human Resources Executive Director. The Human Resources Executive
 877 Director will consult with the supervisor and the employee to negotiate an
 878 appropriate resolution (Work Standard, 12-8-16)
 879

880 C. CAREER DEVELOPMENT

- 881 1. Oneida Nation employees are encouraged to develop their skills and abilities by
 882 pursuing education at a local educational institution. (BC Action, 9-9-92)
 883 a. Oneida Nation employees must provide a general Career Development Plan to the
 884 supervisor listing the goals and objectives of the training and education to be
 885 undertaken.
 886 2. Oneida Nation employees may be eligible for assistance for one (1) course per semester.
 887 The employee must attempt to arrange to take the class outside his/her normal working
 888 hours.
 889 a. Where a class conflicts with the employee's work schedule, the needs of the Tribal
 890 unit take precedence; however, the supervisor shall attempt to accommodate the
 891 employee's request.
 892 b. In no case shall the accommodation exceed actual class hours plus reasonable travel
 893 time.
 894 c. Employees must obtain the approval of their immediate supervisor to take a course
 895 on work time.
 896 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the
 897 Area Manager and the General Manager. (HR Interpretation, 12-8-16)
 898 4. The cost of the books, tuition and fees for the course shall be paid by the Nation through
 899 funds budgeted in programs or through the Higher Education program.
 900 a. Reimbursement for books, tuition and fees is contingent upon the employee
 901 receiving at least a C (2.0 on a 4.0 point scale).
 902 b. Employees who receive less than the required grade point will be required to
 903 reimburse the program for whatever costs were incurred.
 904

905 D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

906 Disciplinary procedures provide a systematic process ~~for handling problem employees.~~
 907 ~~Disciplinary procedures serve to correct~~ correcting unacceptable ~~behavior~~ and ~~to protect the~~
 908 ~~Nation.~~ problematic behaviors in employees. Grievance procedures provide a systematic
 909 process for ~~hearing and evaluating job related disputes.~~ Grievance procedures serve to
 910 protect ~~protecting~~ employees from inconsistent and unfair treatment.- In all cases of
 911 grievance and discipline, supervisors are enjoined to use common sense, discretion and
 912 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~~General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee ~~have a~~ for filing a complaint shall be strictly prohibited.

b. Types of Complaints

1) Employee Disagreements

- a) An employee disagreement ~~with another employee, he/she may lodge~~ occurs when an ~~informal~~ employee alleges they are having problems, misunderstandings, or frustrations with another employee.

2) EEO Violations

- a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.
 - i. 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.

3) ~~formal (written)~~Illegal Activities

- a) An illegal activities violation occurs when an employee alleges:
 - i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
 - ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
 - iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
 - iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

4) Additional Complaints

- a) Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.
- b) Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.
- c. Complaint Procedures
- 1) Employee Disagreements
- a) An employee who alleges they have a disagreement with another employee may file a complaint with the employee's EEO Department.
- ~~a-b)~~ Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.
- ~~b-c)~~ The supervisor will shall have ten (10) working days to investigate the complaint and attempt to resolve the disagreement complaint.
- i. If the employee lodging The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint is dissatisfied from the EEO Department.
- ii. The supervisor shall meet with the attempted resolution, he/she employee filing the complaint as well as all other parties mentioned in the complaint.
1. Meetings between the supervisor and employees may ask occur in person, through video conferencing, or over the telephone.
2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.
- iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
- iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
- ~~1.~~ If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager to attempt a resolution and the Human Resources Executive Director.
- ~~d. There is no further appeal of this process.~~
- v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
- vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
- i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
- ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
- iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
- iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.
- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.
 - vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
 - ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the

- performance of their assigned duties and failure to appropriately investigate a complaint.
- iii. The notice shall address the appropriate accountability of the Area Manager.
- iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.
1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee
- a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
- b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
- c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
- ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
- d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
- i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
- e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
- f. The General Manager level position's resolution of the complaint shall be final.
2. Investigation Procedure for the Oneida Business Committee
- a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.
- 2) EEO Violations
- a) An employee may file a EEO Violation complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

2. Discipline

2.a. Initiation of Disciplinary Actions

- a.1) Disciplinary actions will~~shall~~ be initiated by an immediate supervisor for the purpose of correcting ~~unacceptable~~unsatisfactory work performance. ~~The supervisor will always discuss or as the action with the employee being~~

~~disciplined to ensure that the employee:~~resolution of an Employee Disagreement
complaint investigation.

- ~~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.~~

2) A supervisor Disciplinary actions shall initiate be initiated by an EEO Officer as the
resolution of an EEO Violation complaint or an Illegal Activities complaint
investigation.

b. Determination of Disciplinary Action.

1) All disciplinary actions shall commensurate with the seriousness of the
unsatisfactory performance— or violation.

2) Disciplinary actions shall be considered in progressive order.

a) The progressive order for discipline is as follows, unless otherwise noted:

i. Written warning (W);

ii. Suspension (S);

iii. Termination (T).

b) Deviation from Progressive Order

i. Any deviation from the recommended progressive order made by the
supervisor shall be justified in writing and approved by the EEO
Department.

ii. Any deviation from the recommended progressive order made by the
EEO Officer shall be justified in writing and approved by the Human
Resources Executive Director, or designee.

3) Accumulated Disciplinary Actions Warranting Termination

a) The following accumulations of disciplinary actions shall warrant the
termination of an employee:

i. Three (3) upheld warning notices within any twelve (12) month period;

ii. Two (2) upheld suspensions within any twelve (12) month period; or

iii. Any combination of three (3) upheld warning notices and/or upheld
suspensions within any twelve (12) month period.

c. Disciplinary Action for Unsatisfactory Work Performance.

~~b. 1) A supervisor must consider each~~may initiate disciplinary action ~~in~~
~~progressive order and justify a deviance from that recommended progression for~~
~~unsatisfactory work performance of an employee.~~

~~c. 2) The actions listed below are examples of unacceptable~~unsatisfactory work
performance and do not constitute a comprehensive or exhaustive list. ~~The~~
actions in parentheses are ~~guidelines for a supervisor to use~~the progressive order
standards to be used in administering disciplinary actions. ~~(W = written warning;~~
~~S = suspension; T = termination);, unless a deviation is sought and approved.~~

~~1) a) Work Performance~~

~~a) i.~~i. Insubordination (including disobedience) or failure/refusal to carry out
assignments or instructions. (W/S/T)

~~b) ii.~~ii. Loafing, loitering, sleeping or engaging in personal business. (W/S/T)

~~c) iii.~~iii. Unauthorized disclosure of confidential information or records. (S/T)

~~d) iv.~~iv. Falsifying records or giving false information to departments and/or
employees responsible for Recordkeeping. (S/T)

~~e) v.~~v. Failure to provide accurate and complete information where such
information is required by an authorized person. (S/T)

~~f) vi.~~vi. Failure to comply with health, safety and sanitation requirements, rules
and regulations. (W/S/T)

- ~~g~~vii. Negligence in the performance of assigned duties. (W/S/T)
- ~~2~~b. Attendance and Punctuality
- ~~a~~i. 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~~ii. A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
- ~~3~~c. Use of Property
- ~~a~~i. Unauthorized or improper use of Oneida Nation property or equipment (for example, Oneida Nation vehicles, telephone, mail services, etc.) (W/S/T)
- ~~b~~ii. 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)
- ~~e~~iii. Unauthorized use, lending, borrowing or duplicating of Oneida Nation keys. (T)
- ~~e~~iv. 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~~v. Theft ~~of~~ 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~~the Nation's premises. (S/T) (BC Action, 12-2-88)
- ~~4~~d. Personal Actions and Appearance
- ~~a~~i. Threatening, attempting, or doing bodily harm to another person. (T)
- ~~b~~ii. Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T)
- ~~e~~iii. Making false or malicious statements concerning other employees, supervisors or program heads. (W/S/T)
- ~~e~~iv. Use of alcohol or illegal controlled substances during work hours. (S/T) (GTC Resolution, 01-05-09A)
- ~~e~~v. Reporting for work under the influence of alcohol or illegal controlled substances. (S/T) (GTC Resolution, 01-05-09A)
- ~~f~~vi. Failure to immediately report any work-related injuries to the immediate supervisor. (W/S)
- ~~g~~vii. Direct involvement in political campaigning during scheduled work hours. Violations include:
- ~~i~~1. Use of Oneida Nation employment title in Oneida Nation campaign activities. (W/S/T)
- ~~1~~a. Political materials include: leaflets, brochures, etc. which solicit support for candidates for office.
- ~~2~~b. Resolutions or petitions which propose that a political action be initiated.
- ~~3~~c. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.

- ~~h)~~viii. The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida ~~Tobacco~~Retail Enterprise workers, and Museum ~~Workers~~workers.) (W/S/T)
- ~~i)~~ix. Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)
- ~~j)~~x. Failure to exercise proper judgment. (W/S/T)
- ~~k)~~xi. Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
- ~~h)~~xii. 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)
- xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or ~~controlled substances~~prohibited drugs on or about Oneida Nation premises ~~while on duty~~. (S/T)
- ~~m)~~1. Prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.
(BC Action, 12-2-88)
- ~~n)~~xiv. Any violation of duly adopted ~~Oneida~~laws of the 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).~~

~~1.) 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

2022 12 07

- 1311 a. ~~Should an employee have a complaint, he/she should file a formal~~
1312 ~~(written) complaint with the Human Resources Department.~~
1313 b. ~~The Human Resources Department is obligated to investigate the~~
1314 ~~complaint which is to be held in the strictest confidence. This~~
1315 ~~investigation shall be done within five (5) working days from~~
1316 ~~receiving the formal written complaint.~~
1317 c. ~~After investigating the complaint and the Human Resources~~
1318 ~~Department finds cause to take disciplinary action due to sexual~~
1319 ~~harassment violation, the employee will be disciplined accordingly~~
1320 ~~by their supervisor. This disciplinary action shall be initiated within~~
1321 ~~five (5) working days from the date the supervisor receives the~~
1322 ~~report from the Human Resource Department. (BC Actions, 7-16-93)~~
1323 3. ~~Accumulated Disciplinary Actions Warranting Termination (HR Interpretation, 1-29-14) (Provided~~
1324 ~~that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions~~
1325 ~~warranting termination for drug and alcohol related violations.) (GTC Resolution, 01-05-09A)~~
1326 a. ~~The accumulation of three (3) upheld warning notices within any twelve (12) month~~
1327 ~~period. (T)~~
1328 b. ~~The accumulation of two (2) upheld suspensions within any twelve (12) month~~
1329 ~~period. (T)~~
1330 c. ~~The accumulation of three (3) of any combination of upheld warning notices and/or~~
1331 ~~upheld suspensions within any twelve (12) month period. (T)~~
1332 4. ~~Substance Abuse Disciplinary Procedure Section was deleted. (GTC Resolution, 01-05-09-A)~~
1333 ~~Click here for Drug and Alcohol Free Workplace Policy.~~
1334 5. ~~d. Disciplinary Procedure (Disciplinary Flowchart)~~
1335 ~~The Procedure. The~~ following procedure shall be adhered to by the supervisor or
1336 EEO Officer whenever disciplinary action is taken.
1337 1) ~~Supervisor becomes aware of. The supervisor or EEO Officer shall fill out a~~
1338 disciplinary action form within five (5) working days of either:
1339 a) the resolution of a complaint from which it has been determined that
1340 disciplinary action is warranted, or
1341 a.b) the determination that disciplinary action is warranted based on the
1342 unsatisfactory work performance or violation of an employee.
1343 1) ~~Supervisor investigates through a meeting with the employees and determines~~
1344 ~~whether disciplinary action is warranted.~~
1345 2) ~~If disciplinary action is warranted, within five (5) working days the The supervisor~~
1346 ~~will or EEO Officer shall fill out the five (5) part disciplinary action form stating in its~~
1347 ~~entirety and ensure the information contained on the form is complete and~~
1348 ~~accurate. The disciplinary action form shall include at a minimum the following~~
1349 ~~information:~~
1350 a) Statement of the behavior for which the disciplinary action is being taken,
1351 the;
1352 b) The time and date of its occurrence; and the
1353 b.c) The specific policy section under which action is being taken.
1354 ~~c.3) The form will be discussed supervisor or EEO Officer shall promptly hold a~~
1355 meeting with the employee to discuss the disciplinary action form with the
1356 employee and identify a corrective action will be identified.
1357 a) The meeting between the supervisor or EEO Officer and the employee may
1358 occur in person, through video conferencing, or over the telephone.

2022 12 07

- b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
- i. Understands the reason for the disciplinary action;
 - ii. Understands the expected work performance in light of the disciplinary action; and
 - iii. Understands the consequences of continued unacceptable behavior.
- ~~d.4)~~ The employee being disciplined will~~shall~~ sign the disciplinary action form.
- ~~4)a)~~ Should an employee being disciplined refuse to discuss the action with his/her~~their~~ supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form and distribute as in 5.e.
- 5) Copies will be given to the employee, the HRD Manager, the supervisor, the
Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
- a) Employee being disciplined;
 - b) Human Resources Executive Director;
 - c) Supervisor;
 - d) Area Manager; and
 - e-e) Appropriate General Manager within twenty four (24) hours of the conference with the employee. ~~HR Interpretation 12-8-16)~~ level position.
- f.6) Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:
- a) The Consultation on Suspensions
 - ~~4)i.~~ If the supervisor is issuing the discipline, then the supervisor shall consult with the HRD Manager~~EEO Officer~~ to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - ~~a)b)~~ Suspensions will~~shall~~ be limited to a maximum period of three (3) weeks.
 - i. Suspension/terminations~~Suspensions~~ that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
- a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) Terminations that are overturned in the ~~appeal~~grievance process shall result in the employee receiving back pay for the ~~days he/she was suspended/~~time they were terminated.
- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.
- a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.

- b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
- c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.
- 9) For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager.
- a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.
- b) The letter shall address the appropriate accountability of the supervisor.
3. Grievance [\(Grievance Flowchart\)](#)

a. General

- 1) An employee who receives a disciplinary action which ~~he/she believes~~ they believe is ~~unfair/improper~~ may grieve the action.
- 2) The ~~Grievance~~ 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~~ Nation holidays of the Nation 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
- b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.
- ~~6.c.~~ Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process ~~will~~ shall for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall 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) Appeal to the Area Manager
- ~~1)a)~~ a) The employee (petitioner) ~~must~~ shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.
- ~~a)i.~~ i. The employee may seek the assistance of ~~a spokesperson or an~~ an 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) b) The Area Manager, for all disciplinary action investigations, ~~will~~ shall 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.~~
- ~~i.~~ i. The supervisor shall meet with the following individuals during the disciplinary action investigation:

1. Employee filing the appeal of the discipline;
2. Supervisor who issued the discipline; and
3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
- ii. Meetings between the Area Manager ~~will do~~ and the employees may occur in person, through video conferencing, or by telephone.
- iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.
- iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.

~~3)c)~~ The Area Manager shall take one of the following actions:

- ~~a)i.~~ Uphold the disciplinary action; ~~or~~
- ~~b)ii.~~ Modify the disciplinary action; or
- ~~iii.~~ Overturn the disciplinary action.

~~e)1.~~ If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.

~~d)~~ The Area Manager ~~will~~shall file at their decision with the employee and the HRD Manager (Human Resources Executive Director, or designee) ~~and will~~. The decision of the Area Manager shall include:

- ~~i.~~ a reason for the decision;
- ~~ii.~~ an explanation of the decision; and
- ~~4)iii.~~ the action to be taken as a result of it.

~~e)~~ Filing a Complaint An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.

~~b-2)~~ Appeal to the Oneida Personnel Commission (BC Resolution, 3-18-19)

~~4)a)~~ An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaintgrievance with the Human Resources DepartmentGovernment Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee's receipt of the Area Manager's decision.

~~a)~~ The ~~employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision~~

~~2)b)~~ The ~~Human Resources Department~~Government Administrative Office shall notify the Human Resources ~~Department Manager of receipt~~Executive Director of the appeal of the Area Manager's decision within one (1) business day of receipt of the appeal.

~~c.~~ Collection of Information

~~4)c)~~ The ~~Human Resources Department~~The Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.

~~d.~~ Review of the Complaint

~~d)~~ The ~~Human Resources Department~~The Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the complaint, and the appeal.

- 1508 ~~1)e.~~ The Oneida Personnel Commissioners shall review all the information
 1509 submitted by the ~~Petitioner~~employee petitioner and the ~~Human Resources~~
 1510 ~~Department~~Government Administrative Office to determine if one ~~(1)~~ or both
 1511 conditions exist;
- 1512 ~~a)i.~~ The decision of the Area Manager is clearly against the weight of the
 1513 evidence; ~~and/or~~
- 1514 ~~b)ii.~~ Procedural irregularities were exhibited during the appeal process that
 1515 were harmful to one of the parties to the grievance.
- 1516 ~~2)f)~~ If Oneida Personnel Commission members selected to serve as the hearing
 1517 body for the ~~complaint~~appeal find one ~~(1)~~ or both conditions exist, the
 1518 ~~Human Resources Department~~Government Administrative Office shall
 1519 convene the Oneida Personnel Commission to hear the grievance.
- 1520 ~~3)g)~~ If the Oneida Personnel Commission members find that neither condition
 1521 exists, the Oneida Personnel Commission ~~will~~shall deny the appeal for a
 1522 hearing and affirm the decision of the Area Manager.
- 1523 ~~e.h)~~ Convening a Hearing
- 1524 ~~1)i.~~ The Human Resources Department~~The Government Administrative~~
 1525 Office shall schedule a time and location for the grievance hearing and
 1526 shall confirm the participation of the Oneida Personnel Commission
 1527 members selected to serve as the hearing body for the complaint.
- 1528 ~~2)ii.~~ The Human Resources Department~~The Government Administrative~~
 1529 Office shall send notice of the hearing to the petitioner, respondent, and
 1530 Oneida Personnel Commission members at least five (5) working days
 1531 prior to the hearing date.
- 1532 ~~3)iii.~~ The Human Resources Department~~The Government Administrative~~
 1533 Office shall provide copies of all information on the subject case upon
 1534 which the disciplinary action was upheld or modified by the Area
 1535 Manager to the members of the Oneida Personnel Commission at least
 1536 two (2) working days prior to the appeal date.
- 1537 ~~4)iv.~~ The Human Resources Department~~Government Administrative Office~~
 1538 shall allow the petitioner and respondent access to this information in
 1539 the ~~Human Resources Department~~Government Administrative Office at
 1540 least two (2) days prior to the appeal date.
- 1541 ~~f.i)~~ Hearing Procedure
- 1542 ~~1)i.~~ The order of presentation for the hearing shall be:
- 1543 ~~a)1.~~ Petitioner's opening statement;
- 1544 ~~b)2.~~ Respondent's opening statement;
- 1545 ~~c)3.~~ The Petitioner's case;
- 1546 ~~d)4.~~ The Respondent's case;
- 1547 ~~e)5.~~ Petitioner's closing statement; and
- 1548 ~~f)6.~~ Respondent's closing statement.
- 1549 ~~2)ii.~~ The petitioner shall have the right to be represented by an advocate, at
 1550 ~~his or her~~their own expense. ~~The respondent and/or area manager~~Area
 1551 Manager who is party to the grievance action shall have access to an
 1552 advocate for consultation and/or representation. Should the petitioner
 1553 engage outside professional legal representation, the respondent and/or
 1554 ~~area manager~~Area Manager shall have access to the professional legal
 1555 representation.
- 1556 ~~a)1.~~ Should the petitioner and ~~his or her~~their representative both fail to
 1557 appear for any scheduled hearing without justifiable cause, the

- 1558 decision of the Area Manager shall be upheld, and the grievance
1559 dismissed.
- 1560 ~~b)2.~~ 2. Should the respondent and ~~his/her~~their representative both fail to
1561 appear for any scheduled hearing without justifiable cause, the
1562 decision of the Area Manager shall be overturned.
- 1563 ~~3)iii.~~ iii. If new evidence which was previously unavailable is introduced at any
1564 point during the hearing process, the Oneida Personnel Commission
1565 hearing shall be suspended, and the case ~~will~~shall be remanded to the
1566 Area Manager for reconsideration.
- 1567 ~~a)1.~~ 1. The Area Manager shall reconsider the decision in light of the new
1568 evidence and issue a decision within three (3) working days.
- 1569 ~~b)2.~~ 2. This procedure may be invoked only once.
- 1570 ~~c)iv.~~ iv. Thereafter, the appeal process shall continue to a conclusion based on
1571 the information originally presented and the newly introduced evidence.
- 1572 ~~i.1.~~ 1. If the Area Manager overturns ~~his-or-her~~their decision, the case
1573 ~~would~~shall not come back for a hearing.
- 1574 ~~ii.2.~~ 2. If the Area Manager affirms ~~his-or-her~~their decision, then the case
1575 ~~will~~shall come back to the Oneida Personnel Commission to complete
1576 the hearing.
- 1577 ~~4)v.~~ v. The Oneida Personnel Commission's decision shall be based solely on the
1578 information presented to them before the appeal hearing, the record of
1579 the prior proceedings, and any new evidence if introduced
1580 appropriately.
- 1581 ~~5)vi.~~ vi. The Oneida Personnel Commission may:
- 1582 ~~a)1.~~ 1. Uphold the disciplinary action; or
- 1583 ~~b)2.~~ 2. Overturn the disciplinary action and:
- 1584 ~~i.a.~~ a. Reinstatement the employee (petitioner) with ~~full~~ back pay for any lost
1585 time in accordance with the Back Pay law; or
- 1586 ~~ii.b.~~ b. Reinstatement the employee (petitioner) without back pay.
- 1587 ~~6)vii.~~ vii. The Oneida Personnel Commission shall provide notification of the final
1588 decision within five (5) working days following the hearing. Notification
1589 of the final decision shall include;
- 1590 ~~a)1.~~ 1. The final decision;
- 1591 ~~b)2.~~ 2. The reason(s) for the final decision; and
- 1592 ~~c)3.~~ 3. The action to be taken as a result of the final decision.
- 1593 ~~7)j) The Human Resources Department~~The Government Administrative Office
1594 shall keep records of the hearing, and provide copies of administrative
1595 advocacy rules, procedural rules, and time line rules to interested parties.
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- 1599 k) If the Oneida Personnel Commission is unable to fulfil its responsibility to hear
1600 an appeal of an Area Manager's decision, then the employee may appeal the
1601 Area Manager's decision to the Oneida Nation Judiciary by filing a complaint
1602 with the Trial Court within ten (10) days from the employee's receipt of the
1603 Area Manager's decision.
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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.

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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SECTION VIII – RECORDKEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims

- g. Disciplinary action information
- h. Performance evaluations
- i. Insurance coverage/changes
- j. Transfers
- 2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. Oneida Nation employees shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

B. ACCOUNTING DEPARTMENT

- 1. Basic records to be retained include:
 - a. Attendance records
 - b. Employee Time Sheets
 - c. Earnings - in the form of computer printouts
 - d. Travel - in the form of complete travel authorization forms.
 - 1) Time sheets and travel reports shall be filled out by every employee for pay period, collected by the program head, and forwarded to the Department.
- 2. The Accounting Department shall retain all records for a period of seven (7) years. [\(BC Action, 10-14-09B\)](#)

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

1771 any organization without the written consent of the employee except under the conditions
1772 outlined herein.

1773 B. EMPLOYEE ACCESS

1774 In addition, the Oneida Nation recognizes that the information contained in each employee's
1775 file is personal and that the lives of its employees are subject to changes. Therefore, the Oneida
1776 Nation provides for employee access to his/her personnel file. Employees are allowed to review
1777 their file and submit a statement of amendment should their review uncover any inaccurate,
1778 obsolete or irrelevant information. Should any information come into dispute, an employee's
1779 statement of dispute will be accessed into the file.

1780 C. RELEASE OF INFORMATION TO THIRD PARTIES

1781 The Oneida Nation is obligated by law to release certain information to outside parties. Such
1782 parties include the State of Wisconsin's Unemployment Compensation Department and its
1783 Workers Compensation Division and the United States Social Security Administration. Any
1784 additional information released to a third party by the Human Resources Department related to
1785 employee records shall consist of summary information and will not include any identifying
1786 personal information. (Such information may be total numbers of males and females in the
1787 workforce, mean, median and average age of the workforce, etc.)

1788 The Oneida Nation will release personal information on employees when a request is
1789 accompanied by a written release signed by the employee. The Human Resources Department
1790 will make every effort to validate this request by contacting the employee. In no case shall the
1791 Oneida Nation release personal information from an employee's file without this consent.

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ONEIDA NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

Table of Contents (Last update __/__/__)

SECTION I INTRODUCTION	2
SECTION II - RECRUITING	3
SECTION III – SELECTION POLICY	6
SECTION IV – COMPENSATION AND BENEFITS	13
SECTION V – EMPLOYEE RELATIONS	19
SECTION VI – SAFETY AND HEALTH	28
SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS	29
SECTION VIII - RECORDKEEPING	30
SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS	31

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 Human Resources Executive Director, 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.

- 174 h. All temporary employees are subject to lay-off based upon department job needs
175 and budgets. [\(HR Interpretation – 11-25-13\)](#)
176 i. Supervisors are required to do proficient planning within their respective span of
177 control; as such they must also enforce separation dates and will be monitored by
178 HRD for compliance.
179 j. Supervisors must select the most appropriate category of classification for the job.
180 1) Moving from one classification to another is prohibited.
- 181 4. Benefits
- 182 a. The following employee classifications will be eligible for benefits as defined in the
183 section of the Personnel Policies and Procedures as medical, dental, vacation and
184 personal accrual, holiday pay, premium pay.
185 1) Limited Term
186 2) Seasonal
- 187 b. The following employee classifications will be eligible for benefits as defined in this
188 section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday
189 pay.
190 1) Emergency/Temporary
191 2) Substitute/Relief
192 3) Seasonal Worker (only during their first season)
- 193 c. The following employee classifications will be eligible for benefits as defined in this
194 section of the Personnel Policies and Procedures as Mandatory Benefits.
195 1) Youth Worker
196 2) Student/Intern
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SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. ([GTC Resolution – 5-23-11-A](#))

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian 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 both training upon hiring and periodic retraining 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 and to shield those employees from inconsistent and unfair treatment by:
 - a) Protecting against issues of nepotism;
 - b) Enforcing Oneida and Indian preference.
 - 2) The Personnel Commission is directed to:
 - i. Participate in the hiring selection process, including job description pre-screens and interviews, to ensure compliance with the Nation's laws and policies regarding the following subject matters:
 1. Oneida and Indian preference;
 2. Nepotism;
 3. Conflicts of interest;
 4. Veteran status; and
 5. Physical capacity requirements.
 - ii. Comply with the Oneida Personnel Commission Bylaws.
- c. Hiring and Selection Rules.
 - 1) The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation.

C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Internal Position Posting and Reassignment Rules.

- a. The HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation.

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 (3) 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 Human Resources Executive Director 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.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forty (40) hour requirements.

- 393 e. Tribal employees are expected to work overtime if required. Time and one-half will
 394 be paid for this overtime.
- 395 f. Exempt employees are not eligible for overtime.
- 396 1) The HRD Office will maintain a list of exempt employees.
- 397 4. Holidays ([Work Standard, 11-7-14](#))
- 398 a. Tribal holidays consist of the following:
- 399 1) One-half Day Christmas Eve
 400 2) Christmas Day
 401 3) New Year's Day
 402 4) Memorial Day
 403 5) Veteran's Day
 404 6) Independence Day
 405 7) Labor Day
 406 8) Indigenous Peoples' Day
 407 9) Thanksgiving Day
 408 10) Indian Day (day after Thanksgiving)
 409 11) One-half day Good Friday
 410 12) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
 411 ([BC Resolution – 12-11-13A](#))
- 412 b. To be eligible for a paid holiday, employees must work the preceding and following
 413 scheduled work days (except for employees who are on a prescheduled work leave
 414 or an approved extended sick leave.) Employees who are granted a sick day directly
 415 prior to a holiday must certify that they were capable of working the holiday in order
 416 to qualify for a paid holiday.
- 417 c. All regular employees will be given holiday pay for the maximum pay of eight (8)
 418 hours per day.
- 419 d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling
 420 on a Sunday will be observed on the following Monday. ([2019 Holiday Observance Calendar](#))
 421 ([2018 Holiday Observance Calendar](#))
- 422 e. The Oneida Nation acknowledges its responsibility to make a reasonable
 423 accommodation to employees who wish time off to observe religious holidays.
 424 Requests for such time off will be granted where possible, based on the scheduling
 425 and staffing needs of affected departments. Employees wishing to take time off work
 426 for religious observances should inform their supervisor as early as possible.
 427 Employees may use personal time for such requests if eligible; otherwise the time off
 428 will be treated as unpaid leave.
- 429 5. Vacation/Personal Days
- 430 a. Every Oneida Nation employee, except temporary employees, shall be allowed
 431 personal and vacation days with pay to the extent that personal days and vacation
 432 are accumulated.
- 433 b. The amount of personal and vacations days shall be determined by continuous
 434 service for the Nation. A "lay-off" from Oneida Nation employment shall not be
 435 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 hours. 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.

- 479 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 480 2) Six (6) or more days of vacation require at least two (2) weeks advance
 481 notification.
- 482 l. The burden shall be on the supervisor to show that a denial of a personal day or a
 483 vacation day is based upon interference with the business of the Nation.
- 484 m. Personal or Vacation Days can be taken when an employee is on probation. [\(GTC](#)
 485 [Resolution 5-23-11-B, HR Interpretation 5-8-17\)](#)
- 486 n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze
 487 fiscal conditions to determine whether employees may trade back personal and/or
 488 vacation hours for cash that fiscal year.
- 489 1) If the Oneida Business Committee approves trade-back for cash, they shall also
 490 determine whether (i) and/or (ii) applies: [\(See Revision\)](#)
- 491 i. All employees will have the opportunity to trade-back hours one time that
 492 year.
- 493 1. By August 15, each employee who has accumulated twenty-four (24)
 494 hours or more of vacation and/or personal days may opt to trade in
 495 his/her hours for cash.
- 496 2. Employees will receive their trade back on or before September 30 of
 497 that year.
- 498 ii. Only those employees who are unable to utilize their personal and/or
 499 vacation time due to working conditions, such as a shortage in staffing, as
 500 determined by the Human Resources Executive Director or designee, will
 501 have the opportunity to trade back hours on a quarterly basis.
- 502 1. Employees will receive their trade back within sixty (60) days after
 503 opting to trade back hours.
- 504 2) When trade-back for cash is approved by the Oneida Business Committee, the
 505 following standards shall apply:
- 506 i. Employees must decide which status (vacation or personal or both) from
 507 which their trade back will be drawn.
- 508 ii. Employees may not trade for cash more than eighty (80) hours in one year.
 509 [\(GTC Resolution, 5-23-11-B\)](#)
- 510 o. Additional Duties Compensation
- 511 p. Travel Time Compensation [\(Work Standard , 3-20-13\)](#)
- 512
- 513 B. INSURANCES [\(see separate publication\)](#) for information on Oneida Nation Insurance plans.
 514
- 515 C. RETIREMENT PLAN [\(See separate publication for information on Tribal Retirement Plan\).](#)
 516 [\(Separating Employees WS 5-6-13\)](#)
- 517 D. LEAVES
- 518 1. Meeting Attendance
- 519 a. Approval for attending any meetings inside normal working hours must be approved
 520 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 result 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 five (5) 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. Five (5) 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 three (3) hours 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 shall be approved by the Supervisor.
 - ii. Requests shall 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.
 - 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.
 - 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 Human Resources Executive Director. The Human Resources Executive Director 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 correcting unacceptable and problematic behaviors in employees. Grievance procedures provide a systematic process for

protecting 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. General

- 1) The Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality.
- 2) The Nation recognizes there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process.
- 3) An employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures.
- 4) Access to complaint information shall be limited to those who have a legitimate need to know.
- 5) Retaliation of any form against an employee for filing a complaint shall be strictly prohibited.

b. Types of Complaints

1) Employee Disagreements

- a) An employee disagreement occurs when an employee alleges they are having problems, misunderstandings, or frustrations with another employee.

2) EEO Violations

- a) An EEO violation occurs when an employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.
 - i. 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.

3) Illegal Activities

- a) An illegal activities violation occurs when an employee alleges:
 - i. They witnessed or have knowledge of arson, bribery, lying under oath, obstruction, or interference with a criminal investigation;
 - ii. They witnessed or have knowledge of a possession of a dangerous or unauthorized material, such as explosives or firearms, in the workplace;
 - iii. They witnessed or have knowledge of the use or possession of an illegal controlled substance; or
 - iv. They witnessed or have knowledge of a theft of property which includes, but is not limited to, theft, embezzlement, cheating, defrauding, pilfering,

robbery, extortion, racketeering, swindling, or conspiracy to commit such actions.

4) Additional Complaints

- a) Complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law.
- b) Complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law.

c. Complaint Procedures

1) Employee Disagreements

- a) An employee who alleges they have a disagreement with another employee may file a complaint with the EEO Department.
- b) Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the supervisor of the employee with the complaint.
- c) The supervisor shall have ten (10) working days to investigate and resolve the complaint.
 - i. The supervisor's ten (10) working day timeframe begins the day after the supervisor receives the complaint from the EEO Department.
 - ii. The supervisor shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - 1. Meetings between the supervisor and employees may occur in person, through video conferencing, or over the telephone.
 - 2. The supervisor shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the supervisor shall move forward with the investigation based on the information they have.
 - iii. If the supervisor cannot complete the investigation within the ten (10) working day timeframe, the supervisor may request a one (1) time five (5) working day extension from the EEO Department.
 - iv. When the supervisor's investigation is complete, the supervisor shall contact the EEO Officer to mutually determine an appropriate resolution.
 - 1. If the supervisor cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the supervisor shall provide written justification for non-agreement on the resolution to both the Area Manager and the Human Resources Executive Director.
 - v. The supervisor shall send the final resolution to their Area Manager to ensure accountability.
 - vi. The supervisor shall also send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
- d) If the supervisor fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the Area Manager.
 - i. The notice shall notify the Area Manager that the complaint was not addressed within the allotted ten (10) working days.
 - ii. The notice shall inform the Area Manager that the supervisor violated the complaint process by being negligent in the performance of their assigned duties and failure to appropriately investigate a complaint.
 - iii. The notice shall address the appropriate accountability of the supervisor.

1. If the Area Manager fails to take appropriate action to address the accountability of the supervisor, then the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
- iv. The notice shall direct the Area Manager to complete the complaint investigation within ten (10) working days of receiving the notice from EEO.
- e) If the employee is not satisfied with the supervisor's final resolution, they may refile their complaint with the EEO Department for resolution by the Area Manager.
 - i. Within two (2) working days of the receipt of the complaint, the EEO Department shall provide the Area Manager of the employee with the complaint.
 - ii. The Area Manager shall have ten (10) working days to complete their investigation.
 - iii. The Area Manager's ten (10) working day timeframe begins the day after the Area Manager receives the complaint from the EEO Department.
 - iv. The Area Manager shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 1. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 2. The Area Manager shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the Area Manager shall move forward with the investigation based on the information they have.
 - v. When the Area Manager's investigation is complete, the Area Manager shall contact the EEO Officer to mutually determine an appropriate resolution.
 1. If the Area Manager cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the Area Manager shall provide written justification for non-agreement on the resolution to both the appropriate GM level position and the HRD Executive Director.
 - vi. The Area Manager shall send the final resolution and all supporting documentation used to make the final resolution to the EEO Department for filing and reporting purposes.
 - vii. The Area Manager's resolution shall be final.
- f) If the Area Manager fails to complete the investigation and resolve the complaint within the ten (10) working days, the EEO Department shall send notice to the General Manager level position in that chain of command. If the General Manager level position was the Area Manager in the complaint, then the EEO Officer shall send the notice to the Oneida Business Committee.
 - i. The notice shall notify the General Manager level position that the complaint was not addressed within the additional ten (10) working days.
 - ii. The notice shall inform the General Manager level position that the Area Manager violated the complaint process by being negligent in the

- performance of their assigned duties and failure to appropriately investigate a complaint.
- iii. The notice shall address the appropriate accountability of the Area Manager.
 - iv. The notice shall address the General Manager level position's responsibility to complete the complaint investigation and reach a resolution.
 - 1. Investigation Procedure for all General Manager Level Positions, not the Oneida Business Committee
 - a. The General Manager level position shall complete the investigation and reach a resolution within ten (10) working days of receiving the notice from EEO.
 - b. The General Manager level position's ten (10) working day timeframe begins the day after the General Manager level position receives the complaint from the EEO Department.
 - c. The General Manager level position shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
 - i. Meetings between the General Manager level position and the employees may occur in person, through video conferencing, or by telephone.
 - ii. The General Manager level position shall document all attempts made to meet with an employee. If the complaining employee or the employee being complained about is unavailable, the General Manager level position shall move forward with the investigation based on the information they have.
 - d. When the General Manager level position's investigation is complete, the General Manager level position shall contact the EEO Officer to mutually determine an appropriate resolution.
 - i. If the General Manager level position cannot come to a mutual determination with the EEO Officer as to an appropriate resolution for the complaint, then the General Manager level position shall provide written justification for non-agreement on the resolution to the Human Resources Executive Director.
 - e. The final resolution shall be sent to the EEO Department for filing and reporting purposes.
 - f. The General Manager level position's resolution of the complaint shall be final.
 - 2. Investigation Procedure for the Oneida Business Committee
 - a. When the GM level position of a complaint was the Area Manager in the complaint, then the Oneida Business Committee shall complete the investigation and reach a resolution in accordance with their standard operating procedure regarding complaints.
- 2) EEO Violations
 - a) An employee may file a EEO Violation complaint with the EEO Department.
 - b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
 - c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.

- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.

3) Illegal Activities

- a) An employee may file an Illegal Activities complaint with the EEO Department.
- b) The EEO Officer shall have ten (10) working days to investigate and resolve the complaint.
- c) The EEO Officer's ten (10) working day timeframe begins the day after the EEO Department receives the complaint from the employee.
- d) The EEO Officer shall notify the immediate supervisor of the employee being complained about so they:
 - i. Are aware that the EEO Officer will be investigating their employee;
 - ii. Know the EEO Officer shall be responsible for implementing the final resolution; and
 - iii. Know the final resolution shall be sent to their supervisor to ensure accountability.
- e) The EEO Officer shall meet with the employee filing the complaint as well as all other parties mentioned in the complaint.
- f) The Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an Illegal Activities complaint.
- g) The EEO Officer shall meet with the Human Resources Executive Director to mutually determine an appropriate resolution.
- h) The final resolution and all support documentation used to make the final resolution shall be filed at the EEO Department for reporting purposes.
- i) The EEO Officer's resolution shall be final.
- j) If the EEO Officer's Illegal Activities complaint investigation of the employee resulted in the conclusion that an illegal activity did occur, then the EEO Officer shall forward the complaint resolution and all support documentation to a local law enforcement agency.
 - i. The local law enforcement agency shall utilize their investigation and accountability processes for the complaint.

2. Discipline

a. Initiation of Disciplinary Action.

- 1) Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation.

- 2) Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation.
- b. Determination of Disciplinary Action.
- 1) All disciplinary actions shall commensurate with the seriousness of the unsatisfactory performance or violation.
 - 2) Disciplinary actions shall be considered in progressive order.
 - a) The progressive order for discipline is as follows, unless otherwise noted:
 - i. Written warning (W);
 - ii. Suspension (S);
 - iii. Termination (T).
 - b) Deviation from Progressive Order
 - i. Any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department.
 - ii. Any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee.
 - 3) Accumulated Disciplinary Actions Warranting Termination
 - a) The following accumulations of disciplinary actions shall warrant the termination of an employee:
 - i. Three (3) upheld warning notices within any twelve (12) month period;
 - ii. Two (2) upheld suspensions within any twelve (12) month period; or
 - iii. Any combination of three (3) upheld warning notices and/or upheld suspensions within any twelve (12) month period.
- c. Disciplinary Action for Unsatisfactory Work Performance.
- 1) A supervisor may initiate disciplinary action for unsatisfactory work performance of an employee.
 - 2) The actions listed below are examples of unsatisfactory work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are the progressive order standards to be used in administering disciplinary actions, unless a deviation is sought and approved.
 - a) Work Performance
 - i. Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
 - ii. Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
 - iii. Unauthorized disclosure of confidential information or records. (S/T)
 - iv. Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
 - v. Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)
 - vi. Failure to comply with health, safety and sanitation requirements, rules and regulations. (W/S/T)
 - vii. Negligence in the performance of assigned duties. (W/S/T)
 - b) Attendance and Punctuality
 - i. 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)
 - ii. A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
 - c) Use of Property

- 1002 i. Unauthorized or improper use of Oneida Nation property or equipment
 1003 (for example, Oneida Nation vehicles, telephone, mail services, etc.)
 1004 (W/S/T)
- 1005 ii. Unauthorized possession, removal or willful destruction of Oneida
 1006 Nation or another employee's property (including improper use of
 1007 possession of uniforms, identification cards, badges, permits or
 1008 weapons). (Willful destruction of property may subject the violator to
 1009 applicable liability laws.) (T)
- 1010 iii. Unauthorized use, lending, borrowing or duplicating of Oneida Nation
 1011 keys. (T)
- 1012 iv. Unauthorized entry of Oneida Nation property, including unauthorized
 1013 entry outside of assigned hours of work or entry into restricted areas
 1014 without prior supervisory approval. (S/T)
- 1015 v. Theft of property shall include theft, embezzlement, cheating,
 1016 defrauding, pilfering, robbery, extortion, racketeering, swindling or any
 1017 of these actions, or conspiracy to commit such actions with Oneida
 1018 Nation employees or other persons against the Nation, its guests,
 1019 employee, members, customers and/or clients while on or about the
 1020 Nation's premises. (S/T) [\(BC Action, 12-2-88\)](#)
- 1021 d) Personal Actions and Appearance
- 1022 i. Threatening, attempting, or doing bodily harm to another person. (T)
- 1023 ii. Intimidating, interfering with or using abusive language toward
 1024 customers, clients, co-workers or others. (S/T)
- 1025 iii. Making false or malicious statements concerning other employees,
 1026 supervisors or program heads. (W/S/T)
- 1027 iv. Use of alcohol or illegal controlled substances during work hours. (S/T)
 1028 [\(GTC Resolution, 01-05-09A\)](#)
- 1029 v. Reporting for work under the influence of alcohol or illegal controlled
 1030 substances. (S/T) [\(GTC Resolution, 01-05-09A\)](#)
- 1031 vi. Failure to immediately report any work-related injuries to the immediate
 1032 supervisor. (W/S)
- 1033 vii. Direct involvement in political campaigning during scheduled work
 1034 hours. Violations include:
- 1035 1. Use of Oneida Nation employment title in Oneida Nation campaign
 1036 activities. (W/S/T)
- 1037 a. Political materials include: leaflets, brochures, etc. which solicit
 1038 support for candidates for office.
- 1039 b. Resolutions or petitions which propose that a political action be
 1040 initiated.
- 1041 c. Leaflets, newsletters, or other written materials the purpose of
 1042 which is to espouse political views or opinions.
- 1043 viii. The acceptance of gifts or gratuities for personal gain in the course of
 1044 official duties. (Customers are allowed to tip Bingo workers, Oneida Retail
 1045 Enterprise workers, and Museum workers.) (W/S/T)
- 1046 ix. Inappropriate dress or personal hygiene which adversely affects the
 1047 proper performance of duties or constitutes a health or safety hazard.
 1048 (W/S)
- 1049 x. Failure to exercise proper judgment. (W/S/T)
- 1050 xi. Failure to be courteous in dealing with fellow employees or the general
 1051 public. (W/S/T)

- xii. 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)
- xiii. The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or prohibited drugs on or about Oneida Nation premises while on duty. (S/T)
1. Prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.
(BC Action, 12-2-88)
- xiv. Any violation of duly adopted laws of the Nation. (W/S/T) (BC Action, 12-2-88)
- d. Disciplinary Procedure. The following procedure shall be adhered to by the supervisor or EEO Officer whenever disciplinary action is taken.
- 1) The supervisor or EEO Officer shall fill out a disciplinary action form within five (5) working days of either:
- a) the resolution of a complaint from which it has been determined that disciplinary action is warranted, or
- b) the determination that disciplinary action is warranted based on the unsatisfactory work performance of an employee.
- 2) The supervisor or EEO Officer shall fill out the disciplinary action form in its entirety and ensure the information contained on the form is complete and accurate. The disciplinary action form shall include at a minimum the following information:
- a) Statement of the behavior for which the disciplinary action is being taken;
- b) The time and date of its occurrence; and
- c) The specific policy section under which action is being taken.
- 3) The supervisor or EEO Officer shall promptly hold a meeting with the employee to discuss the disciplinary action form with the employee and identify a corrective action.
- a) The meeting between the supervisor or EEO Officer and the employee may occur in person, through video conferencing, or over the telephone.
- b) During the meeting the supervisor or EEO Officer shall discuss the disciplinary action with the employee being disciplined to ensure that the employee:
- i. Understands the reason for the disciplinary action;
- ii. Understands the expected work performance in light of the disciplinary action; and
- iii. Understands the consequences of continued unacceptable behavior.
- 4) The employee being disciplined shall sign the disciplinary action form.
- a) Should an employee being disciplined refuse to discuss the action with their supervisor or the EEO Officer, or refuse to sign the disciplinary action form, the supervisor or EEO Officer shall so note this, with date of refusal, on the form.
- 5) Within one (1) working day of the conclusion of the meeting with the employee, the supervisor or EEO Officer shall provide copies of the signed disciplinary action form, or disciplinary action form noting the date of refusal, to the:
- a) Employee being disciplined;

- b) Human Resources Executive Director;
 - c) Supervisor;
 - d) Area Manager; and
 - e) Appropriate General Manager level position.
- 6) Should a disciplinary action result in the suspension of an employee, the following guidelines shall apply:
- a) Consultation on Suspensions
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine the length of the suspension.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension.
 - b) Suspensions shall be limited to a maximum period of three (3) weeks.
 - i. Suspensions that are overturned in the grievance process shall result in the employee receiving back pay for the time they were suspended.
- 7) Should a disciplinary action result in the termination of an employee, the following guidelines shall apply:
- a) Consultation on Termination
 - i. If the supervisor is issuing the discipline, then the supervisor shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action.
 - ii. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action.
 - b) Terminations that are overturned in the grievance process shall result in the employee receiving back pay for the time they were terminated.
- 8) The Human Resources Department may void a disciplinary action for clear procedural errors.
- a) The EEO Officer may void a disciplinary action taken by a supervisor for clear procedural errors.
 - b) The Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors.
 - c) Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error.
- 9) For any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department shall send a letter to the Area Manager.
- a) The letter shall notify the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failure to appropriately discipline an employee.
 - b) The letter shall address the appropriate accountability of the supervisor.
3. Grievance ([Grievance Flowchart](#))
- a. General
 - 1) An employee who receives a disciplinary action which they believe is improper may grieve the action.
 - 2) The grievance process shall be conducted with utmost consideration for due process within the time limits set forth herein but will allow and account for recognized holidays of the Nation and unforeseen circumstances, such as illnesses, deaths in the immediate family of principals.
 - b. Grievance Process for EEO Violations and Illegal Activities Complaints. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities

- complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline.
- c. Grievance Process for Employee Disagreement Complaints and Unsatisfactory Work Performance. The grievance process for discipline that resulted from an employee disagreement complaint or unsatisfactory work performance shall be governed by the following guidelines: [\(HR Interpretation, 8-19-2011\)](#) [\(HR Interpretation, 1-29-2014\)](#)
- 1) Appeal to the Area Manager
 - a) The employee (petitioner) shall file an appeal in writing with the Area Manager and the Human Resources Executive Director, or designee, within ten (10) working days from the day the employee receives the disciplinary action.
 - i. The employee may seek the assistance of an advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
 - b) The Area Manager, for all disciplinary action investigations, shall have ten (10) working days from the receipt of the employee's appeal to complete the investigation.
 - i. The supervisor shall meet with the following individuals during the disciplinary action investigation:
 1. Employee filing the appeal of the discipline;
 2. Supervisor who issued the discipline; and
 3. Any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action.
 - ii. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone.
 - iii. The Area Manager shall document all attempts made to meet with an employee. If an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have.
 - iv. One (1) extension of no more than five (5) working days may be requested of and granted by the Human Resources Executive Director, or designee, at their discretion.
 - c) The Area Manager shall take one of the following actions:
 - i. Uphold the disciplinary action;
 - ii. Modify the disciplinary action; or
 - iii. Overturn the disciplinary action.
 1. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated to the position the employee was suspended or terminated from with full back pay.
 - d) The Area Manager shall file their decision with the employee and the Human Resources Executive Director, or designee. The decision of the Area Manager shall include:
 - i. a reason for the decision;
 - ii. an explanation of the decision; and
 - iii. the action to be taken as a result of it.
 - e) An Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline.
 - 2) Appeal to the Oneida Personnel Commission [\(BC Resolution, 3-18-19\)](#)
 - a) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a grievance with the Government

Administrative Office on behalf of the Oneida Personnel Commission within ten (10) working days from the employee's receipt of the Area Manager's decision.

- b) The Government Administrative Office shall notify the Human Resources Executive Director of the appeal of the Area Manager's decision within one (1) business day of receipt of the appeal.
- c) The Government Administrative Office shall collect all information the Area Manager used in making the decision to uphold or modify the disciplinary action.
- d) The Government Administrative Office shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the appeal.
- e) The Oneida Personnel Commissioners shall review all the information submitted by the employee petitioner and the Government Administrative Office to determine if one (1) or both conditions exist;
 - i. The decision of the Area Manager is clearly against the weight of the evidence; or
 - ii. Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.
- f) If Oneida Personnel Commission members selected to serve as the hearing body for the appeal find one (1) or both conditions exist, the Government Administrative Office shall convene the Oneida Personnel Commission to hear the grievance.
- g) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission shall deny the appeal for a hearing and affirm the decision of the Area Manager.
- h) Convening a Hearing
 - i. The Government Administrative Office 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.
 - ii. The Government Administrative Office 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.
 - iii. The Government Administrative Office shall provide copies of all information on the subject case upon which the disciplinary action was upheld or modified by the Area Manager to the members of the Oneida Personnel Commission at least two (2) working days prior to the appeal date.
 - iv. The Government Administrative Office shall allow the petitioner and respondent access to this information in the Government Administrative Office at least two (2) days prior to the appeal date.
- i) Hearing Procedure
 - i. The order of presentation for the hearing shall be:
 1. Petitioner's opening statement;
 2. Respondent's opening statement;
 3. The Petitioner's case;
 4. The Respondent's case;
 5. Petitioner's closing statement; and
 6. Respondent's closing statement.

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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.

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.

SECTION VIII – RECORDKEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims
 - g. Disciplinary action information
 - h. Performance evaluations
 - i. Insurance coverage/changes
 - j. Transfers
2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. Oneida Nation employees shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

B. ACCOUNTING DEPARTMENT

1. Basic records to be retained include:
 - a. Attendance records
 - b. Employee Time Sheets
 - c. Earnings - in the form of computer printouts
 - d. Travel - in the form of complete travel authorization forms.
 - 1) Time sheets and travel reports shall be filled out by every employee for pay period, collected by the program head, and forwarded to the Department.
2. The Accounting Department shall retain all records for a period of seven (7) years. [\(BC Action, 10-14-09B\)](#)

1427 **SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS**

1428 The Human Resources Department of the Oneida Nation collects information from employees in
1429 order to make decisions regarding personnel actions including hiring, transfers and promotions,
1430 training, compensation and benefits, disciplinary actions and other job opportunities. This
1431 information is maintained by the Human Resources Department in individual files for as long as
1432 the person is an employee of the Oneida Nation.

1433 A. STATEMENT OF POLICY

1434 As a general rule, the Oneida Nation considers all information contained in these files to be
1435 private and confidential. No information of any type shall be released to any person or agent of
1436 any organization without the written consent of the employee except under the conditions
1437 outlined herein.

1438 B. EMPLOYEE ACCESS

1439 In addition, the Oneida Nation recognizes that the information contained in each employee's
1440 file is personal and that the lives of its employees are subject to changes. Therefore, the Oneida
1441 Nation provides for employee access to his/her personnel file. Employees are allowed to review
1442 their file and submit a statement of amendment should their review uncover any inaccurate,
1443 obsolete or irrelevant information. Should any information come into dispute, an employee's
1444 statement of dispute will be accessed into the file.

1445 C. RELEASE OF INFORMATION TO THIRD PARTIES

1446 The Oneida Nation is obligated by law to release certain information to outside parties. Such
1447 parties include the State of Wisconsin's Unemployment Compensation Department and its
1448 Workers Compensation Division and the United States Social Security Administration. Any
1449 additional information released to a third party by the Human Resources Department related to
1450 employee records shall consist of summary information and will not include any identifying
1451 personal information. (Such information may be total numbers of males and females in the
1452 workforce, mean, median and average age of the workforce, etc.)

1453 The Oneida Nation will release personal information on employees when a request is
1454 accompanied by a written release signed by the employee. The Human Resources Department
1455 will make every effort to validate this request by contacting the employee. In no case shall the
1456 Oneida Nation release personal information from an employee's file without this consent.

1457



HANDOUT

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"> 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; 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. Remove the wage deduction for probationary employees. Eliminate much of the process and procedures currently contained in the law regarding the hiring and selection process, and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. Eliminate much of the process and procedures currently contained in the law regarding the internal transfer process, and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation. Add a new holiday to the list of the Nation's recognized holidays – Indigenous Peoples' Day. Increase the amount of funeral leave that is provided to an employee for attending a funeral of an immediate family member or another individual when the employee is responsible for making funeral arrangements from three (3) days to five (5) days. Simplify the process for an employee to request a leave of absence by eliminating the approval requirements of the Area Manager, HRD Manager, and General Manager, and only requiring the approval of the supervisor. Recognize that there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process by formally recognizing three (3) different types of complaints: employee disagreements, EEO Violations, and Illegal Activities. Provide the process and procedures for who investigates the different complaints, how long a complaint investigation lasts, and the steps for investigating a complain with the goal of providing supervisors or the

	<p>EEO Officer with clear guidance on how a complaint should be investigated, as well as ensure accountability for those who do not follow the complaint procedure.</p> <ul style="list-style-type: none"> Revise who initiates disciplinary procedure so that it is the immediate supervisor who initiates disciplinary action for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation, while it is the EEO Officer who initiates disciplinary action as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. Clarify the requirement to follow a progressive order for discipline, and provide that for any deviation from the progressive order by the supervisor shall be justified in writing and approved by the EEO Department, while any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee. Provide greater clarification as to the process when a disciplinary action results in the suspension or termination of an employee. Allow the Human Resources Department to void a disciplinary action for clear procedural errors. Split the grievance procedures into two categories based on the type of complaint that the discipline the employee is grieving stems from. <ul style="list-style-type: none"> An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline. An employee who wishes to appeal a discipline that resulted from an employee disagreement complaint or unsatisfactory work performance may first appeal the discipline to the Area Manager, and then further appeal the Area Manager's decision to the Oneida Personnel Commission. Provide that if the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision.
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, Oneida Business Committee, Oneida Personnel Commission, Oneida Nation Judiciary
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.
Expiration of Emergency Legislation	The emergency amendments to the Oneida Personnel Policies and Procedures expire on May 11, 2023.

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 and minimize the time to hire employees 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 were set to expire on May 24, 2022.
- C. *Additional Emergency Amendments through BC-05-11-22-A.* When discussing the potential six (6) month extension of the emergency amendments to the Oneida Personnel Policies and Procedures adopted through resolution BC-11-24-21-A 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 Oneidas Business Committee adopted these additional emergency amendments to the Oneida Personnel Policies and Procedures through the adoption of resolution BC-05-11-22-A. These emergency amendments were set to expire on November 11, 2022.
- D. *Extension of Emergency Amendments through BC-11-07-22-A.* The Oneida Business Committee extended the emergency amendments to the Oneida Personnel Policies and Procedures as adopted through BC-05-11-22-A for an addition six (6) month period through the adoption of resolution BC-11-07-22-A. The emergency amendments to the Oneida Personnel Policies and Procedures will now expire on May 11, 2023.
- E. The Legislative Operating Committee is now seeking the permanent adoption of comprehensive amendments to the Law.

SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments or entities participated in the development of the amendments to this Law and legislative analysis:
 - Human Resources Department.
- The following laws of the Nation were reviewed in the drafting of this analysis:
 - Investigative Leave Policy;
 - Workplace Violence law;
 - Drug and Alcohol Free Workplace law;
 - Administrative Rulemaking law;
 - Judiciary law; and
 - Oneida Judiciary Rules of Civil Procedure.

SECTION 4. PROCESS

A. The amendments to this Law comply with the process set forth in the Legislative Procedures Act.

- On October 7, 2020, the Legislative Operating Committee added this Law to its Active Files List for amendments.
- On August 18, 2021, the Legislative Operating Committee accepted 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 information, and also accepted the request *[request for amendments to the Oneida Personnel Policies and Procedures to address the selection process]* to be developed as emergency amendments.
- On November 17, 2021, the Legislative Operating Committee approved the Oneida Personnel Policies and Procedures emergency amendments adoption packet and forwarded this legislative item to the Oneida Business Committee for consideration.
- On November 24, 2021, the Oneida Business Committee adopted resolution BC-11-24-21-A, *Emergency Amendments to the Oneida Personnel Policies and Procedures - Selection Policy*.
- On May 4, 2022, the Legislative Operating Committee approved the Oneida Personnel Policies and Procedures emergency amendments adoption packet and forwarded this legislative item to the Oneida Business Committee for consideration.
- On May 11, 2022, the Oneida Business Committee adopted resolution BC-05-11-22-A, *Additional Emergency Amendments to the Oneida Personnel Policies and Procedures - Selection Policy*.
- On June 8, 2022, the Oneida Business Committee adopted a motion to support the designation of June 19 as an Oneida Nation paid holiday for the Juneteenth National Independence Day and forward to the Legislative Operating Committee for review.
- On June 15, 2022, the Legislative Operating Committee accept the request for the designation of June 19 as a holiday as information to be discussed during the current development of amendments to the Oneida Personnel Policies and Procedures.
- On November 3, 2022, the Legislative Operating Committee conducted an e-poll entitled, *Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures*. The requested action of this e-poll was to approve the Oneida Personnel Policies and Procedures emergency amendments extension packet and forward to the Oneida Business Committee for consideration. This e-poll was approved by David P. Jordan, Kirby Metoxen, Marie Cornelius, Jennifer Webster, and Daniel Guzman King.
- On November 7, 2022, the Oneida Business Committee conducted an e-poll entitled, *Adopt the resolution entitled Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures*. The requested action of this e-poll was to adopt the resolution entitled, *Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures*. This e-poll was approved by Daniel Guzman King, David P. Jordan, Kirby Metoxen, Brandon Stevens, Jennifer Webster.

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

- September 13, 2021: LOC work meeting with HRD.
- September 15, 2021: LOC work session.
- October 12, 2021: LOC work meeting with HRD.
- October 18, 2021: LOC work meeting with HRD.

- October 21, 2021: Work meeting with HRD.
- October 25, 2021: LOC work meeting with HRD.
- November 4, 2021: LOC work meeting with Oneida Business Committee officers and HRD.
- November 9, 2021: LOC work session.
- November 30, 2021: Work meeting with HRD.
- December 15, 2021: LOC work session.
- February 21, 2022: Work Meeting with HRD.
- February 24, 2021: LOC work meeting with HRD.
- April 20, 2022: LOC work session.
- July 15, 2022: LOC work meeting with HRD.
- August 31, 2022: LOC work meeting with HRD.
- October 19, 2022: LOC work meeting with HRD.
- November 2, 2022: LOC work meeting with HRD.
- November 23, 2022: LOC work meeting with HRD.
- December 1, 2022: LOC work session.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. ***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.
- B. ***Role of the Oneida Personnel Commission.*** The proposed amendments add language to clarify that the Oneida Nation established the Personnel Commission to represent the Oneida Community-at-large in the selection of tribal employees. employees of the Nation and to shield those employees from inconsistent and unfair treatment by protecting against issues of nepotism and enforcing Oneida and Indian preference. [Section III(B)(2)(b)(1)]. The proposed amendments also 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)]. The proposed amendments also clarify the role of the Oneida Personnel Commission so that it is consistent with the language used in the Oneida Personnel Commission's bylaws. The proposed amendments now provide that the Personnel Commission is directed to participate in the hiring selection process, including job description pre-screens and interviews, to ensure compliance with the Nation's laws and policies regarding the following subject matters: Oneida and Indian preference, nepotism, conflicts of interest; veteran status, and physical capacity requirements. The proposed amendments also direct the Oneida Personnel Commission to comply with the Oneida Personnel Commission bylaws.
- *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.
- C. ***Hiring and Selection Rules.*** The proposed amendments to the Oneida Personnel Policies and Procedures eliminate much of the process and procedures currently contained in the law regarding the hiring and selection process, and instead provides that the HRD Office shall be delegated rulemaking

authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. [Section III(B)(2)(c)]. Currently, the Law addresses such topics as identification of vacancies and development of job descriptions, applications, advertising, screening of applicants, interviews, and selection.

- *Effect:* Utilizing the Administrative Rulemaking law for the promulgation of rules regarding the hiring and selection process instead of including this information in the law itself provides greater flexibility to the Human Resources Department to develop rules that best meet the needs of the Nation in its current circumstances. The Administrative Rulemaking law still ensures that the promulgation process is transparent and the community has an opportunity to provide input during the administrative rulemaking process.

D. Internal Position Posting. The proposed amendments to the Law eliminate much of the process and procedures currently contained in the law regarding the internal transfer process, and instead provides that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation. [Section III(C)(1)]. Currently, the Law addresses such topics as procedures for internal posting, bidding and transfers; applicant pool process; and reassignments.

- *Effect:* Utilizing the Administrative Rulemaking law for the promulgation of rules regarding the internal position posting and reassignment of employees instead of including this information in the law itself provides greater flexibility to the Human Resources Department to develop rules that best meet the needs of the Nation in its current circumstances. The Administrative Rulemaking law ensures that the promulgation process is transparent and the community has an opportunity to provide input during the administrative rulemaking process.

E. Original Probation. The proposed amendments to the Law clarify that the first three (3) months after an employee's starting date after being hired, transferred, or reassigned shall be considered a period of probation. [Section III(D)]. The proposed amendments eliminate the wage deduction for probationary employees. 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)], or 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)]. The proposed amendments also eliminate the section stating that employees who are terminated during the probation period will receive credit for accrued vacation or personal days in their final paycheck. [Section III(D)(3)(b)]. The Law now 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)].

- *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 or personal days in their final paycheck.

F. Indigenous Peoples' Day. The proposed amendments to the Law add a new holiday to the list of the Nation's recognized holidays – Indigenous Peoples' Day. [Section IV(A)(4)]. Indigenous Peoples' Day is a holiday in the United States that celebrates and honors indigenous American peoples and commemorates their histories and cultures that is celebrated on the second Monday in October.

- *Effect.* On June 8, 2022, the Oneida Business Committee adopted a motion to support the designation of June 19 as an Oneida Nation paid holiday for the Juneteenth National Independence Day and forward to the Legislative Operating Committee for review. The Legislative Operating Committee reviewed and discussed this request with the Human Resources Department. Although

the Legislative Operating Committee recognizes and appreciates the diversity of members of the Nation, and fully supports the designation of Juneteenth as a federal holiday, the Legislative Operating Committee ultimately decided that the Nation should first recognize Indigenous Peoples' Day as a recognized holiday of the Nation.

- G. *Funeral Leave.*** The proposed amendments to the Law increase the amount of leave a regular employee will be given without loss of pay for attending a funeral service for an immediate family member from three (3) days to five (5) days. *[Section IV(D)(2)(a)]*. Additionally, the amount of leave a regular employee will be given without loss of pay for attending a funeral service where the employee is responsible for making funeral arrangements was also increased from three (3) days to five (5) days. *[Section IV(D)(2)(b)]*. The Law was then revised to clarify that all other funeral leave shall be limited to three (3) hours with pay. *[Section IV(D)(2)(c)]*. Currently, the Law provides that all other funeral leave will be limited to no more than one (1) day, although current practice is limited to three (3) hours.
- *Effect.* The proposed amendments to the Law increase the amount of funeral leave that is provided to an employee for attending a funeral of an immediate family member or another individual when the employee is responsible for making funeral arrangements in an effort to provide more time for the employee to mourn while also recognizing the time that is necessary to make funeral arrangements.
- H. *Leave of Absence.*** The proposed amendments to the Law address the approval process for an employee's leave of absence. The proposed amendments provide that all leaves of absences shall be approved by the supervisor. *[Section IV(D)(3)(a)(1)(i)]*. Under the current version of the Law, a leave of absence is required to be approved by the supervisor, Area Manager, HRD Manager, and General Manager.
- *Effect.* The proposed amendments to the Law simplify the process for an employee to request a leave of absence by eliminating the approval requirements of the Area Manager, HRD Manager, and General Manager. HRD relied on the input from various levels of management throughout the Nation to come to the determination that it was unnecessary and burdensome to require more approval beyond that of the supervisor.
- I. *Complaints.*** The proposed amendments to the Law greatly expand the process and procedure for complaints. Currently, the Law provides that if an employee has a disagreement with another employee, they may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor, and then the supervisor will investigate the complaint and attempt to resolve the disagreement. The Law demonstrates that the Nation recognizes that all employees have the right to file a complaint against another employee, and that all complaint investigations shall be handled with the utmost fairness, respect, and equality. *[Section V(D)(1)(a)(1)]*. The proposed amendments to the Law now recognize and provides that there are various levels of severity of complaints, and dependent on the severity of the complaint, not all complaints shall follow the same process. *[Section V(D)(1)(a)(2)]*. The Law now recognizes three (3) different types of complaints: employee disagreements, EEO Violations, and Illegal Activities. *[Section V(D)(1)(b)]*.

TYPES OF COMPLAINTS

Employee Disagreement Complaints

An employee alleges they are having a problem or misunderstanding with another employee.

Example: Employee A files a complaint against Employee B because of the unprofessional attitude and tone Employee B is using with both coworkers and customers.

EEO Violation Complaints

An employee alleges they are being bullied, working in a hostile work environment, being discriminated against, being harassed, being intimidated, being retaliated against, or being sexually harassed.

Example: Employee A files a complaint against Employee B because Employee B continues to ask Employee A out on dates, and hug Employee A without their consent.

Illegal Activities Complaints

An employee alleges they witnessed or have knowledge of the occurrence of an illegal activity such as arson, bribery, theft, embezzlement, possession of an unauthorized material or weapon, or the possession or use of an illegal controlled substance.

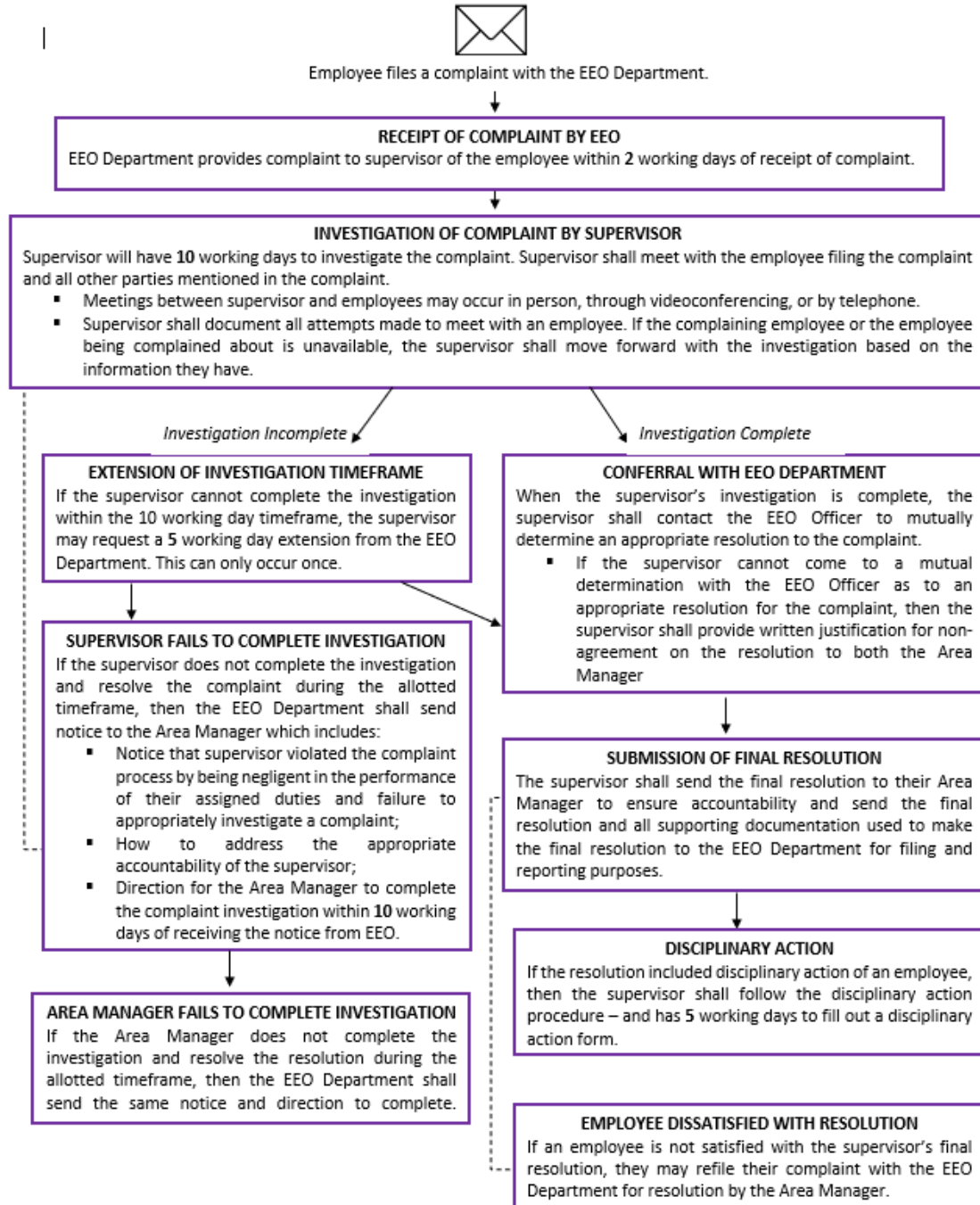
Example: Employee A files a complaint against Employee B because they saw Employee B take money out of the register at the end of their shift.

Each type of complaint has its own process and procedures for who investigates the complaint, how long a complaint investigation lasts, and the steps for investigating a complaint. The goal for the employee disagreement complaint process is to provide supervisors with clear guidance on how a complaint should be investigated, as well as ensure accountability for those who do not follow the complaint procedure. [Section V(D)(1)(c)(1)].

The employee disagreement complaint process is as follows:

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Employee Disagreement Complaint Process



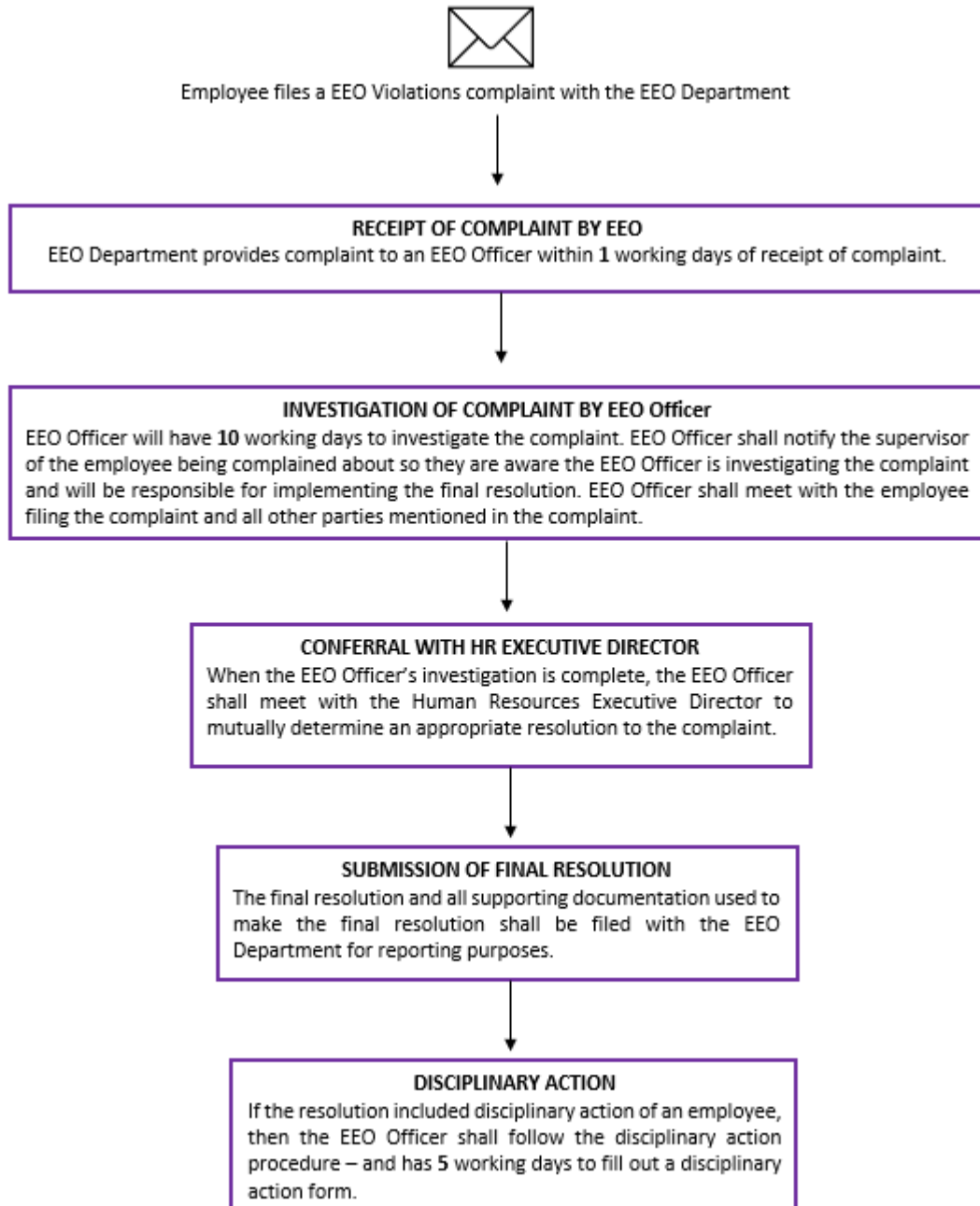
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241 The process for EEO violations complaints places the responsibility to investigate the complaint into
242 the hands of the EEO Department instead of the supervisor based on the increased severity of the
243 complaint. [Section V(D)(1)(c)(2)].

244 The EEO Violation complaint process is as follows:

245

EEO VIOLATION COMPLAINT PROCEDURE

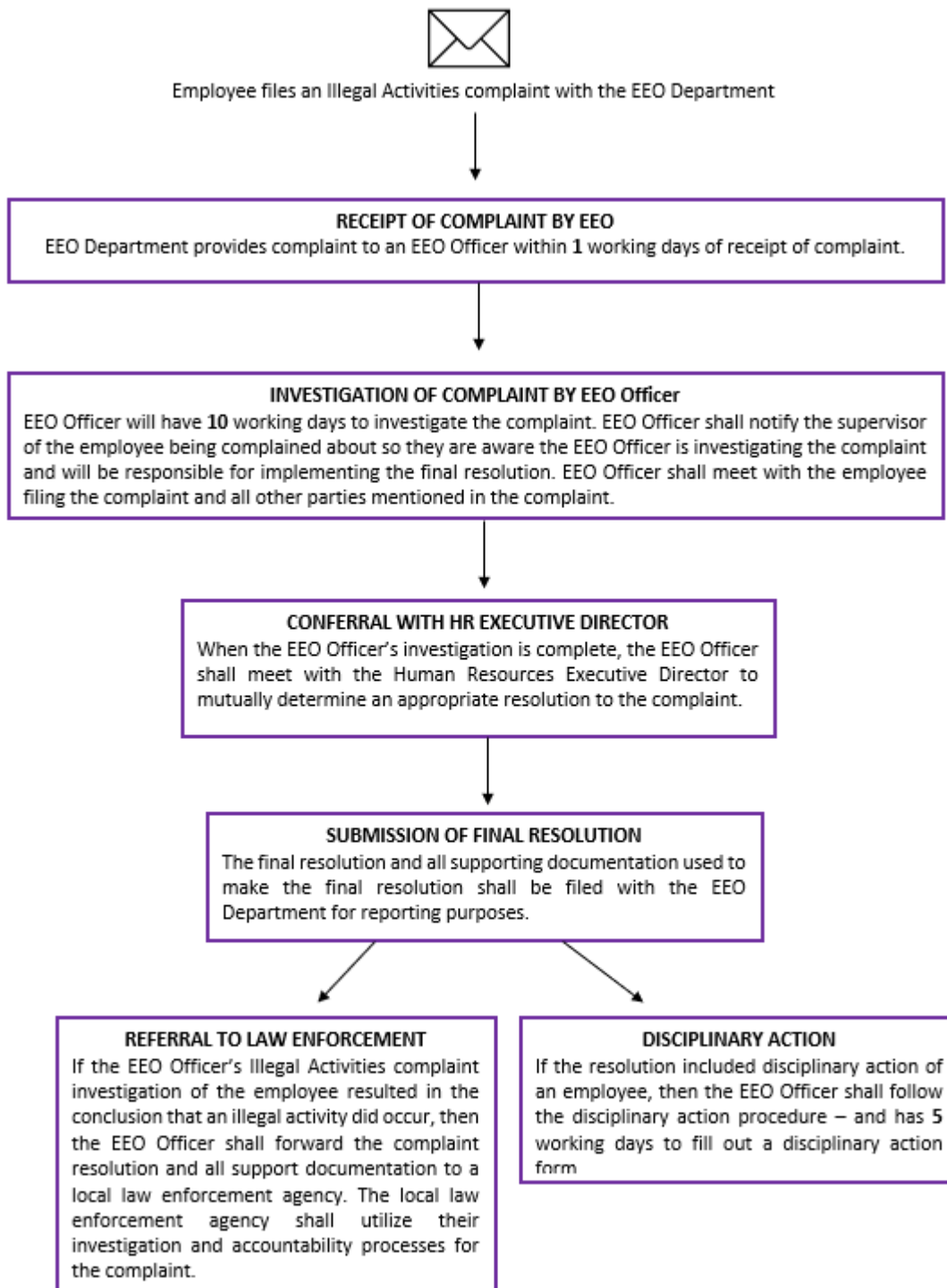


246

247 The Nation may utilize its Investigative Leave Policy while the employee is being investigated for an
248 EEO Violations complaint. [Section V(D)(1)(c)(2)(f)]. Much like the process for EEO Violations, the
249 process for Illegal Activities complaints places the responsibility to investigate the complaint into the
250 hands of the EEO Department instead of the supervisor based on the increased severity of the complaint.
251 [Section V(D)(1)(c)(3)]. Previously, only complaints alleging sexual harassment were investigated by
252 the EEO Department.

The Illegal Activities complaint process is as follows:

ILLEGAL ACTIVITIES COMPLAINT PROCEDURE



The Nation may utilize its Investigative Leave Policy while the employee is being investigated for an Illegal Activities complaint. [Section V(D)(1)(c)(3)(f)]. Any employee found to have given false information or made a false claim shall face disciplinary action in accordance with the appropriate policies and procedures. [Section V(D)(1)(a)(3)]. For all types of complaints, access to complaint information shall be limited to those who have a legitimate need to know. [Section V(D)(1)(a)(4)]. Retaliation of any form against an employee have a for filing a complaint shall be strictly prohibited. [Section V(D)(1)(a)(5)].

- *Effect.* The proposed amendments to the Law greatly expand the process and procedure for complaints in recognition that there are various levels of severity of complaints that should be handled in different manners, while also striving to provide clear guidance on how a complaint should be investigated, as well as ensuring accountability for those who do not follow the complaint procedure.

J. Discipline. The proposed amendments to the Law provide greater clarify to the Nation's disciplinary procedure. [Section V(D)(2)]. The proposed amendments to the Law revise who initiates disciplinary procedure. Disciplinary actions shall be initiated by an immediate supervisor for the purpose of correcting unsatisfactory work performance or as the resolution of an Employee Disagreement complaint investigation. [Section V(D)(2)(a)(1)]. Disciplinary actions shall be initiated by an EEO Officer as the resolution of an EEO Violation complaint or an Illegal Activities complaint investigation. [Section V(D)(2)(a)(2)]. Previously, disciplinary actions could only be initiated by the supervisor of the employee. The Law has always, and still does require that a supervisor initiate disciplinary actions which commensurate with the seriousness of the unsatisfactory performance or violation. [Section V(D)(2)(b)]. Previously, the Law provided that the supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression. The proposed amendments now provide greater clarification on this issue, and provide that disciplinary action shall be considered in progressive order (written warning → suspension → termination), and that any deviation from the recommended progressive order made by the supervisor shall be justified in writing and approved by the EEO Department, while any deviation from the recommended progressive order made by the EEO Officer shall be justified in writing and approved by the Human Resources Executive Director, or designee. [Section V(D)(2)(b)(2)]. The proposed amendments to the Law clarify that it is both the supervisor and the EEO Officer – depending on the type of violation the complaint is based on – that has responsibilities within the disciplinary procedures when the resolution of a complaint results in the determination that disciplinary action is warranted, or when the determination that disciplinary action is warranted is based on the unsatisfactory work performance of an employee. [Section V(D)(2)(d)]. The proposed amendments to the Law provide greater clarification when a disciplinary action results in the suspension or termination of an employee. If the supervisor is issuing the discipline, then the supervisor is required to consult with the EEO Officer to mutually determine the length of the suspension. [Section V(D)(2)(d)(6)(a)(i)]. If the EEO Officer is issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine the length of the suspension. [Section V(D)(2)(d)(6)(a)(ii)]. Previously, the Law required that the supervisor shall consult with the HRD Manager to mutually determine the length of the suspension. Suspension remained capped at a maximum of three (3) weeks. [Section V(D)(2)(d)(6)(b)]. The proposed amendments to the Law also now require that should a disciplinary action result in the termination of an employee, then the supervisor issuing the discipline shall consult with the EEO Officer to mutually determine that the termination is the appropriate disciplinary action, while if it is the EEO Officer is

issuing the discipline, then the EEO Officer shall consult with the Human Resources Executive Director to mutually determine that the termination is the appropriate disciplinary action. [Section V(D)(2)(d)(7)(a)]. The proposed amendments to the Law contain a new provision that allows the Human Resources Department to void a disciplinary action for clear procedural errors. [Section V(D)(2)(d)(8)]. The EEO Officer is delegated the authority to void a disciplinary action taken by a supervisor for clear procedural errors, while the Human Resources Executive Director, or designee, may void a disciplinary action taken by an EEO Officer for clear procedural errors. *Id.* Notification of a voided disciplinary action shall be sent to the supervisor or EEO Officer and the employee which identifies the procedural error. *Id.* The Law also now clearly provides that for any supervisor who fails to follow the Nation's disciplinary procedures, the EEO Department is required to send a letter to the Area Manager notifying the Area Manager that the supervisor violated the disciplinary process by being negligent in the performance of their assigned duties and failed to appropriately discipline an employee, while also addressing the appropriate accountability of the supervisor. [Section V(D)(2)(d)(9)].

▪ *Effect.* The proposed amendments to the Law revise who initiates the discipline – either the supervisor or the EEO Officer – based on how completed the complaint investigation. This was done in an effort to ensure that the individual who initiates the discipline is the individual who collected the information during the complaint and has the most knowledge of the situation. Overall, the amendments to the discipline provisions were made in an effort to provide greater clarity to the discipline processes and procedures.

K. Grievance. The proposed amendments to the Law split the grievance procedures into two categories based on the type of complaint that the discipline the employee is grieving stems from. An employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline. [Section V(D)(3)(b)]. This is a new process added to the Law in the proposed amendments. An employee who wishes to appeal a discipline that resulted from an employee disagreement complaint or unsatisfactory work performance may first appeal the discipline to the Area Manager, and then further appeal the Area Manager's decision to the Oneida Personnel Commission. [Section V(D)(3)(c)]. This is reflective of the current grievance process contained in the Law. In regard to the process for the grievance of a discipline that resulted from an employee disagreement complaint or unsatisfactory work performance, more detail was added to the current process in the Law to provide greater clarity and direction. The Area Manager is given ten (10) working days from the receipt of the employee's appeal to complete the disciplinary action investigations. [Section V(D)(3)(c)(1)(b)]. The Area Manager is required to meet with the employee filing the appeal of the discipline, the supervisor who issued the discipline, and any other witnesses mentioned in the appeal that were not mentioned in the disciplinary action. [Section V(D)(3)(c)(1)(b)(i)]. Meetings between the Area Manager and the employees may occur in person, through video conferencing, or by telephone. [Section V(D)(3)(c)(1)(b)(ii)]. The Area Manager shall document all attempts made to meet with an employee, and if an employee is unavailable to meet within the grievance timelines, the Area Manager shall move forward with the investigation based on the information they have. [Section V(D)(3)(c)(1)(b)(iii)]. The Law then provides that an Area Manager who does not comply with the disciplinary action grievance procedure may be subject to discipline. [Section V(D)(3)(c)(1)(e)]. The process for the appeal of the Area Manager's decision to the Oneida Personnel Commission remains mostly unchanged. One revision the proposed amendments to the Law makes to the Oneida Personnel Commission grievance process is that the Human Resources Department is removed from any

administrative responsibilities, and instead replaced with the Government Administrative Office, who has administrative responsibilities for the boards, committees, and commissions of the Nation. [Section V(D)(3)(c)(2)]. A new provision was then added to the Law that provides that if the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision. [Section V(D)(3)(c)(2)(k)].

- *Effect.* The proposed amendments to the Law split the grievance procedures into two categories based on the type of complaint that the discipline the employee is grieving stems from. This amendment was made in recognition that there are various levels of severity of complaints that occur throughout the Nation, and that the different bodies – the Oneida Personnel Commission and the Oneida Nation Trial Court – may be better suited to hear some levels of severity of complaints than others.

SECTION 6. EXISTING LEGISLATION

A. *Related Legislation.* The following laws of the Nation are related to the proposed amendments 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].
 - The amendments to this Law provide that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for the hiring and selection of employees of the Nation. [Section III(B)(2)(c)].
 - The amendments to this Law provide that the HRD Office shall be delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop rules regarding procedures for internal position posting and reassignment of employees of the Nation. [Section III(C)(1)].
 - Any rules developed under this Law are required to be promulgated in accordance with the Administrative Rulemaking law.
- *Drug and Alcohol Free Workplace Law.* The Drug and Alcohol Free Workplace law establishes a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-2].
 - The amendments to the Law provide that complaints of use of prohibited drugs and/or alcohol during working hours shall be reported and processed in accordance with the Nation's Drug and Alcohol Free Workplace law [Section V(D)(1)(b)(4)(b)].
- *Workplace Violence Law.* The purpose of the Workplace Violence law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence by establishing the procedures by which incidents of workplace violence shall be addressed. [2 O.C. 223.1-1, 223.1-2].
 - Workplace violence means any intentional act committed by an employee in a workplace that: inflicts, attempts to inflict, or threatens to inflict emotional or bodily

harm on another person; or inflicts, attempts to inflict, or threatens to inflict, damage to property. [2 O.C. 223.3-1(k)].

- The amendments to the Law provide that complaints of alleged workplace violence shall be reported and processed in accordance with the Nation's Workplace Violence law. [Section V(D)(1)(b)(4)(a)].
- *Investigative Leave Policy.* The purpose of the Investigative Leave Policy is to address investigative leave for employees undergoing work-related investigations, in an effort to maintain confidentiality and avoid undue influence when conducting an investigation into an employee's alleged wrong doings. [2 O.C. 208.1-1. 208.1-2].
 - This Law provides that the Nation may utilize its laws and policies governing investigative leave while the employee is being investigated for an EEO Violation complaint or an Illegal Activities complaint. [Section V(D)(1)(c)(2)(f), Section V(D)(1)(c)(3)(f)].
- *Judiciary Law.* The purpose of the Judiciary law is to establish a Judiciary, and to provide for the administration of law, justice, judicial procedures and practices by the Oneida Nation as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people. [8 O.C. 801.1-1].
 - The Judiciary law provides that employment grievances shall be heard in accordance with the Nation's personnel policies and procedures. [8 O.C. 801.4-6(c)].
- *Oneida Judiciary Rules of Civil Procedure.* The purpose of the Oneida Judiciary Rules of Civil Procedure is to govern all civil actions that fall under the jurisdiction of the Oneida 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].
 - This Law provides that an employee may appeal a discipline that resulted from an EEO Violation or Illegal Activities complaint to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the discipline. [Section V(D)(3)(b)].
 - This Law provides that if the Oneida Personnel Commission is unable to fulfil its responsibility to hear an appeal of an Area Manager's decision, then the employee may appeal the Area Manager's decision to the Oneida Nation Judiciary by filing a complaint with the Trial Court within ten (10) days from the employee's receipt of the Area Manager's decision. [Section V(D)(3)(c)(2)(k)].
 - The Oneida Judiciary Rules of Civil Procedure governs how a complaint shall be filed with the Oneida Trial Court as well as the various processes and procedures to be used during the various stages of the hearing process.

SECTION 7. OTHER CONSIDERATIONS

A. *Deadline for Permanent Adoption of Legislation.* The emergency amendments to the Oneida Personnel Policies and Procedures will expire on May 11, 2023.

- *Conclusion:* The Legislative Operating Committee will need to development and present these permanent amendments to the Oneida Personnel Policies and Procedures to the General Tribal Council prior to May 11, 2023. If the General Tribal Council does not adopt permanent

amendments to the Oneida Personnel Policies and Procedures before May 11, 2023, then the Law reverts back to the version in place before the emergency amendments occurred through BC-11-24-21-A and BC-05-11-22-A.

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.* A fiscal impact statement has not yet been requested.

ONEIDA NATION PUBLIC MEETING NOTICE**THURSDAY, JANUARY 12 2023, 12:15 pm**

Norbert Hill Center-Business Committee Conference Room
 N7210 Seminary Rd., Oneida, Wisconsin

Find Public Meeting Materials at
[Oneida-nsn.gov/government/register/public-meetings](https://oneida-nsn.gov/government/register/public-meetings)

**Send Public Comments to**

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4417

ONEIDA PERSONNEL POLICIES AND PROCEDURES AMENDMENTS

The purpose of the Oneida Personnel Policies and Procedures is to provide for the Nation's employee related policies and procedures including recruitment, selection, compensation and benefits, employee relations, safety and health, program and enterprise rules and regulations, and record keeping. Amendments to the Oneida Personnel Policies and Procedures are being made to address the selection process, as well as the complaint, discipline, and grievance procedures.

Individuals may attend the public meeting for the proposed amendments to the Oneida Personnel Policies and Procedures in person at the Norbert Hill Center, or virtually through Microsoft Teams. If you wish to attend the public meeting through Microsoft Teams please contact LOC@oneidanation.org.

If the Norbert Hill Center's Administrative Offices guidelines prohibits a public meeting from being held in person on January 12, 2023, based on the COVID-19 Community levels in Brown and Outagamie Counties, then the public meeting will be held solely on Microsoft Teams.

PUBLIC COMMENT PERIOD CLOSING THURSDAY, JANUARY 19, 2023

During the public comment period, anyone may submit written comments, questions or input. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.



For more information on the proposed amendments to the Oneida Personnel Policies and Procedures please review the public meeting packet at oneida-nsn.gov/government/register/public-meetings.



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



AGENDA REQUEST FORM

- 1) Request Date: December 7, 2022
- 2) Contact Person(s): Clorissa N. Santiago
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Emergency Gift Card Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Develop an Emergency Gift Card Law to govern and oversee emergency
gift card use within the organization and to set a standardized process
that will monitor, control, and disburse emergency gift cards.

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

- 1) Draft Law
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:
 Notification of this proposal came to the LRO from the Oneida Law Office, and originated from an Audit finding.
- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Nation needs a standardized process for the use of gift cards.

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

Title 1. Government and Finances – Chapter 132
ONEIDA NATION EMERGENCY GIFT CARD POLICY

132.1. Purpose and Policy	132.5. Purchases, Inventory, Disbursement
132.2. Adoption, Amendment, Repeal	132.6. Department/Divisional Responsibilities
132.3. Definitions	132.7. Reconciliations
132.4. Emergency Gift Card Use	132.8. Violations, Disciplines, Appeals

132.1. Purpose and Policy

132.1-1. The purpose of this policy is to govern and oversee emergency gift card use within the Oneida Nation organization and to set a standardized process that will monitor, control, and disburse emergency gift cards.

132.1-2. It is the policy of the Oneida Nation that use of emergency gift cards are to be used as a last choice after the department /division has exhausted all other means for service with clients.

132.1-3. It is the policy that all business units that may have use of gift cards must first have in place a department S.O.P. Addendum that is in alignment to this policy and the Centralized Emergency Gift Card S.O.P. from Purchasing.

132.1-4 Departments / Division Emergency Gift Card Addendums must be approved by the General Manager, Gaming General Manager, Chief Financial Officer and ratified by the Oneida Business Committee before purchase.

132.2. Adoption, Amendment, Repeal

132.2-1. This policy was adopted by the Oneida Business Committee by Resolution BC-_____.

132.2-2. This policy may be amended by the Oneida Business Committee pursuant to Tribal law.

132.2-3 In the event of a conflict between a provision of this policy and a provision of another law, ordinance, policy, regulation, rule, resolution or motion, the provisions of this policy shall control.

132.3. Definitions

132.3.1. 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) Emergency. Emergency is defined as: a serious unexpected situation for which life safety, health, well-being is potentially detrimentally impacted in a time sensitive urgent matter. The exception is back to school related materials & items.

(b) Gift Card. Including but not limited to gift cards, gas cards, gift certificates, or gift voucher.

(c) Limited Use. The use of emergency gift cards shall be utilized as a last resort and limited to client related emergency services only.

(d) Business Unit. The office, service, or division that generates the requirement requisition or the end user of the goods and service.

(e) Blanket Purchase Order.

(f) S.O.P. Addendum.

(g) Purchasing Thresholds

132.4. Emergency Gift Card Use

132.4-1. It is the intent of this policy to limit the use of gift card use by only those business units that provide direct emergency services to external clients, all other use of gift cards will be prohibited.

132.4-2. Emergency gift cards can only be purchased after the business unit has an approved Emergency Gift Card S.O.P. Addendum approved and filed in Purchasing, verification of completed staff training, written names of all personnel that will be responsible for gift cards, and written reporting instructions.

132.5. Purchases, Inventory, Disbursement

132.5-1. All business units that do order gift cards must use the standardized Purchase Order process as outlined in the Purchasing Manual.

132.5-2. All business units utilizing gift cards must use the standardized gift card tracking log process (Excel spreadsheet) as developed by the Purchasing Department that will include all pertinent information of the card, the end user information, all dates, and all staff that signed off.

132.5-3 These gift card tracking logs are to be reviewed monthly by the business unit managers with their division directors, signed by both and sent to Central Accounting.

132.5-4 All gift card inventory will be counted by two staff members each month and signed off by the business unit manager. The monthly inventory count must be added to the tracking logs.

132.5-5. All business units must use a standardized gift card reconciliation template as developed by Central Accounting.

132.5-6. All gift card reconciliations are to be reviewed monthly by the business unit manager with their division director, signed by both and sent to Central Accounting for final reconciliation.

132.5-7. All variances from inventory and the gift card tracking log, or gift card reconciliations will be immediately be sent to the division director and General Manager who may request an Audit or other action.

132.6. Department /Divisional Responsibilities

132.6-1. It is the expressed intent of this policy to oversee all activities related to emergency gift card use, and limiting usage, to only those areas that work with external clients in assisting with emergency situations.

132.6-2. Use of gift cards for incentives of any kind for Oneida Nation tribal employees is strictly prohibited.

132.6-3. Should emergency gift cards with grant funds, written approval from the granting agency must be provided in the ordering process and should contain specific amount that can be used, specific use that can be allowed, and reimbursement process for all unused gift cards prior to end of grant date.

132.6-4. Emergency Gift Card Standard Operating Procedures by department /division are to be developed as Addendums to the Central Emergency Gift Card S.O.P. as developed by Purchasing.

132.6-5. Said Addendums are required and must be approved before purchasing /ordering by any business unit.

132.6-6. Current Gift Card S.O.P.'s should to be immediately updated as Addendums to the standards of this policy and the Tribal-Wide S.O.P. and shall contain but not limited to the following:

- (a) Purpose
- (b) Definitions
- (c) Work Standards / Procedures
- (d) Storage & Handling of Emergency Gift Cards
- (e) Ordering & Purchasing of Emergency Gift Cards
- (f) Distribution of Emergency Gift Cards
- (g) Reconciliation of Emergency Gift Cards
- (h) Lost Emergency Gift Cards
- (i) Violations, Disciplines, Appeals
- (j) Forms
- (k) References (Including This Policy, & BC Resolution pertaining to Emergency Gift Card S.O.P.'s and Tribal-Wide Emergency Gift Card S.O.P.)

132.6-6. The S.O.P. Addendum shall also include: Held Inventory requires two party access including the Program Manager/Supervisor. Gift cards must be locked in a second, secure location.

132.6-7. On September 30th of each fiscal year, an inventory log of all unused gift cards will be forwarded to the business unit's accountant in the Central Accounting department for a final reconciliation and close

out of the department's /division's budget. The inventory log will include all gift card numbers listed individually, denominations of gift cards, purchase date, purchase order number, and shall be signed and verified by two separate individuals in the department /division.

132.7. Reconciliations

132.7-1. Reconciliation reports are required and are to be completed monthly and annually and documentation forwarded to Central Accounting, General Manager and Audit Manager.

132.8. Violations, Disciplines, Appeals

132.8-1. Department / Division Addendum should cite progressive discipline actions to all individuals in accordance with the Oneida Nation's personnel policies and procedures.

132.8-2. The Audit Department will have the right of review of any business unit's Gift Card inventory announced or unannounced in accordance with the Audit Law.

132.8-3. Upon verification following investigation of emergency gift card misuse by any tribal employee it will be the prerogative of the General Manager to suspend indefinitely use of such cards by associated business unit and all gift cards in inventory will be seized.

132.8-4. In accordance with the Oneida Nation's personnel policies and procedures and the Investigative Leave Policy an employee(s) may appeal any disciplinary action they may receive as a result of an investigation.

132.8-5. The business unit may appeal the suspension of gift card use to the General Manager and request inventory to be returned provided they supply additional measures in their department Addendum to more adequately address safeguarding of gift cards.

132.8-6. All information following an investigation will be considered confidential and only released in accordance with relevant law and personnel policies and procedures.

132.9 References

132.9-1. Purchasing Policies and Procedures

132.9-2. Code of Ethics

132.9-3. Emergency Purchase Order Process

132.9.4. Investigative Leave Policy

132.9.5. HRD Personnel Policies and Procedures Manual

132.9.6. Audit Law



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



AGENDA REQUEST FORM

- 1) Request Date: December 7, 2022
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Audit Committee Bylaws Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Amendments to the Audit Committee bylaws are being sought to address
the eligibility of the Audit Committee community member to receive a
stipend for attendance at the Oneida Business Committee meeting where
the annual audit is presented by the external auditors.

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

- | | |
|--|--------------------------------|
| 1) <u>Current Audit Committee bylaws</u> | 3) <u>Legislative Analysis</u> |
| 2) <u>Draft Audit Committee bylaws</u> | 4) _____ |

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Law Office provided legal opinion on this issue.

- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

Oneida Business Committee meeting where the annual audit is presented by the external auditors is upcoming.

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

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

AUDIT COMMITTEE BYLAWS

Article I. Authority

- 1-1. *Name.* The name of this committee shall be the Audit Committee, hereinafter referred to as "Committee."
- 1-2. *Authority.* By the authority of the Oneida Business Committee, the Committee was created by adoption of the Audit Law Resolution BC-07-15-98-C which has been updated to Internal Audit BC 08 09 17 B. Through Internal Audit BC 08 09 17 B, the Committee has been delegated the authority to ensure the integrity of the Oneida Nation's financial reporting and audit systems. Definitions for the words used throughout these bylaws shall be taken from Internal Audit BC 08 09 17 B. All words not defined in Internal Audit BC 08 09 17 B shall be used in their ordinary and everyday sense.
- 1-3. *Office.* The office of the Committee shall be located within the exterior boundaries of the Oneida Reservation and its mailing address shall be P.O. Box 365, Oneida, WI 54155.
- 1-4. *Membership.*
 - a. Number of members. The Committee shall consist of five (5) members.
 - b. How elected or appointed.
 1. Four (4) Committee members shall be Oneida Business Committee members, excluding the Treasurer, selected by a majority of the Oneida Business Committee.
 - A. Any member of the Oneida Business Committee, with the exception of the Treasurer, may serve as Ad Hoc when needed.
 2. One (1) Committee member shall be a member of the community who meets the qualifications of 1-4(d).
 - A. The Committee member from the Community shall be selected through the application and appointment process set forth in those sections of the Boards, Committees and Commissions law that govern the appointment of persons to entities of the Nation that are subject to the law.
 - c. How vacancies are filled. Vacancies on the Committee shall be filled in accordance with section 1-4(b) for the remainder of the outstanding term.
 - d. Qualifications of members.
 1. The appointed Committee member shall be at least twenty-one (21) years of age and be an enrolled member of the Oneida Nation.
 2. Committee members shall be both independent and financially literate or have access to financial expertise, whether in the form of the Chief Financial Officer, a single individual serving on the Committee, or collectively among Committee members. Components of financial expertise include:
 - A. The ability to assess the general application of the principles and standards in connection with the accounting for estimates, accruals, and reserves.
 - B. An understanding of internal controls.
 - C. An understanding of the procedures for financial reporting.
 - D. An understanding of Audit Committee functions and responsibilities.
 - e. Term of office.
 1. The terms of the Audit Committee members shall coincide with the term of the Oneida Business Committee.
 2. The term of the appointed community member shall expire midway through the term of the Oneida Business Committee.
 3. Defining independence of each Committee member is important for the Nation and no Committee member may:
 - A. Be employed by any entity of the Nation.

- B. Provide contract services to the Nation.
 - C. Be a member of any other of the Nation's boards, committees or commissions, other than the Oneida Business Committee.
 - D. Represent any interests other than the Oneida Nation's while acting as a member of the Committee.
4. Committee members shall strictly adhere to the Oneida Nation's laws and policies, establishing ethical standards and/or conflicts of interest, and any code of conduct. All work shall be performed in accordance with the International Professional Practices Framework. Failure to do so may result in the removal from the Committee or termination of an appointment.

Article II. Officers

- 2-1. The Committee shall have two (2) officers: Chairperson and Vice-Chairperson. The terms of office for the officers shall coincide with the terms of the Oneida Business Committee members.
- 2-2. *Chairperson Duties.* The Chairperson shall preside over all meetings and may not vote except in the case of a tie. The Chairperson shall be responsible for calling meetings and notifying members with the assistance of the Internal Audit Department.
- 2-3. *Vice-Chairperson Duties.* The Vice-Chairperson shall assist the Chairperson with his or her duties, at the request of the Chairperson, and shall preside over all meetings in the Chairperson's absence.
- 2-4. *How Officers are Chosen.* The Chairperson and Vice-Chairperson shall be chosen from the Oneida Business Committee representatives by all Committee members present at the first meeting held after the Committee is appointed.
- 2-5. *Personnel.* The Committee shall recruit and hire a qualified Internal Audit Manager to lead the internal audit function and to assure unbiased audit and investigative processes and reporting.

Article III. Meetings

- 3-1. All meetings of the Audit Committee are to be closed session as required by the International Professional Practices Framework with the exceptions below. Notice of Committee meetings shall be provided to members and to the public in accordance with these bylaws and the applicable provisions of the Nation's Open Records and Open Meetings law.
- 3-2. The Committee shall meet on a monthly basis within the Reservation boundaries.
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electronic communication.

3-6. *Quorum.* A quorum shall consist of a majority of current members of the Committee and shall include the Chairperson or Vice-Chairperson.

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- a. Minutes and audit reports require Oneida Business Committee acceptance in order to finalize the audit records.

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5-1. The Bylaws of the Committee shall be amended with the approval of a quorum of the Committee and upon subsequent approval by the Oneida Business Committee.

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6-2. *Enforcement.* The Committee shall have the ability to utilize all existing enforcement authorities to carry out their responsibilities to achieve their purpose, including:

- a. Request the Business Committee to compel entity representatives to attend meetings

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- e. Request the Business Committee to issue notices of violation of Oath of Office, as appropriate, to entity members.
- f. Seek improvements to assure the Oneida Nation's laws and policies establishing ethical standards and/or conflicts of interest, as well as any code of conduct implemented are current and adequate to ensure fairness for all and equity by protecting the resources.

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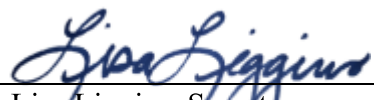
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These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee at a duly called meeting held on April 28, 2021, by the Secretary of the Oneida Business Committee's signature.

A handwritten signature in blue ink, reading "Lisa Liggins", is written over a horizontal line.

Lisa Liggins, Secretary
Oneida Business Committee

AUDIT COMMITTEE BYLAWS

Article I. Authority

1-1. *Name.* The name of this committee shall be the Audit Committee, hereinafter referred to as "Committee."

1-2. *Authority.* By the authority of the Oneida Business Committee, the Committee was created by adoption of the Audit Law Resolution BC-07-15-98-C which has been updated to Internal Audit BC 08 09 17 B. Through Internal Audit BC 08 09 17 B, the Committee has been delegated the authority to ensure the integrity of the Oneida Nation's financial reporting and audit systems. Definitions for the words used throughout these bylaws shall be taken from Internal Audit BC 08 09 17 B. All words not defined in Internal Audit BC 08 09 17 B shall be used in their ordinary and everyday sense.

1-3. *Office.* The office of the Committee shall be located within the exterior boundaries of the Oneida Reservation and its mailing address shall be P.O. Box 365, Oneida, WI 54155.

1-4. *Membership.*

a. Number of members. The Committee shall consist of five (5) members.

b. How elected or appointed.

1. Four (4) Committee members shall be Oneida Business Committee members, excluding the Treasurer, selected by a majority of the Oneida Business Committee.

A. Any member of the Oneida Business Committee, with the exception of the Treasurer, may serve as Ad Hoc when needed.

2. One (1) Committee member shall be a member of the community who meets the qualifications of 1-4(d).

A. The Committee member from the Community shall be selected through the application and appointment process set forth in those sections of the Boards, Committees and Commissions law that govern the appointment of persons to entities of the Nation that are subject to the law.

c. How vacancies are filled. Vacancies on the Committee shall be filled in accordance with section 1-4(b) for the remainder of the outstanding term.

d. Qualifications of members.

1. The appointed Committee member shall be at least twenty-one (21) years of age and be an enrolled member of the Oneida Nation.

2. Committee members shall be both independent and financially literate or have access to financial expertise, whether in the form of the Chief Financial Officer, a single individual serving on the Committee, or collectively among Committee members. Components of financial expertise include:

A. The ability to assess the general application of the principles and standards in connection with the accounting for estimates, accruals, and reserves.

B. An understanding of internal controls.

C. An understanding of the procedures for financial reporting.

D. An understanding of Audit Committee functions and responsibilities.

e. Term of office.

1. The terms of the Audit Committee members shall coincide with the term of the Oneida Business Committee.

2. The term of the appointed community member shall expire midway through the term of the Oneida Business Committee.

3. Defining independence of each Committee member is important for the Nation and no Committee member may:

- A. Be employed by any entity of the Nation.
 - B. Provide contract services to the Nation.
 - C. Be a member of any other of the Nation's boards, committees or commissions, other than the Oneida Business Committee.
 - D. Represent any interests other than the Oneida Nation's while acting as a member of the Committee.
4. Committee members shall strictly adhere to the Oneida Nation's laws and policies, establishing ethical standards and/or conflicts of interest, and any code of conduct. All work shall be performed in accordance with the International Professional Practices Framework. Failure to do so may result in the removal from the Committee or termination of an appointment.

Article II. Officers

- 2-1. The Committee shall have two (2) officers: Chairperson and Vice-Chairperson. The terms of office for the officers shall coincide with the terms of the Oneida Business Committee members.
- 2-2. *Chairperson Duties.* The Chairperson shall preside over all meetings and may not vote except in the case of a tie. The Chairperson shall be responsible for calling meetings and notifying members with the assistance of the Internal Audit Department.
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197



Audit Committee Bylaws Amendments Legislative Analysis

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Amendments	The Audit Committee (“Committee”) bylaws were added to the Active Files List per the request of the Audit Committee to amend the Committee’s bylaws in accordance with the Legislative Procedures Act to allow the appointed community member to be eligible to receive a stipend for attending the Oneida Business Committee meeting when the annual audit is presented by the external auditors.
Purpose	The Audit Committee is as a standing committee of the Oneida Business Committee (“OBC”) that was established pursuant to the Nation’s Internal Audit law, which was adopted and subsequently amended through resolutions BC-07-15-98-C and BC-08-09-17-B, to oversee the internal audit process, including, but not limited to, any and all violations of the Nation’s policies, laws, rules and directives. [1 O.C. 108.1-1].
Related Legislation	Oneida Nation Constitution, Internal Audit law, Social Media Policy, Travel and Expense Policy, Conflict of Interest law, Open Records and Open Meetings law; Vehicle Driver Certification and Fleet Management law; Computer Resources Ordinance.
Enforcement/Due Process	Committee members are required to strictly adhere to the laws, as well as policies, of the Nation regarding ethics and/or conflicts of interest and any code of conduct, including the International Professional Practices Framework. A failure to adhere to the above could result in a member’s removal from the Committee or a termination of his/her appointment. [Committee Bylaws 1-4(e)(4)]. The Internal Audit law grants the Committee the authority to utilize all existing enforcement mechanisms to carry out its responsibilities as set forth therein. [1 O.C. 108.4-2].
Public Meeting	Public meetings are not required for bylaws.
Fiscal Impact	A fiscal impact statement is not required for bylaws.

SECTION 2. BACKGROUND

- A. Bylaws provide a framework for the operation and management of a board, committee or commission of the Nation; the government of its members; and the regulation of its affairs.
- B. The Audit Committee was established pursuant to the Internal Audit law, which was adopted and subsequently amended by resolutions BC-07-15-98-C and BC-08-09-17-B, respectively. [1 O.C. 108.2-1]. The Committee is a standing committee of the OBC that oversees the internal audit process, including, but not limited to, any investigations into complaints alleging or suspecting improprieties and/or violations of the Nation’s policies, laws, rules and directives. [1 O.C. 108.4-1].
- C. On December 7, 2022, the Legislative Operating Committee will consider adding this item to the Active Files List, per the request of the Audit Committee Chairman, David P. Jordan, to amend the Committee’s bylaws in accordance with the Legislative Procedures Act.
- D. The Committee’s current bylaws were adopted in April of 2021. As a standing committee of the OBC, the Audit Committee is not subject to the Boards, Committees and Commissions law, and thus,

amendments to its bylaws do not have to conform to the provisions therein that govern the bylaws of other boards, committees and commissions of the Nation not exempted therefrom. [1 O.C. 105.1-1(a)].

SECTION 3. AMENDMENTS

This section details the changes to the bylaws from the previously adopted bylaws.

A. Article III. Meetings.

- **Section 3-9 – Stipends.** Section 3-9 of the Committee’s bylaws currently provides that “[t]he appointed Committee member shall be paid a meeting stipend of \$75.00 per any meeting provided that the meeting has established a quorum.”[*Committee Bylaws 3-9*]. Under the proposed amendments to the bylaws, this section, will now also read that “[t]he appointed Committee member shall be paid a stipend of seventy-five dollars (\$75.00) for attending the Oneida Business Committee meeting when the annual audit is presented by the external auditors.” [*Proposed Bylaws 3-9(b)*].

- **Impact:** This revision will allow the appointed community member to be eligible to receive a stipend of seventy-five dollars (\$75.00) for attending the Oneida Business Committee meeting when the annual audit is presented by the external auditors, since they are required to be in attendance at that meeting.

SECTION 4. LEGISLATION RELATED TO BOARDS, COMMITTEES AND COMMISSIONS

Below is a summary of laws referenced in and related to the proposed amendments to the Audit Committee bylaws.

A. Oneida Nation Constitution. The Constitution of the Oneida Nation contains a provision that allows for the creation of committees for the proper conduct of tribal business of the Nation. [*Oneida Nation Constitution, Article IV, Section 1(g)*]. There are no conflicts between the proposed bylaws amendments and the Oneida Nation Constitution.

B. Internal Audit [1 O.C. Chapter 108]. This law creates a process by which internal audits are conducted upon the Nation’s entities and delegates responsibilities for the purpose of conducting such audits. The Audit Committee, established under section 108.4-1 of the law, is a standing committee of the OBC with the responsibility for overseeing the internal audit process, including, but not limited to, any and all investigations into complaints received alleging or suspecting improprieties and/or violations of the Nation’s policies, laws, rules and directives. [1 O.C. 108-4-1]. There are no conflicts between the proposed bylaws amendments and the Nation’s Internal Audit law.



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



AGENDA REQUEST FORM

- 1) Request Date: November 30, 2022
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Emergency Amendments to the Election Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 11/30/22 the OBC adopted a motion to request the LOC to take
emergency action on th Election law to address concerns identified in the
event the 2023 Annual GTC meeting is not held. Section 102.9-1 requires
that the GTC set the election date at the January annual meeting.

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

- 1) Election Law
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Election Board brought this concern to the Oneida Business Committee on 11/30/22.
- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

The 2023 General Election is upcoming. Election law requires that the GTC set an election date at the January annual meeting.

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

Title 1. Government and Finances - Chapter 102

ELECTION

Onayote'a·ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsila

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

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

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

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

102.2. Adoption, Amendment, Repeal

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, and emergency amended by resolution BC-07-13-22-E.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

102.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

102.3. Definitions

102.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

102.3-6. “Candidate” shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

102.3-7. “Clerk” shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

102.3-8. “Close of business” shall mean 4:30 p.m. Monday through Friday.

102.3-9. “Conflict of Interest” shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

102.3-10. “Election” shall mean every primary and election.

102.3-11. “General election” shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

102.3-12. “Judge” shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

102.3-13. “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

102.3-14. “Lot drawing” shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

102.3-15. “Nation” means the Oneida Nation.

102.3-16. “Nation’s newspaper” shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

102.3-17. “Oneida Police Officer” shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

102.3-18. “Private property” shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

102.3-19. “Prominent locations” shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

102.3-20. “Qualified voter” shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

102.3-21. “Rejected Ballots” shall mean those ballots which are rejected by the vote tabulating machine.

102.3-22. “Spoiled Ballot” shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

102.3-23. “Teller” shall mean the election official in charge of collecting and storing of all ballots.

102.4. Election Board

Section A. Establishment, Composition and Election

102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this

law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

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

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

Section C. Specific Duties of Officers and Election Board Members

102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 102.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.
- (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as

determined by this law. Shall assist the Chairperson in conducting the election.

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

Section D. Compensation Rates

102.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

102.5. Candidate Eligibility

Section A. Requirements

102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:
 - (1) a valid Wisconsin driver's license;
 - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
 - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

102.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

102.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

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

Section B. Eligibility Review

102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the

appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

102.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
 - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
 - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

102.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
 - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
 - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
 - (3) No campaign sign shall project beyond the property line into the public right of way.
- (b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.
- (c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.
- (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.
- (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

102.5-14. *Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.6. Selection of Candidates

Section A. Setting of Caucus

102.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

102.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.

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

Section B. Petition

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

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

- (1) printed name and address;
- (2) date of birth;
- (3) Oneida Nation Enrollment Number; and
- (4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

102.7. Notice of Polling Places

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

102.7-4. Notice of the election shall be placed in the Nation's newspaper.

102.8. Registration of Voters

Section A. Requirements

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

Section B. Identification of Voters

102.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

Section C. Registration Procedures

102.8-3. Voters shall physically register, on the day of the election, at the polls.

102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment

with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

Section D. Qualification/Verification of Voter Eligibility

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

102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

102.9. Election Process

Section A. Polling Places and Times

102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 102.12-6.

102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.

102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

- (a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

102.9-7. No one causing a disturbance shall be allowed in the voting area.

102.9-8. Election Board members may restrict the voting area to qualified voters only. This

restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

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

Section C. Spoiled Ballots

102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

Section D. Rejected Ballots

102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

102.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

102.10-2. At least three (3) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3(a).

Section B. Manually Counted Ballots

102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

102.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

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

102.11. Election Outcome and Ties

Section A. Election Results Announcement

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

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

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

Section B. Tie

102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

102.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

102.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within

two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

102.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

102.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

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

Section D. Challenges and Declaration of Results

102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

- (b) Total votes cast for each candidate by subsection of the ballot.
 - (c) List of any ties and final results of those ties, including the method of resolution.
 - (d) List of candidates elected and position elected to.
 - (e) Number of spoiled ballots.
 - (f) Cost of the election, including the compensation paid to each Election Board member.
- 102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.
- 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office
- 102.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.
- (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.
 - (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.
- 102.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

102.12. Elections

Section A. Primary Elections; Business Committee

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

Section B. Special Elections

- 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as

defined in this law, may be placed on the same ballot as the subject matter of an election.

102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Section C. Referendums

102.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

Section D. Initiation of Special Elections

102.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

102.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

102.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

102.13. Oneida Nation Constitution and By-law Amendments

102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment

Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain signatures from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.

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

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

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

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

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

End.

Adopted - June 19, 1993

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

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

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

Amended-GTC-01-04-10-A
Amended – BC-02-25-15-C
Amended – GTC-04-23-17-A
Emergency Amended – BC-03-17-20-B
Emergency Amended – BC-05-13-20-H
Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)
Emergency Amended – BC-04-28-21-B (Expired)
Emergency Amended – BC-07-13-22-E



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



AGENDA REQUEST FORM

- 1) Request Date: December 7, 2022
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Amendments to Address the Dissolution of ERB and Transition of Responsibilities
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Amendments to various laws are needed to address the dissolution of
ERB and the transfer of responsibilities to other entities such as the
EHSLA and/or the Land Commission.

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

- 1) Oneida Law Office Memorandum
- 2) Excerpt from 9/28/22 OBC Meeting Packet
- 3) Affected Laws
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Cemetery law, Domestic Animals law, Tribal Environmental Response law, Well Abandonment law, All Terrain Vehicle law, Tribal Environmental Quality Review law, Hunting Fishing and Trapping law, On-Site Waste Disposal law, Water Resources Ordinance, Public Use of Tribal Land law.
- 6) Please list all other departments or person(s) you have brought your concern to:
General Manager and Oneida Law Office provided assessments of this issue.
- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why:

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

Jo Anne House, PhD | Chief Counsel
James R. Bittorf | Deputy Chief Counsel
Kelly M. McAndrews | Senior Staff Attorney

Carl J. Artman
Krystal L. John
Peggy A. Van Gheem
Lydia M. Witte

Law Office



MEMORANDUM

TO: Jo Anne House, Chief Counsel

FROM: Kelly M. McAndrews, Senior Staff Attorney
Krystal John, Staff Attorney
Krystal L. John

DATE: November 21, 2022

SUBJECT: Considerations in the dissolution of ERB

Kelly M.
McAndrews

Digitally signed by Kelly M.
McAndrews
Date: 2022.11.22 13:43:07 -06'00'

Digitally signed by Krystal L. John
Date: 2022.11.22 13:45:20 -06'00'

During the August 10, 2022 Business Committee (BC) meeting, Lisa Liggins, Tribal Secretary, made a motion to Direct the General Manager (GM) to “[C]omplete the assessment regarding the feasibility of the EHSLA Division taking on the roles of ERB. . .” This assessment, as required, was submitted by Mark Powless, General Manager, to the BC for its September 28, 2022 meeting.

In short, the GM concluded that although changes were necessary to those Oneida laws that delegated the authority and responsibility to the Environmental Resources Board (ERB), those responsibilities that were jointly executed by the ERB and Environmental, Health, Safety, and Land Division (EHSLA), could be assumed by EHSLA. Additionally, for those duties that delegated ERB the power and duty to carry out the intent and purposes of the law, including enforcement, those responsibilities could be delegated to EHSLA and/or the Land Commission.

Oneida Environmental Resources Board

The ERB was established by BC Resolution BC-02-22-85-B. ERB was established to assist in the protection of the Nation’s hunting and fishing treaty rights. *See* BC-02-22-85-B. The establishment of ERB was to oversee and coordinate “all tribal conservation activities including, reforestation, recreational development and the orderly regulation of hunting and fishing” on the Oneida Reservation. *Id.* At the time the charter and the by-laws governed ERB. *Id.* Over time the by-laws have changed and laws were created which ERB implemented and enforced.

ERB’s authority was codified in several Tribal laws. ERB acted as an original hearing body for enforcement action pursuant to those laws in which ERB was delegated authority. However, once the Judiciary was formalized, this hearing authority was transferred to the Judiciary. On July 26, 2017, as part of an effort to standardize and streamline the Nation’s hearing responsibilities,¹ the Oneida Business Committee adopted amendments to various laws

¹ Specific to enforcement matters.

Page 2

of the Nation which transferred the Environmental Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary, including:²

- Well Abandonment Law Amendments (BC#7-26-17-A)
- Tribal Environmental Response Law Amendments (BC#7-26-17-B)
- On-Site Waste Disposal Law Amendments (BC#7-26-17-C)
- Public Use of Tribal Land Law Amendments (BC#7-26-17-D)
- All-Terrain Vehicle Law Amendments (BC#7-26-17-E)
- Hunting, Fishing and Trapping law amendments (BC#7-26-17-F) (these amendments also clarify the law's Jurisdiction section)
- Water Resources Ordinance amendments (BC#7-26-17-G)
- Domestic Animals Ordinance (BC#6-28-17-B)

The original date established to transfer ERB's hearing authority to the Judiciary, October 1, 2017, was extended to January 1, 2018 in order to work out implementation issues. BC Resolutions 09-27-17-E; 09-27-17-F.

The ERB continued to operate in an administrative capacity after its hearing authority was transferred to the Judiciary. However, the realization of the COVID-19 pandemic impacted the Nation and, specific to this memorandum, operations of the Nation's Boards, Committees, and Commissions—including the ERB. Broadly, as a result of the COVID-19 pandemic, the Nation was forced to implement financial and health/safety/welfare restrictions on operations. As a result, specified Boards, Committees, and Commissions (including ERB) were placed in temporary closure states. BC #4-8-20-B (“[T]hese entities should be placed on temporary closure to preserve funding for necessary governmental services and activities.”) Vacancies were also not posted. *Id.* Listed boards were placed on closure status for the remainder of FY 2020 and during any continuing resolution for FY 2021. *Id.* The temporary closure of ERB was continued for the duration of FY 2021. BC#11-24-20-C.

Soon it became necessary for some Boards, Committees, and Commissions to resume business. Thus, BC Resolution 04-14-21-B specified that those Boards, Committees, and Commissions that were subject to the extension of the temporary closure (BC#11-24-20-C), including the ERB, were able to meet virtually, but could not meet in person and were not authorized to receive a stipend (stipends for these boards was suspended for FY2021 by previously mentioned resolution).³ However, even after FY2021 ended, the Nation's GAO reports that ERB has not received anything from the EHSLA that requires review, all ERB board member terms have now expired, and despite posting, there have been no applications for vacant ERB positions (including by former Board members). Thus, the Business Committee has determined that it may be necessary to dissolve the ERB and transfer its duties and responsibilities.

² The legislative history of the laws referenced is located within each resolution.

³ BC#08-12-20-B codified amendments to the Nation's Boards, Committees, and Commissions law including the ability to have meetings which were not conducted in person, but through certain technology. BC#05-12-21-I addressed the Nation's “reopening” and resumption of government offices, indicating the Nation shall attempt to safely re-open to the public and in accordance with U.S. Centers for Disease Control.



Transition of the ERB duties and Responsibilities

There currently appears to be no community interest in applying for the ERB Board. Although ERB's [enforcement] hearing responsibilities were transitioned to the Judiciary in 2018, the ERB continues to have duties and responsibilities. It is possible to dissolve the ERB and transfer the ERB's duties and responsibilities to other entities. In fact, the GM concluded that the ERB's duties and responsibilities could be delegated to EHSLA and/or the Land Commission. Although the ERB's bylaws do not address the dissolution of the ERB, the Nation's Boards, Committees, and Commissions law addresses the dissolution of a board:

105.17-2. Dissolution of an Entity. All other entities⁴ of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee.

105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

In sum, the Business Committee may make a motion to dissolve the ERB.⁵ Although there is no sitting ERB, a written "Notice of dissolution" should be provided to Secretary's Office, OBC Records, Supervisor- Boards, Committees, and Commissions within five (5) business days of the BC action. Additionally, since the ERB has no Chairperson or Secretary, it will be necessary to designate an individual/unit to complete the Management of Records and Materials functions required by sec. 105.17.4. This designation may also occur in the aforementioned motion.

⁴ This section applies to the ERB. An earlier provision contains the dissolution process for a Task Force or Ad Hoc Committee. See sec. 105.17-1 for further.

⁵ Codified into a Resolution is appropriate.



Page 4

In addition to the closure of open business and storage/ disposal of records and materials, ERB's duties and responsibilities must be considered and transferred. The following laws contain duties and responsibilities for the ERB and will need to be addressed by the LOC, with delegated authorities assigned elsewhere (as recommended by the GM):

Rulemaking authority/ Fine and penalty schedule authority/ Citation authorities⁶

Ch. 127, Cemetery law, delegation of rulemaking authority re: prohibited uses of Oneida Nation cemetery grounds. Sec. 127.8-2. ERB to be copied on Cemetery complaints and provided maintenance and appearance rules created by LC. Secs. 127.9-2; 127.8-1(a).

Ch. 304, Domestic Animals, delegation of joint authority (with EHSLA) to develop a fine, penalty, and licensing fee schedule. Such schedules are adopted by the Oneida Business Committee through resolution. Sec. 304.4-3.

Ch. 401, Tribal Environmental Response, delegation of rulemaking authority to adopt a penalty schedule (recommended by EHSLA). Sec. 401.10-2. Contested action hearings at 401.10-3.

Ch. 404, Well Abandonment, contested action hearings at 406.7-4.⁷

Ch. 410, All Terrain Vehicle, authority to promulgate rules to establish minimum standards for the instruction given under par. (a)1 [rental/ leasing]. Sec. 410.5-2. Contested action hearings at 410.7-2.

Ch. 606, Tribal Environmental Quality Review, there is no explicit authority granted to the ERB—any authority is implied based upon delegation of rulemaking authority other rules. Sec. 606.6-1 simply says (in part), the “Tribe shall adopt rules and regulations. . . .” This law does not need to be changed, but any changes made may impact internal procedures in the implementing of this law.

Additional authorities⁸

Ch. 405, Hunting, Fishing, and Trapping, the ERB has extensive authority under this law. ERB and the [Conservation] Department jointly establish and maintain the rules that are required to implement this law. Joint rulemaking authority includes: license types and limits, fee schedule/ application requirements, declare/amend protected, threatened, or endangered species, establish and modify hunting season(s), establish/modify territorial limits, establish check in procedures, regulate craft (boats, air, vehicles) used for hunting/ fishing/trapping, regulate means/methods by which wildlife may be taken, regulate transportation/storage of wildlife, prescribe fire and other

⁶⁶ For those laws referencing contested action hearings, such section may need to be rewritten to reduce redundancy to the Nation's Citation law. Additionally, the Judiciary uses a minimum wage calculation for community service situations, which is higher than the \$10 per hour rate that appears in these laws. It is believed the \$10 rate used in these laws was minimum wage at the time those sections were adopted.

⁷ This number is as it appears in the law.

⁸ These authorities are more in depth than those listed in under the Rulemaking authority/ Fine and penalty schedule authority/ Citation section.



Page 5

safety control measures for recreationists (etc.), establish fine/ penalty schedule, provide public notice (on website) of the rules and development of rule booklet, and authority to implement other rules as necessary to implement the law.

Ch. 407, On-site Waste Disposal, delegation of rulemaking authority to establish penalties for violations. Sec. 407.7-4. Contested action hearings at 407.7-6. 407.7-1 . Variances- Requests for a variance to conditions/ requirements of the law are made to the ERB (may be made through the Environmental Specialist), and the ERB shall issue written approval or denial of any variance requested. The decision may be appealed to the Judiciary. Sec. 407.7-5.

Ch. 409, Water Resources Ordinance, the ERB serves in an advisory capacity to the [Environmental] Department in the development and administration of the programs contemplated by this law. The ERB and the Business Committee approve intergovernmental agreements related to the control [of] pollution of any inter-jurisdiction streams and other waters. The ERB also has the authority to review any Orders issued by the Department, hold a [public] hearing, and suspend, affirm/ repeal/ change the Order. Additionally, the ERB is delegated authority to hold environmental pollution hearings and issue emergency orders/ establish fines. Contested action hearings at 409.6-5.

Ch. 609, Public Use of Tribal Land, the ERB has extensive authority pursuant to this law. The ERB has the duty and power to carry out the intent and purposes of this law and enforce the provisions of this law. The ERB, or designated staff,⁹ shall: develop/approve/maintain a land access map (includes access designations), hold public hearings on amendments to the map, determine which Tribal land will be posted/ ensure posting, prescribe permissible/prohibited uses for Tribal land and post, and implement/ interpret provisions of this law. This law creates fines/ penalties for certain land related violations (example: trespassing; A list of related laws is referenced). Contested action hearings at 609.7.

⁹ Post-COVID It is believed ERB no longer has staff.



Review the Environmental, Health, Safety, Land, and Agriculture Environmental Resource Board...**Business Committee Agenda Request**

1. Meeting Date Requested: 09/28/22

2. Session:

☒ Open ☐ Executive – must qualify under §107.4-1.

Justification: *Choose or type justification.*

3. Requested Motion:

☐ Accept as information; OR

Follow up to BC meeting August 10, 2022: Motion by Lisa Liggins to direct the General Manager to complete the assessment regarding the feasibility of the EHSLA Division taking on the roles of the ERB and for the assessment to be submitted at the second Business Committee meeting in September.

4. Areas potentially impacted or affected by this request:

<input type="checkbox"/> Finance	<input checked="" type="checkbox"/> Programs/Services
<input type="checkbox"/> Law Office	<input type="checkbox"/> MIS
<input type="checkbox"/> Gaming/Retail	<input checked="" type="checkbox"/> Boards, Committees, or Commissions
<input type="checkbox"/> Other: <i>Describe</i>	

5. Additional attendees needed for this request:

Mark W. Powless, General Manager

Nicole Rommel, EHSLA Director

Name, Title/Entity OR Choose from List

Name, Title/Entity OR Choose from List

6. Supporting Documents:

- | | | |
|---|--|---|
| <input type="checkbox"/> Bylaws | <input type="checkbox"/> Fiscal Impact Statement | <input type="checkbox"/> Presentation |
| <input type="checkbox"/> Contract Document(s) | <input type="checkbox"/> Law | <input checked="" type="checkbox"/> Report |
| <input type="checkbox"/> Correspondence | <input type="checkbox"/> Legal Review | <input type="checkbox"/> Resolution |
| <input type="checkbox"/> Draft GTC Notice | <input type="checkbox"/> Minutes | <input type="checkbox"/> Rule (adoption packet) |
| <input type="checkbox"/> Draft GTC Packet | <input type="checkbox"/> MOU/MOA | <input type="checkbox"/> Statement of Effect |
| <input type="checkbox"/> E-poll results/back-up | <input type="checkbox"/> Petition | <input type="checkbox"/> Travel Documents |
| <input type="checkbox"/> Other: <i>Describe</i> | | |

7. Budget Information:

- | | |
|---|--|
| <input type="checkbox"/> Budgeted – Tribal Contribution | <input type="checkbox"/> Budgeted – Grant Funded |
| <input type="checkbox"/> Unbudgeted | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Other: <i>Describe</i> | |

8. Submission:

Mark W. Powless

Digitally signed by Mark W.
Powless
Date: 2022.08.26 16:38:08 -05'00'

Authorized Sponsor: Mark W. Powless, General ManagerPrimary Requestor: Nicole Rommel, EHSLA Director

Memorandum

TO: Mark Powless, General Manager
FROM: Nicole Rommel, EHSLA Director
SUBJECT: Environmental Resource Board (ERB) Responsibilities
DATE: 08/12/2022

Due to the pandemic, the ERB has been in temporary closure status since April 8, 2020.

A review of the ERB's applicable laws and the responsibilities included in each law has been completed. The Environmental, Health, Safety, Land, and Agriculture Division (EHSLA) and/or Judiciary can take on the duties from six of the seven applicable laws.

Many of the responsibilities are jointly executed between the ERB and EHSLA. EHSLA has the capability to take over full responsibility. The ERB does have some hearing body authorities which could be transferred to the Judiciary.

The Public Use of Tribal Lands Law is different due to the ERB having the duty and power to carry out the intent and purposes of the law and enforce the provisions of the law. The responsibilities in this law could be split between EHSLA and the Oneida Land Commission.

A legal review of all seven of the applicable laws may need to be completed to determine the needed changes and determine who should be responsible for the Public Use of Tribal Lands Law.

Below are details on the establishment and purpose of the ERB. Also included is a summary of the applicable laws with a description of the ERB's responsibilities in each.

The ERB was established through resolution BC-02-22-85-B (Attachment A). An excerpt on the purpose as stated in the resolution is, overseeing and coordinating all tribal conservation activities including, reforestation, recreational development and the orderly regulation of hunting and fishing on the Oneida Indian Reservation.

According to the ERB's Bylaws (Attachment B), the purpose is as follows:

1. Through its establishment, the ERB was delegated authority to supervise and regulate the Nation's conservation resources and the environment of the Oneida Reservation.
2. The ERB shall be responsible for the oversight, compliance, and/or development of conservation and environmental laws, practices, and/or policies for the Oneida Nation that relate to including, but not be limited to:
 - a. hunting and fishing;
 - b. conservation, reforestation, parks/wildlife, and recreation;
 - c. environmental protection and improvement;
 - d. community education; and

- e. enforcement.
- 3. The ERB shall monitor environmental problems on the Oneida Reservation.
- 4. The ERB shall carry out all other powers and/or duties delegated through the laws, policies, rules, and resolutions of the Nation, including but not limited to the Hunting, Fishing, and Trapping Law; the Well Abandonment Law, the Public Use of Tribal Land Law, and the Domestic Animals Law.

In addition to the laws listed above, the ERB also has responsibilities in the Tribal Environmental Response Law, Water Resources Law, and the All-Terrain Vehicle Law.

Title 3, Chapter 304 - Domestic Animals

- Develop fines and penalties jointly with EHSLA

Title 4, Chapter 401 - Tribal Environmental Response

- Rulemaking authority to adopt a penalty schedule upon recommendation of EHSLA
- Garnishment process for non-payment

Title 4, Chapter 404-Well Abandonment

- Fines and penalties payable to ERB
 - Proceeds to general fund
 - Garnishment process for non-payment

Title 4, Chapter 406 - Hunting, Fishing, and Trapping

- Joint rulemaking authority with EHSLA
- Form a Hearing Body for denial of a license or permit by Conservation Department
- Fines and penalties payable to ERB
 - Proceeds to general fund
 - Garnishment process for non-payment

Title 4, Chapter 409 - Water Resources

- Advisory capacity to EHSLA in the development and administration of the programs contemplated under this law
- Approval of any agreements along with the Business Committee between EHSLA and political entities
- Form a Hearing Body for review of any orders by the Conservation Department under this law
- Garnishment process for non-payment

Title 4, Chapter 410 - All-Terrain Vehicle

- Fines and penalties payable to ERB
 - Proceeds to general fund
 - Garnishment process for non-payment

Title 6, Chapter 609 - Public Use of Tribal Land

- ERB has the duty and power to carry out the intent and purposes of this law and enforce provisions of this law



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Tribe of Indians of Wisconsin

Phone: 869-2771



Oneida, WI 54155



UGWA DEMOLUH YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

RESOLUTION NO. 2-22-85-B

- WHEREAS, The governing body of the Oneida Tribe of Indians of Wisconsin is the Oneida General Tribal Council, and
- WHEREAS, the Oneida General Tribal Council has delegated its governing powers and responsibilities to the Oneida Business Committee, subject to its review, and
- WHEREAS, the legal right of Oneida Indians to hunt and fish on the Oneida Indian Reservation is defined by the 1838 Treaty, and
- WHEREAS, it has been determined that the treaty protected rights to hunt and fish on the Oneida Reservation by Oneida Indians can best be accomplished by the establishment of an Oneida Conservation Board, and
- WHEREAS, it has been determined that the establishment of the Oneida Conservation Board will benefit the Oneida Tribe, from the present into the future, by overseeing and coordinating all tribal conservation activities including, reforestation, recreational development and the orderly regulation of hunting and fishing on the Oneida Indian Reservation.
- NOW, THEREFORE BE IT RESOLVED: That the Oneida Conservation Board is hereby established to carry out the purposes set forth above, and
- BE IT FURTHER RESOLVED: That the attached charter and by-laws shall govern the conduct and activities of the Oneida Conservation Board.
- BE IT FINALLY RESOLVED: That the following named persons are hereby appointed as the first Oneida Conservation Board members:

- | | |
|-------------------|----------------------|
| 1. Larry Barton | 5. Jerry Kurowski |
| 2. Bob Christjohn | 6. Al Manders |
| 3. Ted Hawk | 7. Dennis G. Powless |
| 4. Harlan King | |

Resolution No. 2-22-85-B
Page 2

The following persons are hereby appointed as alternates to the first Oneida Conservation Board members, and may serve in the absence of any of the regular members.

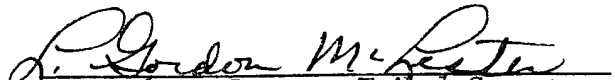
1. Jim Danforth
2. Bill Sauer
3. Gary Ness

All persons will be installed by public oath at a regular meeting of the Oneida Business Committee by the Chairman or his delegate prior to commencing business.

The first Oneida Conservation Board will serve until the first annual meeting when they may be succeeded or re-elected as determined by, and provided for the Charter and By-laws.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of nine (9) members of whom 7 members, constituting a quorum, were present at a meeting duly called, noticed, and held on the 22 day of February, 1985; that the foregoing resolution was duly adopted at such meeting by a vote of 6 members for, 0 members against, and 0 members abstaining: And that said resolution has not been rescinded or amended in any way.


L. Gordon McLester, Tribal Secretary
Oneida Business Committee

ONEIDA ENVIRONMENTAL RESOURCE BOARD BYLAWS**Article I. Authority**

- 1-1. *Name.* The Oneida Environmental Resource Board is the official name of this entity. For the purpose of these bylaws, the Oneida Environmental Resource Board may hereinafter be referred to as the ERB.
- 1-2. *Establishment.* The Oneida Environmental Resource Board, formerly known as the Oneida Conservation Board, was established through resolution BC-02-22-85-B pursuant to the authority delegated to the Oneida Business Committee under Article IV, Section 1(g) of the Constitution of the Oneida Nation and the Oneida Nation's inherent sovereign power to protect the political integrity, economic security, health and welfare of its members, and its territory. The purpose for the ERB's establishment was later expanded upon by the Oneida Business Committee in resolution BC-09-16-86-A.
- 1-3. *Authority.* Through its establishment, the ERB was delegated authority to supervise and regulate the Nation's conservation resources and the environment of the Oneida Reservation.
- (a) The ERB shall be responsible for the oversight, compliance, and/or development of conservation and environmental laws, practices and/or policies for the Oneida Nation that relate to including, but not be limited to:
 - (1) hunting and fishing;
 - (2) conservation, reforestation, parks/wildlife, and recreation;
 - (3) environmental protection and improvement;
 - (5) community education; and
 - (6) enforcement.
 - (b) The ERB shall monitor environmental problems on the Oneida Reservation.
 - (c) The ERB shall carry out all other powers and/or duties delegated through the laws, policies, rules and resolutions of the Nation, including, but not limited to, the Hunting, Fishing and Trapping law; the Water Resources law; the All-Terrain Vehicle law; the Well Abandonment law; the Public Use of Tribal Land law; and the Domestic Animals law.
- 1-4. *Office.* The official office of the ERB shall be located within the exterior boundaries of the Oneida Reservation, and its mailing address shall be:
The Oneida Environmental Resource Board
P.O. Box 365
Oneida, Wisconsin 54155
- 1-5. *Membership.*
- (a) *Number of Members.* The ERB shall consist of nine (9) members.
 - (b) *Appointment.* The ERB members shall be appointed by the Oneida Business Committee, in accordance with the Boards, Committees and Commissions law, to three (3) year terms which shall be staggered.

- (1) The ERB shall review application materials and, per a decision by majority vote of the members in attendance at an ERB meeting of an established quorum, the ERB Chairperson shall provide the Oneida Business Committee with recommendations for appointment from among the qualified applicants by the executive session in which appointments are intended to be made.
- (c) *Vacancies.* The ERB shall fill vacancies through appointment by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law.
 - (1) A position on the ERB shall be considered vacant in any of the following situations:
 - (A) *End of Term.* A vacancy is effective as of 4:30 p.m. on the last day of the month in which the term ends.
 - (i) Although a member's position is considered vacant once his or her term ends, that member may remain in office until a successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the ERB.
 - (B) *Termination of Appointment.* An ERB member may have his or her appointment terminated by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law.
 - (i) The ERB may make recommendations to the Oneida Business Committee for termination of a member's appointment by a majority vote of the members present at an ERB meeting of an established quorum.
 - (C) *Resignation.* A member may resign at any time verbally at a meeting or by delivering written notice to the Oneida Business Committee Support Office and the ERB Chairperson or Chairperson's designee. The resignation is deemed effective upon:
 - (i) Deliverance of the written notices to the Oneida Business Committee Support Office and to the ERB Chairperson or Chairperson's designee; or
 - (ii) Acceptance by motion of the ERB of the member's verbal resignation.
- (d) *Qualifications of Members.* Members of the ERB shall meet the following qualifications:
 - (1) Be an enrolled member of the Nation;
 - (2) Be a resident of Brown or Outagamie County;
 - (3) Be 18 years of age or older;
 - (4) Unless pardoned under the Nation's Pardon and Forgiveness law, not have a felony on his or her record;

- (5) Applicants that possess a degree in either environmental sciences or environmental law/policy; have sportsmen's experience and/or have a back-ground in Oneida culture shall be given preference; and
- (6) Not be employed by the Oneida Environmental, Health, Safety, and Land Division.

1-6. *Termination.* Upon a majority vote of the members in attendance at an ERB meeting of an established quorum, the ERB may make a recommendation to the Oneida Business Committee that it terminate the appointment of an ERB member pursuant to the Boards, Committees and Commissions law for any of the following reasons:

- (a) Unexcused absences from more than three (3) meetings or other mandatory events of the ERB within one (1) year.
 - (1) An ERB member will be deemed unexcused if he or she fails to provide written notification of the pending absence to an Officer at least thirty (30) minutes before the missed meeting/mandatory event.
- (b) Violation of any laws of the Nation, these bylaws or any other policy governing members of the ERB.
- (c) Failure to maintain qualifications to be an ERB member.
- (d) Failure to act within the scope of a member or Officer of the ERB.
- (e) Failure to complete all training mandated by section 1-7 of these bylaws within the time allowed for completion or within any extension of time granted thereunder.

1-7. *Trainings and Conferences.*

- (a) All ERB members, within one (1) year after being appointed to the ERB, shall participate in mandatory training as follows:
 - (1) Environmental Law – Two (2) hours, which shall include the Nation's laws and procedures.
 - (2) Legal Writing – Two (2) hours, which shall include environmental and conservation law drafting.
 - (3) Professional Ethics – Two (2) hours of training, including issues of confidentiality.
 - (4) Robert's Rules of Order.
- (b) The ERB may, at its discretion, extend the time allowed for completion of any and all required training of a member for good cause shown.
- (c) Regardless of the number of trainings/conferences that he or she is required to attend, no member of the ERB shall be eligible to receive stipends for attending more than five (5) full days of mandatory trainings/conferences per year.

Article II. Officers

2-1. *Officers.* The ERB shall have three (3) Officer positions consisting of a Chairperson, a Vice-Chairperson and a Secretary.

- 2-2. *Responsibilities of the Chairperson.* The responsibilities, duties and limitations of the Chairperson shall be as follows:
- (a) To preside over all meetings of the ERB.
 - (b) To, either personally or through a designee, meet with the ERB liaison from the Oneida Business Committee as the official spokesperson of the ERB.
 - (c) To, with the help of the ERB Secretary, schedule or reschedule meetings of the ERB as deemed necessary.
 - (d) To submit, or through a designee have submitted, annual and semi-annual reports to the Oneida General Tribal Council, as well as quarterly reports to the Oneida Business Committee, in accordance with the Boards, Committees and Commissions law.
 - (e) To attend, or designate an ERB member to attend, the Oneida Business Committee meeting in which the ERB's quarterly report appears on the agenda.
- 2-3. *Responsibilities of the Vice-Chairperson.* The responsibilities, duties and limitations of the Vice-Chairperson shall be as follows:
- (a) In the absence of the Chairperson, to preside over all meetings of the ERB and carry out all other functions of the Chairperson as specified in section 2-2 of these bylaws.
- 2-4. *Responsibilities of the Secretary.* The responsibilities, duties and limitations of the Secretary shall be as follows:
- (a) Subject to the limitations set forth herein, in the absence of the Chairperson and Vice-Chairperson, to carry out all functions of the Chairperson as specified in section 2-2 of these bylaws.
 - (1) The Secretary's authority to call and/or preside over meetings of the ERB shall be limited as follows:
 - (A) In the event that both the Chairperson and Vice-Chairperson positions become vacant before the end of their terms, the Secretary shall be allowed to call meetings of the ERB to fill the vacancies and preside over those meetings for the sole purpose of appointing new Officers, at which point the Chairperson, or Vice-Chairperson in the absence of the Chairperson, shall preside.
 - (b) To inform ERB members of the time and place of each meeting and the trainings/conferences that they are required to attend in the manner required by these bylaws.
 - (c) To schedule ERB member trainings/conferences as specified in section 1-7 (a) of these bylaws.
 - (d) To attend all meetings to record and create accurate minutes of the proceedings.
 - (1) If the Secretary is unable to attend a meeting, it is his or her responsibility to find a replacement prior to the meeting and to notify the Chairperson or Chairperson's designee who the replacement is that will accurately record the proceedings in place of the Secretary.

- (e) To provide notice on the Nation's calendar of when and where each regular and emergency meeting will be held no less than two (2) business days prior to the meeting and further provide notice of the meeting agenda, documents and minutes in accordance with these bylaws and the Nation's Open Records and Open Meetings law.
- (f) To prepare, as well as make available in writing to all members, the agenda, minutes and any documents to be reviewed by the ERB at an upcoming meeting no less than two (2) business days prior to the meeting.
- (g) To type the minutes from all regularly scheduled and emergency meetings and make them available to all ERB members.
- (h) To forward the ERB meeting minutes to the Oneida Business Committee Support Office in accordance with these bylaws upon their approval by the ERB.
- (i) Except for the limited ability to call and/or preside over meetings of the ERB under subsection (a)(1)(A) of this section, the Secretary may select a designee to complete his or her duties when necessary.

2-5. *Selection of Officers.* Officers of the ERB shall be elected for one (1) year terms by majority vote of the members present at the ERB meeting of an established quorum held on the first Thursday in the month of August.

- (a) Any ERB member may nominate any other ERB member for an Officer position.
 - (1) A nominee shall be asked by the Chairperson whether he or she accepts or declines the nomination.
 - (2) The Chairperson shall close the nominations for each Officer position by a majority vote of the ERB members in attendance at the meeting of the established quorum.
- (b) The Chairperson shall be elected first, the Vice-Chairperson second, and the Secretary shall be elected last.
 - (1) The newly elected Officers shall take office at the next meeting of the ERB.
- (c) ERB members may be dismissed from their Officer positions by majority vote of the members in attendance at an ERB meeting of an established quorum.
- (d) An ERB member may attempt to win election to any or all offices, but upon accepting one (1) Officer position, may not be nominated to another Officer position or serve in more than one (1) Officer position per Officer term.

2-6. *Budgetary Sign-Off Authority and Travel.* The ERB shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

- (a) Levels of budgetary sign-off authority for the ERB shall be as set forth in the manual titled, *Oneida Tribe of Indians of Wisconsin Purchasing Policies and Procedures*, for Area Directors/Enterprise Directors.
 - (1) ERB Officers shall have and be of an equal sign-off authority level.
 - (2) Two (2) ERB Officers shall be required to sign-off on all budgetary requests, except as follows:

- (A) The Oneida Business Committee Support Office shall have sign-off authority over requests for stipends, travel per diem and business expense reimbursement.
- (b) The ERB shall approve a member's request to travel by majority vote of the members in attendance at a regular or emergency meeting of an established quorum.

2-7. *Personnel.* Commencing the date these bylaws are adopted by the Oneida Business Committee and from that point forward, the ERB shall not have authority to hire staff for its benefit.

Article III. Meetings

3-1. *Regular Meetings.* The ERB shall hold regular meetings on the first and third Thursday of each month at the Ridgeview Plaza located in Oneida, WI, commencing at 6:00 p.m.

- (a) The first Thursday of each month may be for the conducting of regular ERB business, and the third Thursday of each month may include community meetings and outreach.
- (b) The meeting date, time and/or location may change from time-to-time as determined by the ERB upon notice to all members in writing and, along with the public, in accordance with the Nation's Open Records and Open Meetings law prior to the implementation of a new date, time and/or location.
 - (1) The meeting location shall be within the Reservation boundaries unless the entire ERB membership is notified in writing and, along with the public, in accordance with the Nation's Open Records and Open Meetings law, of an off-Reservation meeting location prior to designating the meeting location.
- (c) The Secretary and/or Secretary's designee shall provide notice of meeting agendas, documents and minutes to all ERB members in writing and, along with the public, in accordance with the Nation's Open Records and Open Meetings law, as well as these bylaws.
- (d) Meetings shall follow Robert's Rules of Order.

3-2. *Emergency Meetings.* An emergency meeting may be called when there is an imminent need to address conditions that threaten the conservation, environmental, and/or public health or safety of the Oneida Nation which cannot wait until the next scheduled meeting.

- (a) The Chairperson, or a majority of the ERB, may call an emergency meeting so long as the Secretary provides notice in writing and by telephone call to every ERB member of the emergency meeting no less than twenty-four (24) hours prior to such meeting.
 - (1) Notice of the emergency meeting shall further be provided to all members and the public in accordance with the Nation's Open Records and Open Meetings law.

- (2) Email notification must be sent to the official Oneida Nation email address that was provided to each member to conduct business electronically on behalf of the ERB.
 - (b) The Secretary or Secretary's designee shall provide notice of the emergency meeting agendas, documents and minutes as specified in section 2-4 of these bylaws.
 - (c) Within seventy-two (72) hours after an emergency meeting, the ERB shall provide the Nation's Secretary with notice of the emergency meeting, the reason for the emergency meeting, and an explanation as to why the matter could not wait until the next regular meeting.
- 3-3. *Joint Meetings.* Joint meetings between the ERB and the Oneida Business Committee shall not be held.
- 3-4. *Quorum.* Five (5) members of the ERB must be present at any regular or emergency ERB meeting in order to constitute a quorum.
- (a) The ERB shall take no official action without a quorum present.
- 3-5. *Order of Business.* The ERB meeting agenda shall be set up as follows:
- (a) Call to Order
 - (b) Adopt the Agenda
 - (c) Approval of Minutes
 - (d) Old Business
 - (e) New Business
 - (f) Reports
 - (g) Other Business
 - (h) Executive Session
 - (i) Adjournment
- 3-6. *Voting.* Decisions of the ERB shall be by majority vote of the members present at a regular or emergency ERB meeting of an established quorum.
- (a) The Chairperson, or Officer presiding over the meeting in lieu of the Chairperson, shall not vote on matters at the ERB meetings, except in the event of a tie vote, in which case he or she shall cast the tie-breaking vote.
 - (b) E-polls are permissible so long as completed in accordance with the Boards, Committees and Commissions law.
 - (1) The Secretary shall serve as the Chairperson's designee for the responsibility of conducting an e-poll when the Chairperson is absent or unavailable.

Article IV. Expectations

4-1. *Behavior of Members.*

- (a) ERB members shall conduct themselves in accordance with the applicable behavioral expectations and requirements set forth in the Nation's Code of Ethics law and these bylaws.

- (b) *Enforcement.* Violations of this or any section of these bylaws shall be enforced as follows:
 - (1) Upon majority vote of the members in attendance at an ERB meeting of an established quorum, the ERB may make a recommendation to the Oneida Business Committee for the termination of a member's appointment in accordance with the Boards, Committees and Commissions law or any other law of the Nation governing the termination of appointed officials.
 - (2) The ERB may take action to discipline a member in accordance with any law of the Nation governing sanctions and penalties for appointed officials.

4-2. *Prohibition of Violence.* Members of the ERB are prohibited from committing any violent intentional act that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person or damage to property.

4-3. *Drug and Alcohol Use.* The use and/or consumption of any prohibited drugs or alcohol when acting in their official capacity as ERB members is strictly forbidden.

- (a) Prohibited drugs are defined as marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, any other substances included in Schedules I through V under Section 812 of Title 21 of the United States Code, and prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

4-4. *Social Media.* Members of the ERB shall use social media in accordance with the Nation's Social Media Policy and their oath of office.

4-5. *Conflict of Interest.* Members of the ERB shall follow all laws and policies of the Nation governing conflicts of interest, including, but not limited to, the Conflict of Interest law.

Article V. Stipends and Compensation

5-1. *Stipends.* Members of the ERB shall receive the following stipends so long as in accordance with these bylaws; the Boards, Committees and Commissions law; and resolution BC-05-08-19-B titled, Amending Resolution BC-09-26 -18-D Boards, Committees and Commissions Law Stipends, as may be further amended from time-to-time hereafter:

- (a) One (1) meeting stipend per month, whether called as a regular or emergency meeting; provided:
 - (1) A quorum was established;
 - (2) The meeting of the established quorum lasted for at least one (1) hour; and
 - (3) The ERB member requesting the stipend was physically present for the entire meeting.
- (b) A stipend for each day of attendance at a conference or training; provided:

- (1) The ERB member attended a full day of training or was present at the conference for a full day; and
- (2) The ERB member's attendance at the training or conference was mandated by law, bylaws or resolution.
- (c) A stipend for attending a Judiciary hearing if the ERB member's attendance at the Judiciary hearing was required by official subpoena.

5-2. *Compensation.* Besides the travel, per diem and business expense reimbursement authorized by the Boards, Committees and Commission law, members of the ERB shall not be eligible for any other form of compensation for duties/activities they perform in relation to their membership on the ERB.

Article VI. Records and Reporting

6-1. *Agenda Items.* Agenda items shall consistently follow the format as specified in section 3-5 of these bylaws.

6-2. *Minutes.*

- (a) Minutes of the ERB shall be typed in the format set forth in section 3-5 of these bylaws and shall generate the most informative record of the ERB's meetings to include, but not be limited to:
 - (1) A summary of the actions taken by the ERB during the meeting;
 - (2) The ERB members who made motions and seconded motions; and
 - (2) The ERB members who voted for, against or abstained from voting on motions.
- (b) Within ten (10) business days of being approved, minutes shall be submitted by the ERB to the Oneida Business Committee Support Office for filing.

6-3. *Attachments.* All meeting handouts, reports, memorandum and the like shall be attached to their corresponding meeting agenda and minutes for filing on the network drive.

6-4. *Oneida Business Committee Liaison.* The ERB, through its Chairperson or Chairperson's designee, shall regularly communicate with the member of the Oneida Business Committee who is its designated liaison.

- (a) The frequency and method of communication shall be as agreed upon by the ERB and the liaison, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or the Oneida General Tribal Council.
- (b) The purpose of the liaison relationship is to uphold the ability of the liaison to act as support to the ERB.

6-5. *Audio Recordings.* All meetings of the ERB shall be recorded with a standard portable audio recorder.


- (a) Audio recordings shall be maintained on the network in accordance with the Boards, Committees and Commissions law and the Open Records and Open Meetings law.

- (b) *Exception.* Audio recordings of executive session portions of an ERB meeting shall not be required.

Article VII. Amendments

- 7-1. *Amendments.* Amendments to these bylaws shall be approved by a majority vote of the members in attendance at an ERB meeting of an established quorum.
- (a) Amendments to these bylaws shall conform to the requirements of the Boards, Committees and Commissions law and any other policy of the Nation.
 - (b) Amendments to these bylaws shall be approved by the Oneida Business Committee before implementation.
 - (c) The ERB shall conduct a review of these bylaws no less than on an annual basis.

These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee at a duly called meeting held on October 23, 2019, by the Secretary of the Oneida Business Committee's signature.



Lisa Summers, Secretary
Oneida Business Committee

Title 1. Government and Finances– Chapter 127

CEMETERY LAW

Tsi? Lotiya?tata Olihwa'ke

The matters concerning when they bury the body

127.1. Purpose and Policy

127.2. Adoption, Amendment, Repeal

127.3. Definitions

127.4. Administration and Authority

127.5. Eligibility and Ownership

127.6. Interment and Plots

127.7. Disinterment

127.8. Prohibited Items and Behavior on Cemetery Grounds

127.9. Complaint Process

127.1. Purpose and Policy

127.1-1. *Purpose.* The purpose of this law is to establish administrative authority for Oneida Nation cemeteries on the Oneida Reservation, establish cemetery maintenance responsibility, govern the sale, transfer and recordkeeping of plots, establish who is eligible for interment, establish a process for disinterment, and delegate authority pursuant to Oneida laws.

127.1-2. *Policy.* It is the policy of the Nation that all enrolled Oneida Nation members, their families and descendants may be interred in an Oneida Nation cemetery.

127.2. Adoption, Amendment, Repeal

127.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E, BC-07-23-14-B and BC-07-26-17-K.

127.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

127.2-3. 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.

127.2-4. 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.

127.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

127.3. Definitions

127.3-1. 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) “Decedent” means a person who has died.

(b) “Descendant” means a person who is not enrolled in the Nation, but is a blood relative in the direct line of descent of an Oneida Nation member.

(c) “Disinterment” means to exhume interred human remains or cremated human remains.

(d) “Disinterment permit” means the form established by Land Management to authorize removal of a human corpse from a grave or tomb.

(e) “Family” means husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, step-parent and step-children as established through a certified copy of the original marriage license, foster children, adopted children, kinship and fictive kinship relationships and/or a person who accepts legal responsibility for the decedent.

- (f) “Interment” means to bury remains.
- (g) “Judiciary” means the judicial system that was established by Oneida General Tribal Council to administer the judicial authorities and responsibilities of the Oneida Nation.
- (h) “Nation” means the Oneida Nation.
- (i) “Reinterment” means to rebury remains.
- (j) “Remains” means the body of a deceased person, regardless of its state, and includes cremated remains. “Remains” is synonymous and may be used interchangeably with “decedent” and “corpse”.
- (k) “Reservation” means all the lands and waters 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.
- (l) “Rule” means a set of requirements, including citation fees and penalty schedules, in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

127.4. Administration and Authority

127.4-1. The land designation, administrative duties and maintenance responsibilities for the Oneida Sacred Burial Grounds, also known as Tsi? Tyeya?Tat’alih and any other cemetery owned by the Nation shall be as provided within this section.

127.4-2. *Land Designation Responsibilities.* The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Oneida Nation cemeteries.

127.4-3. *Administrative Responsibilities.* Land Management shall be responsible for the administrative duties for all Oneida Nation cemeteries. These duties include:

- (a) Issuance of disinterment permits, where appropriate. An approved disinterment permit constitutes authorization to transport the remains and reinter the disinterred remains at an approved location within the boundaries of the Oneida Reservation. If the remains are being transported outside the boundaries of the Oneida Reservation and/or reinterment is occurring at a location outside the boundaries of the Oneida Reservation, other laws may apply and the parties involved are responsible for compliance. Permits shall include:
 - (1) Information that is necessary to identify the decedent;
 - (2) The date and place of death;
 - (3) The current place of interment;
 - (4) The intended place of interment, the name of the person requesting the disinterment; and
 - (5) The name of the person in charge of the disinterment.
- (b) Maintaining vital statistics of decedents interred, disinterred, and/or reinterred in an Oneida Nation cemetery including data derived from certificates death, fetal death reports or related reports, a report for final disposition, authorization for disinterment or reinterment or related judicial order or any other data as determined by Land Management.
- (c) Creating long-term strategic plans for Oneida Nation cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.
- (d) Causing portions of land designed to be used for an Oneida Nation cemetery to be surveyed and mapped into plots, drives and walks.
- (e) Maintain records concerning all plots.

- (f) Requesting additional portions of land to be designated for use as an Oneida Nation cemetery, if needed.
- (g) Selling and transferring plots and restricting the use of plots.
- (h) Administering accounting activities related to the sale or transfer of a plot.
- (i) Determining how to utilize gifts to an Oneida Nation cemetery.
- (j) Establishing rules, entering into agreements with person(s) or entities, where needed, in order to carry out their responsibilities under this law.

127.4-4. *Maintenance Responsibilities.* Land Management shall be responsible for cemetery maintenance duties including:

- (a) Maintaining Oneida Nation cemetery grounds.
- (b) Ensuring the appearance of an Oneida Nation cemetery is kept in accordance with any established rules.
- (c) Entering into agreements and communication with person(s) or entities, where needed, in order to meet the maintenance responsibilities.
- (d) Oversight of any position created to care for the cemetery.

127.4-5. *Public Health Emergency and Communicable Diseases.* The Community Public Health Officer shall, in a state of emergency related to public health as duly proclaimed, issue and enforce orders that are reasonable and necessary to provide for the safe disposal of remains in an Oneida Nation cemetery. This includes the power to take possession or control of any remains and make orders specific to embalming, interment, cremation, disinterment, transportation, or other disposal. Additionally, the Community Public Health Officer may:

- (a) Determine conditions and order a specific method of disposal of remains in an Oneida Nation cemetery of a decedent who has died of a communicable disease that is dangerous to public health, within a reasonable or necessary timeframe, as determined by the Community Public Health Officer.

- (1) The Community Public Health Officer shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request.

- (b) Require the labeling of all remains before disposal in an Oneida Nation cemetery with all available identifying information and information concerning the circumstances of death and, in addition, require the remains of a decedent with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

- (c) Maintain or require the maintenance of a written or electronic record of all remains that are disposed of in an Oneida Nation cemetery, including all available identifying information and information concerning the circumstances of death and disposal. These written and electronic records shall be safeguarded following applicable privacy standards and may only be released in accordance with applicable laws. If it is impossible to identify remains prior to disposal in an Oneida Nation cemetery, the Public Health Office or designee may request that the local coroner or medical examiner obtain any fingerprints, photographs, or identifying dental information, and/ or collect a specimen of deoxyribonucleic acid from the remains and transmit this information to any interested public health authority.

127.4-6. *Other requirements.* Neither this section nor any other section of this law relieves any person from all applicable legal, professional, or other requirements.

127.5. Eligibility and Ownership

127.5-1. *Eligibility.* The following persons may be interred in an Oneida Nation cemetery:

- (a) An Oneida Nation member, his or her family, or descendants.
- (b) Remains that are:
 - (1) Returned to the Nation;
 - (2) Repatriated; or
 - (3) Discovered on the Reservation if Oneida's Cultural Heritage Department, along with any other appropriate Oneida entity has determined that the most suitable place for interment of the remains is an Oneida Nation cemetery.

127.5-2. *Ownership of Plots.* Plots in an Oneida Nation cemetery may be purchased by anyone for individuals eligible to be interred in an Oneida Nation cemetery, as defined in section 127.5-1, but the owner of the plot shall be the individual for whom the plot was purchased, if living, and shall be specified at purchase. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this law.

- (a) In the event the owner of a plot becomes ineligible to be interred in an Oneida Nation cemetery, the plot shall be resold to the Nation in accordance with section 127.5-2(c).
 - (b) A plot is not inheritable, but may be transferred from the owner to an individual eligible to be interred in an Oneida Nation cemetery. The transfer of a plot from one owner to another shall be processed through Land Management.
 - (c) A plot may only be resold by the owner of the plot to the Nation through Land Management. Plots resold to the Nation shall be bought for the original purchase price.
- The following owners of plots may resell a plot to the Nation:
- (1) Competent individuals who are at least eighteen (18) years of age;
 - (2) Individuals who are less than eighteen (18) years of age, with the written permission of the original purchaser of the plot; and
 - (3) Incompetent individuals who are at least eighteen (18) years of age, with the permission of their guardian or appropriate power of attorney.

127.6. Interment and Plots

127.6-1. All interments shall be approved by Land Management prior to interment to ensure the health and safety of the public will not be endangered, that the plot is properly marked, and to provide information to any company or contractor providing services for the interment.

- (a) In any case in which a decedent will be buried in an Oneida Nation cemetery, Land Management shall report any known situations involving communicable diseases to Oneida's Community Public Health Officer for investigation. The Community Public Health Officer may determine conditions for disposal of the remains in accordance with section 127.4-5.

127.6-2. No interments will be scheduled on the observance of any Holiday recognized by the Nation.

127.6-3. *Cost of Interment.* All fees for the cost of a plot and/or an interment, or disinterment or re-interment, including all the below listed fees, are the responsibility of the decedent's estate, if any, family assuming responsibility, or other individual assuming legal responsibility for the remains, unless otherwise stated. Land Management shall create rules regarding plot and marking fees.

- (a) Plot fees shall be paid prior to interment.

(b) Marking fees for the plot or monument location shall be assessed and required each time an interment occurs, regardless of container use or method of disposition.

(c) Opening and closing fees shall be determined by the vendor chosen.

(1) Any such vendor is required to have the qualifications and experience to perform opening and closings. Family members or private persons lacking qualifications or experience to perform burial related openings may not perform openings for the burial of caskets.

(d) There shall be no plot fees or marking fees assessed for remains interred in accordance with section 127.7-4. If the Nation or its contracted vendor opens or closes a plot for the interment of human remains in accordance with section 127.7-4, no fees shall be assessed for the opening or closing of the plot.

127.6-4. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while recommended, are not required for interment. Land Management shall provide information concerning the potential effects if a burial container is not used.

127.6-5. *Division of Plots.* Each plot may only be used for the interment of:

(a) one (1) human corpse;

(b) one (1) human corpse along with the cremated remains of one (1) other decedent; or

(c) the cremated remains of up to four (4) decedents.

127.6-6. *Monuments and Flush Markers.* No more than four (4) monuments or flush markers shall be allowed per plot. If a plot is designated for more than two (2) decedents, only flush markers can be installed outside of the designated headstone area. Land Management shall establish rules regarding maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, Land Management may establish the types of materials that may be used for monuments or flush markers.

(a) No monuments/markers will be installed from November 1st through May 1st.

127.7. Disinterment

127.7-1. Disinterment from an Oneida Nation cemetery may occur pursuant to any of the following; requirements for each are listed below:

(a) Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary;

(b) Land Management's issuance of a disinterment permit; or

(c) Reburial required by Land Management in accordance with section 127.7-4. .

127.7-2 Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary. The Oneida Judiciary may issue an Order for Authorization for Disinterment and/or Reinterment as follows:

(a) When a petition for an Order for Authorization for Disinterment and/or Reinterment is filed with the Oneida Judiciary, unless a hearing is held determining circumstances exist that would reasonably justify dispensing of the notice requirement, the petitioner shall serve a copy of the Petition for an Order for Authorization for Disinterment and/or Reinterment upon Land Management and all members of the same or a prior class as listed in section 127.7-3(b). A Petition for an Order for Authorization for Disinterment and/ or Reinterment shall include all of the following:

(1) The decedent's name, date of death, and burial location;

(2) The requester's name, address, telephone number, and relationship with the decedent;

(3) The requester's intent to obtain an order of disinterment/reinterment;

- (4) The reason for the disinterment;
 - (5) The location of reinterment and/or certification that the petitioner will have the remains cremated;
 - (6) Individual or entity responsible for the disinterment/reinterment; and
 - (7) That any objections shall be filed with the Judiciary within five (5) business days of the notification, or may be presented at the hearing.
- (b) Unless the Judiciary has found that grounds exist to dispense with Notice requirements, the Judiciary shall set a hearing date on the Petition for Order for Authorization for Disinterment and/or Reinterment at the earliest possible time after the deadline for filing objections has passed and shall issue an Order on the matter within ten (10) days after the hearing. The Judiciary may, for good cause, extend the time for issuance of an Order for an additional ten (10) days. When entering its decision, the Judiciary may also take into consideration:
- (1) The cause and manner of the decedent's death, including whether the Petitioner was convicted for a murder or homicide related offense in connection with the decedent's death;
 - (2) Whether disinterment would create a known public health risk;
 - (3) The decedent's will or other evidence of the decedent's wishes concerning final disposition, if known;
 - (4) Any objections filed with the Judiciary or presented at the hearing;
 - (5) Whether an order of disinterment or similar order from a court other than the Judiciary has been issued;
 - (6) Whether any required permits regarding re-interment have been obtained; or
 - (7) Any other factor requiring consideration.
- (c) The Judiciary may deny the Petition for Order for Authorization for Disinterment and/or Reinterment based solely on an objection to the disinterment either filed or presented by an individual with the same or a higher priority than the requester.
- (d) *Appeals.* An appeal of an Order issued under this section shall be filed with the Judiciary within five (5) business days after the order is issued. The Judiciary may modify the appeal time frame if it is determined exigent circumstances exist requiring more immediate disinterment. If no appeal is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a stay of the disinterment may be ordered, but only after inquiry into the facts and a finding that based on the facts it is reasonable to stay disinterment pending appeal.
- 127.7-3. *Land Management's issuance of a disinterment permit.* Land Management shall issue a Permit for Disinterment when all of the following occur:
- (a) The person in charge of the disinterment submits a complete Application for Disinterment Permit to Land Management.
 - (b) The person in charge of the disinterment submits a complete Land Management Consent Form, signed by any of the following persons, in the order of priority stated below, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:
 - (1) An individual, as designated in writing by the decedent as listed in the Authorization for Final Disposition;
 - (2) The decedent's spouse;
 - (3) An adult son or daughter of the decedent;

- (4) Either parent of the decedent;
- (5) An adult brother or sister of the decedent;
- (6) A guardian of the person of the decedent at the time of the decedent's death;
- (7) Any other person authorized, under obligation, or agreeing to dispose of the decedent's corpse.

(c) Land Management shall deny the request for a Disinterment Permit when an objection to the disinterment is either filed or presented by an individual with the same or a higher priority than the requester. In such cases, Land Management shall refer the requester to the Judiciary.

127.7-4. *Reinterment by Land Management.* Land Management may reinter or disinter human remains that are interred in an Oneida cemetery in another plot in the same cemetery under the following circumstances:

- (a) Reinterment is necessary to correct a recordkeeping error made by the Nation or its designee when the human remains were first buried; and
- (b) Notification concerning the need for reinterment is made to one of the following, in descending order, by registered mail:
 - (1) The decedent's spouse;
 - (2) An adult son or daughter of the decedent;
 - (3) Either parent of the decedent; or
 - (4) An adult brother or sister of the decedent.

(c) Land Management shall maintain a record of its attempt to provide notification under this section as part of Land Management's permanent records.

127.7-5. The Nation shall be responsible for making all arrangements and incurring all costs associated with disinterment and reinterment due to a recordkeeping error on the Nation's behalf.

127.8. Prohibited Items and Behavior on Cemetery Grounds

127.8-1. Land Management shall promulgate rules concerning the maintenance and appearance of Oneida Nation cemetery grounds which shall be publically posted, including on Oneida Nation cemetery grounds. Land Management shall notify the Environmental Resource Board of the current rules and any changes to such rules.

- (a) Land Management or its designee may remove and dispose of any non-conforming objects from plots and/or cemetery grounds.

127.8-2. In accordance with applicable Oneida law, the Environmental Resource Board shall promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds.

- (a) The Oneida Police Department or Oneida Conservation Department may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law.
- (b) Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law.

127.9. Complaint Process

127.9-1. Any individual may file a complaint with Land Management regarding the implementation and enforcement of this law.

127.9-2. Within five (5) business days of the receipt of a complaint, Land Management shall respond in writing indicating any action taken or planned action to remedy the complaint to the individual that filed the complaint, if the address is known, to the Oneida Land Commission, and to the Environmental Resource Board.

End.

BC-09-02-88-A (Adoption of the Burial Ordinance)
BC-05-19-89-E (Adoption of Burial Ordinance)
BC-02-23-05-F (Emergency Adoption of Amendments)
BC-06-29-05-A (Permanent Adoption of Emergency Amendments)
BC-1-14-09-E (Adoption of Cemetery Law)
BC-10-09-13-B (Adoption of Emergency Amendments)
BC-03-26-14-C (Extension of Emergency Amendments)
BC-07-23-14-B (Adoption of Amendments)
BC-07-26-17-K (Adoption of Amendments)

Title 3. Health and Public Safety - Chapter 304

Kátse?na Olihwa'ke

matters concerning the pet animals

DOMESTIC ANIMALS

304.1. Purpose and Policy	304.8. Hens
304.2. Adoption, Amendment, Conflicts	304.9. Prohibited Animals
304.3. Definitions	304.10. Dangerous Animals
304.4. Authority	304.11. Owner Liability
304.5. Treatment of Animals	304.12. Enforcement of Violations
304.6. Dogs and Cats	
304.7. Livestock	

304.1. Purpose and Policy

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals which may be kept as domestic animals.

304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC-05-13-20-B.

304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

304.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

304.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

304.3. Definitions

304.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Abandon" means leaving behind a domestic animal at a location without providing minimum care.
- (b) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.
- (c) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including

rabies.

- (d) “Fine” means a monetary punishment issued to a person violating this law.
- (e) “Hen” means a female chicken of the order and family gallus gallus domesticus.
- (f) “Husbandry practices” means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.
- (g) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (h) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.
- (i) “Nation” means the Oneida Nation.
- (j) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.
- (k) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.
- (l) “Reservation” means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (m) “Residential household” means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.
- (n) “Tethering” means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.
- (o) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.
- (p) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

304.4. Authority

304.4-1. *General.* This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.

- (a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.9-2.

304.4-2. *Authority of the Oneida Police Department and Conservation Department.* Oneida Police Officers and Conservation Wardens shall have the authority to:

- (a) investigate complaints involving domestic animals;
- (b) enforce the provisions of this law through appropriate means, including but not limited to:

- (1) seizing any animal that is taken, employed, used, or possessed in violation of

this law and/or mistreated, rabid or otherwise in danger or dangerous;

(2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and

(3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.

(A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.

304.4-3. *Fine, Penalty, and Licensing Fee Schedule.* The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.

304.4-4. *Disease Investigation and Quarantine.* The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.

304.4-5. *Issuance of Licenses.* The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

304.5. Treatment of Animals

304.5-1. *Food and Water.* An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.5-2. *Shelter.* An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

(a) *Minimum indoor standards of shelter.* Minimum standards for indoor shelter include the following:

(1) *Temperature.* The ambient temperature of the indoor shelter shall be compatible with the health of the animal.

(2) *Ventilation.* Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

(b) *Minimum outdoor standards of shelter.* Minimum standards for outdoor shelter include the following:

(1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.

(2) *Climatic Conditions.* Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

(3) *Adverse Weather.* If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

(c) *Space Standards.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) *Dog Kennels.* Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

(A) *Dog Size Between One and Thirty-Five Pounds.* A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

(B) *Dog Size Between Thirty-Six and Seventy-Five Pounds.* A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.

(C) *Dog Size Seventy-Six Pounds or Greater.* A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

(d) *Sanitation Standards.* An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

(e) *Shelter Exception for Livestock.* In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.5-3. *Tethering.* If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

(a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;

(1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.

(b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;

(c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;

(d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;

(e) the tethered animal is not sick, injured, or nursing;

(f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and

(g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.

304.5-4. *Mistreatment of Animals.* No person shall treat any animal in a manner which causes

harm, injury or death. This section does not apply to:

- (a) normal and accepted veterinary and/or care practices; or
- (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.5-5. *Abandonment*. No person shall abandon any animal.

304.5-6. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

304.6. Dogs and Cats

304.6-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.

(a) *License Period*. The license year shall commence on January 1st and end on December 31st of every year.

(b) *License Eligibility*. To be eligible for a license, the owner shall provide:

- (1) the licensing fee; and
- (2) proof of current rabies vaccination.

(c) *Placement of License Tag*. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times.

(1) *Exception*. A dog or cat shall not be required to wear the collar if the dog or cat is:

- (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;
- (B) within the owner's residence and/or securely confined in a fenced area; and/or
- (C) being shown during a competition.

304.6-2. *Rabies Vaccinations Required*. An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.

304.6-3. *Limit on the Number of Dogs and Cats*. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.

(a) *Exception*. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:

- (1) is eligible for any grandfather provisions included in this law's adopting resolution;
- (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;
- (3) resides on property zoned agricultural; and/or
- (4) obtains a permit for the additional dog or cat.

(b) *Permit for Additional Dogs or Cats*. A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the

homeowner of the residential household if the homeowner is not the applicant.

(1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.

(2) If two (2) or more nuisance complaints are received against the residential household due to the number of dogs or cats housed on the premises, the owner shall reduce the number of animals within thirty (30) days.

304.6-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

(a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

(b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.

304.6-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

(a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or

(b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

304.6-6. *Investigations for Suspected Animal Bites.* The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.

(2) Ensure all information provided is correct.

(3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.

(4) If the cat or dog has current rabies vaccinations, order the owner to:

(A) Quarantine the animal for ten (10) days; and

(B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day.

(5) If the cat or dog does not have current rabies vaccination, order the owner to:

(A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of

quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day; or

(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.

(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

304.6-7. District Quarantine. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.

(a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.

(b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

304.7. Livestock

304.7-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.

304.7-2. Limitations on Livestock. Livestock kept on land zoned residential are subject to the following limitations:

(a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.

(b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

(c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.7-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

304.8. Hens

304.8-1. Hen Permit. An owner shall obtain a conditional use permit from the Oneida Land

Commission in order to keep hens on land zoned residential.

304.8-2. *Prohibition of Roosters.* An owner shall not keep a rooster on land zoned residential.

304.8-3. *Limit on the Number of Hens Allowed.* The number of hens an owner may keep is dependent on the size of the residential lot.

(a) An owner may keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.

(b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.

304.8-4. *Standards for Keeping Hens.* An owner shall keep hens in the following manner:

(a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

(b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.

(c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.

(d) No accessory structure used to keep hens shall be located in a front or side yard.

(e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.

304.8-5. *Prohibition of Nuisance Hens.* No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

304.9. Prohibited Animals

304.9-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal.

304.9-2. *Prohibited Animals.* The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.

304.9-3. *Prohibited Animals Exception.* The prohibition of certain animals shall not apply to:

(a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.

(b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.

304.9-4. *Prohibited Animal Permit.* The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:

(a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

(b) the animal is maintained in quarters so constructed as to prevent its escape.

304.9-5. *Release of Prohibited Animals.* The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.

304.9-6. *Seizure of Prohibited Animals.* An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.

(a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.

(b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.

(c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.

304.9-7. *Notice of Release or Escape.* The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.

304.10-8. *Forfeiture of the Prohibited Animal.* An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

304.10. Dangerous Animals

304.10-1. *Dangerous Animals.* No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

- (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
- (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
- (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
- (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

304.10-2. *Dangerous Animal Determination.* An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.

(a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.

(b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.

(c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.

304.10-3. *Contesting a Dangerous Animal Determination.* If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

(a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal

biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

- (1) defend its owner or another person from an attack by a person or animal;
- (2) protect its young or another animal;
- (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
- (4) defend its owner's property against trespassers.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:

(1) *Leash and Muzzle.* No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) *Confinement.* Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) *Signs.* The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) *Notification.* The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the

animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. *Appeal of the Trial Court's Decision.* An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

604.10-6. *Dangerous Animal Exception.* The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.11. Owner Liability

304.11-1. An owner shall be liable for damages caused by his or her domestic animal.

(a) *First Offense.* The owner is liable for the full amount of damages caused by the domestic animal.

(b) *Subsequent Offenses.* The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

304.12. Enforcement of Violations

304.12-1. *Citations.* A citation for the violation of this law and/or orders issued pursuant to this

law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.10.

304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.

(a) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

End.

Adopted - BC-03-13-96-B
 Amended – BC-06-22-11-G
 Amended – BC-06-28-17-B
 Amended – BC-05-08-19-C
 Amended – BC-05-13-20-B

Title 4. Environment and Natural Resources—Chapter 401

TRIBAL ENVIRONMENTAL RESPONSE

Latihwatsyahalé·tu kayanl̥hslaʔ

They clean up the earth laws

<p>401.1. Purpose and Policy</p> <p>401.2. Adoption, Amendment, Conflicts</p> <p>401.3. Definitions</p> <p>401.4. Jurisdiction</p> <p>401.5. Tribal Environmental Response Program (TERP)</p> <p>401.6. Environmental Quality Standards</p>	<p>401.7. Discharge of Hazardous Substances</p> <p>401.8. Remedial Actions</p> <p>401.9. Case Closure or No Further Action</p> <p>401.10. Enforcement and Penalties</p> <p>401.11. Appeals</p>
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401.1. Purpose and Policy

401.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

401.1-2. It is the policy of the Nation to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

401.2. Adoption, Amendment, Conflicts

401.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B and amended by resolution BC-02-25-15-C and BC-07-26-17-B.

401.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

401.2-3. 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.

401.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

401.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

401.3. Definitions

401.3-1. 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) “All Appropriate Inquiries” means the process of evaluating a property’s environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.

(b) “Contamination” or “contaminated” means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

- (c) “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.
- (d) “Dispose” or “disposal” means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.
- (e) “Free product” means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.
- (f) “Groundwater” means any water contained beneath the ground surface.
- (g) “Hazardous substance” means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:
 - (1) a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.
 - (2) those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.
 - (3) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.
- (h) “Immediate action” means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.
- (j) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (k) “Operator” means any person who operates a site.
- (l) “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.
- (m) “Person” means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (n) “Practicable” means remedial action is capable of being implemented, taking into account:
 - (1) The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and
 - (2) The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.
- (o) “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.
- (p) “Remedial action” means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.
- (q) “Responsible party” means any person who, under this law, is required to:

- (1) take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or
- (2) reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.
- (r) “Restore” or “restoration” means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.
- (s) “Site” means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.
- (t) “Tribal entity” means a board, committee, commission, department, division, or agency of the Nation.

401.4. Jurisdiction

401.4-1. *Personal Jurisdiction.* This law shall apply to:

- (a) all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;
- (b) individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and
- (c) individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the Nation:
 - (1) By entering into a consensual relationship with the Nation, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or
 - (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

401.4-2. *Territorial Jurisdiction.* This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin.

401.5. Tribal Environmental Response Program (TERP)

401.5-1. The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

401.5-2. Under the TERP, the Division shall:

- (a) provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.
- (b) conduct and/or oversee assessments and investigations of sites with contamination concerns.
- (c) identify potentially responsible parties to clean up contaminated sites.
- (d) require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.
- (e) oversee and enforce required remedial actions.

(f) develop mechanisms for the approval, certification, and verification of remedial actions taken at a site.

(g) maintain a public record of remedial actions conducted at a contaminated site.

401.5-3. *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

(a) orders to prevent the discharge of a hazardous substance.

(b) orders to allow the investigation of a site it has reason to believe is contaminated or is under threat of contamination.

(c) orders to require a responsible party to take action to prevent and/or abate contamination.

401.5-4. *Emergency Situations.* Chapter 302 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

401.6. Environmental Quality Standards

401.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

401.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

(a) The notice shall contain a deadline for comments to be received from any person.

(b) The Division shall review and consider comments received before approving the new or revised standards.

401.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

401.7. Discharge of Hazardous Substances

401.7-1. *Notification of Discharge.* Unless exempted from notifying the Division under 401.7-10, the following individuals shall notify the Division immediately of the discharge of a hazardous substance or threat of such discharge:

(a) Any person who possesses or controls a hazardous substance which is discharged;

(b) Any person who causes the discharge of a hazardous substance; and

(c) Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

401.7-2. *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

401.7-3. *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any

discharge has caused contamination. The initial assessment shall include sampling and/or testing of the site where the discharge of a hazardous substance has occurred.

(a) Evidence that indicates contamination of a site has occurred, or may have occurred includes, but is not limited to:

- (1) visible soil contamination;
- (2) presence of free product or vapors in soils, basements, sewers or utility lines, surface water or groundwater; and
- (3) reports, environmental assessments or routinely gathered monitoring data that indicates contamination has occurred or may have occurred.

(b) Groundwater samples shall be collected for analysis and evaluation to determine whether the groundwater poses any public health and welfare concerns.

(c) Whether contamination exists shall be based on the level of contamination as compared to environmental quality standards adopted by the Nation.

401.7-4. The Division shall evaluate the harmfulness of the discharge of a hazardous substance based on the initial assessment and shall:

(a) publish the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication, in two (2) consecutive issues of the Kalihwisaks; and

(b) mail the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication of the results in the Kalihwisaks, to all owners of property located within one thousand two hundred (1,200) feet of the outer boundaries of the property that is the subject of the initial assessment.

401.7-5. The Division shall accept comments on the results of the initial assessment for at least thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall compile, review and respond to all comments. Responses will be recorded and published in a document available to the public.

401.7-6. A person who possesses or controls a hazardous substance which is discharged or causes the contamination of a site shall take remedial action.

401.7-7. A person who voluntarily assumes responsibility for performance of, or payment of, remedial actions in accordance with a plan that has been approved through the TERP, shall not be subject to enforcement actions for the contamination if he or she complies with the plan.

401.7-8. Except as provided in 401.7-10, the following persons are responsible parties:

- (a) The current owner and operator of the site;
- (b) Any owner or operator of the site at the time the discharge or contamination occurred;
- (c) Any person who arranged for the disposal or treatment of the hazardous substance, or arranged for the transportation of the hazardous substance for disposal or treatment;
- (d) Any person who transports the hazardous substance and selects the disposal site; and
- (e) Any person who, by any act or omission, caused or contributed to the discharge or contamination.

401.7-9. *Exemptions.* The following persons are not “responsible parties” under this law:

(a) Any person discharging in accordance with a permit or program approved under federal or Tribal law.

(b) Law enforcement officers and members of a fire department using hazardous substances in carrying out their responsibilities to protect public health, safety and welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) Any person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (1) An act of nature;
- (2) An act of war; or
- (3) An act or omission of a third party, including but not limited to a trespasser, other than:
 - (A) An employee or agent of the person asserting the defense; or
 - (B) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) Any person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

- (1) To establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) Any person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

- (1) the person did not cause the contamination on the property;
- (2) the person establishes that all disposal of hazardous substances occurred before the person acquired the property;
- (3) the person makes All Appropriate Inquiries into previous ownership and uses of the property prior to acquiring the property; and
- (4) the person is not affiliated with a party liable for any contamination.

401.7-10. Where there is an unresponsive or unknown responsible party, the Division may refer the site to the appropriate outside agency to retain contractors or consultants, and take other necessary actions to conduct remedial action or have remedial action conducted at a site.

401.8. Remedial Actions

401.8-1. A responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

401.8-2. If, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

401.8-3. The Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

- (a) the replacement and/or removal of injured plant and animal life or contaminated soil.
- (b) the treatment of contaminated soils and/or surface and/or groundwater.
- (c) adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.
- (d) the replacement or repair of faulty equipment.

(e) other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.

401.8-4. Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.

401.8-5. In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.

401.8-6. Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.

401.9. Case Closure or No Further Action

401.9-1. The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.

401.9-2. Sampling shall be conducted at the completion of the remedial action when:

- (a) The hazardous substance discharge is in contact with groundwater.
- (b) The amount, identity or duration of the contamination is unknown.
- (c) Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.

401.9-3. The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.

401.9-4. If additional remedial action is required for a previously closed case, the Division:

- (a) Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.
- (b) May require the responsible parties to achieve compliance with the Nation's public health and environmental laws, within a time period established by the Division.

401.10. Violations, Enforcement and Appeals

401.10-1. *Compliance Orders.* If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

- (a) Take remedial action to prevent or abate the discharge of a hazardous substance; and/or
- (b) Allow the investigation of a site believed to be contaminated or under threat of contamination.

401.10-2. *Penalty Schedule.* The Environmental Resource Board is delegated rulemaking authority to adopt a penalty schedule, upon recommendation of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a penalty in accordance with the fine schedule. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by the Division at the Owner's expense.

(b) Any person who is a lessee of the Nation who violates any provision of this law or any compliance order issued by the Division shall have said case referred to the Division of Land Management to consider potential lease violations.

401.10-3. *Contested Action Hearings.* All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-09-12-12-B
 Amended – BC-02-25-15-C
 Amended – BC-07-26-17-B

Title 4. Environment and Natural Resources—Chapter 404

WELL ABANDONMENT

Tsi? Kahne·kóte Kayanl'hsia

our laws of the wells

404.1. Purpose and Policy

404.2. Adoption, Amendment, Repeal

404.3. Definitions

404.4. Abandonment Required

404.5. Well Operation Permit

404.6. Abandonment Procedures

404.7. Penalties

404.8. Conflict with Federal

404.1. Purpose and Policy

404.1-1. The purpose of this law is to require the abandonment or upgrading of all unused, unsafe or noncomplying wells located within the exterior Reservation boundaries of the Oneida Nation to prevent contamination of groundwater.

404.1-2. The proper abandonment of wells protects public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.

404.2. Adoption, Amendment, Repeal

404.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-A and amended by resolution BC-07-26-17-A.

404.2-2. 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.

404.2-3. 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.

404.2-4. 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.

404.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

404.3. Definitions

404.3-1. All words used herein shall have their ordinary meaning unless specifically defined within this section.

404.3-2. Unless otherwise stated within this law, the following specific definitions shall apply:

(a) “Municipal water system” means a system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents owned or operated by a city, village, county, town, town sanitary district or public institution, or a privately owned water utility serving any of the above.

(b) “Noncomplying” means a well or a pump installation which does not meet the provisions of NR 112, Wis. Admin. Code.

(c) “Pump installation” means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.

(d) “Unsafe” means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances exceeding the standards of chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been issued.

(e) “Unused” means a well or pump installation which has not been in use for three (3) months prior to the date of the adoption of this Law or has not had a functional pumping system for three consecutive months.

(f) “Well” means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.

(g) “Well Abandonment” means the filling and sealing of a well according to the provisions set out herein or by adoption within this code of §NR 112.26, Wis. Admin. Code.

404.4. Abandonment Required

404.4-1. All wells located on premises served by a municipal water system or, regardless of location, are unused or of noncomplying construction, shall be abandoned in accordance with the terms of this law and §NR 112.26, Wis. Admin. Code, unless a well operation permit has been obtained from the Oneida Environmental Health and Safety Division within three (3) months of adoption of this law, prior to opening a well after adoption of this law, or a renewal permit was granted within three months of expiration of prior permits.

404.5. Well Operation Permit

404.5-1. The Oneida Environmental Health and Safety Division may grant a yearly well operation permit to a private well owner to operate a well for a period not to exceed five (5) years, providing the conditions of this section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this section are met.

404.5-2. The following requirements must be met prior to granting a permit

(a) A yearly water quality test is performed at the owner’s expense.

(b) The Oneida Environmental Health and Safety Division or its agent, may conduct inspections or have water quality tests conducted to obtain or verify information necessary for consideration of a permit application, on an annual basis for reverification, or upon request for permit renewal.

(c) Permit applications and renewals shall be made on forms provided by the Oneida Environmental Health and Safety Division.

404.5-3. The following conditions must be met for issuance or renewal of a well operation permit.

(a) The well and pump installation meet or are upgraded to meet the requirements of ch. NR 112, Wis. Admin. Code; and

(b) The well construction and pump installation have a history of producing bacteriologically safe water as verified by sampling histories. No exception to this condition may be made for unsafe well, unless the Oneida Environmental Health and Safety Division provides the appropriate form for the continued use of the well; and

(c) There are no cross-connections between the well and pump installation and the municipal water system; and

- (d) The proposed use of the well and pump installation will be reviewed on a case by case basis.

404.6. Abandonment Procedures

404.6-1. All wells abandoned under the jurisdiction of the Oneida Nation shall be abandoned according the procedures and methods set out herein and supplemented in §NR 112.26, Wis. Admin. Code. Provided that, any notification within the state regulation shall be superseded and integrated as reasonable with the notification procedures herein.

404.6-2. The owner of the well, or the owner's agent, shall notify the Oneida Environmental Health and Safety Division at least 48 hours prior to the commencement of any well abandonment activities. The abandonment of the well may be observed by the Oneida Environmental Health and Safety Division, or its designated agent.

404.6-3. A well abandonment report will be completed and submitted by the owner's agent, to the Oneida Environmental Health and Safety Division within 10 days of the completion of the well abandonment. The well abandonment report form is available from the Oneida Environmental Health and Safety Division.

404.6-4. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

404.7. Penalties

404.7-1. Any well owner or agent violating any provision of this law shall be subject to forfeiture of not less than \$100 nor more than \$1,000. Each day of violation is a separate forfeiture. Provided that each forfeiture be proven individually.

404.7-2. Failure to comply with this law within ten (10) working days after receiving written notice of this violation, the Oneida Nation may impose a penalty and cause the well abandonment to be performed at the expense of the well owner.

404.7-3. It shall be a valid defense to any continuing forfeiture that the well owner has begun procedures to abandon the well and shall be by sworn affidavit that notice has been presented to the Oneida Environmental Health Program of approved well abandonment procedure.

406.7-4. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the

Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

404.8. Conflict with Federal.

404.8-1. Should any part of this law be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for the purpose of the particular funding and that particular conflict. Provided that any consideration in regards to federal funding does not undermine the purposes and policies of this law. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or department directly affected.

Adopted - BC-8-31-94-A

Amended – BC-07-26-17-A

Title 4. Environment and Natural Resources – Chapter 406
HUNTING, FISHING AND TRAPPING
Lutolátha?, Latsywáaha? O?khále Atlistáya Tsi? Kayanláhsla
Our laws concerning hunting, fishing and trapping

406.1.	Purpose and Policy	406.6.	Licenses and Permits
406.2.	Adoption, Amendment, Repeal	406.7.	General Regulations
406.3.	Definitions	406.8.	Wildlife Damage and Nuisance Control
406.4.	Jurisdiction	406.9.	Hunting
406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

406.1. Purpose and Policy

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

- (a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and
- (b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

406.2. Adoption, Amendment, Repeal

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A, BC-01-25-17-D and BC-07-26-17-F .

406.2-2. 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.

406.2-3. 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.

406.2-4. 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.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

406.3. Definitions

406.3-1. 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) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.
- (b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.
- (c) “ERB” means the Environmental Resources Board.
- (d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or

threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

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

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.¹

406.4. Jurisdiction

406.4-1. This law applies to the following persons:

- (a) All Tribal members,
- (b) All non-member Indians,
- (c) All non-Indians who:
 - (1) apply for and receive a license and/or permit, and/or
 - (2) enter Tribal land,
- (d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

- (a) within the boundaries of the reservation, and
- (b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-3. *Jurisdiction.* The Nation has jurisdiction over the management and regulation of the Nation’s natural resources. However this law shall not negate the jurisdiction of the State of Wisconsin in certain instances involving non-member Indians and non-Indians. Thus, to hunt, fish, or trap on tribal land, non-member Indians and non-Indians shall adhere to the Nation’s

¹ For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

license, permit, and tag requirements and may also be subject to the requirements of the State of Wisconsin. License and permit holders may not exercise any hunting, fishing, or tapping privileges within the Reservation boundaries using a State of Wisconsin license that would amount to greater privileges than those afford pursuant to this Law and associated rules.

406.5. Administration and Supervision

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

- (a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.
- (b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.
- (c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.
- (d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.
- (e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.
- (f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:
 - (1) the taking of wildlife;
 - (2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.
- (g) Establish methods for checking persons into and out of areas specified under subsection (f) above.
- (h) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.
- (i) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:
 - (1) bait;
 - (2) decoys;
 - (3) hunting dogs
 - (4) traps;
 - (5) firearms;
 - (6) ammunition;
 - (7) laser sights; and
 - (8) night vision.

- (j) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.
- (k) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.
- (l) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.
- (m) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.
- (n) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules on the Nation's website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.

406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:

- (a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.
- (b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.
- (c) Work to prevent persons from violating this law and/or the corresponding rules.
- (d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.

406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

406.6. Licenses and Permits

406.6-1. *Sportsman License.*

- (a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:
 - (1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.
 - (2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:
 - (A) coyote;
 - (B) fox;
 - (C) raccoon;
 - (D) woodchuck;
 - (E) rabbit;
 - (F) squirrel; and
 - (G) any nuisance animal that is not an endangered or threaten species and

is also not a regulated or protected species.

(b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified hunter safety course to be eligible for a sportsman license, except that:

(1) *Fishing Only Sportsman License.* A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.

(A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.

(B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.

406.6-2. *Ceremonial and/or Feast Permit.* Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.

(a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.

(b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:

(1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;

(2) The agent of the group/organization is a Tribal member;

(3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and

(4) The hunt takes place on the reservation.

(c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.

(d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.

406.6-3. *Other Permits, Tags and Stamps.* In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.

406.6-4. It is unlawful for any person to:

(a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or

(b) Aid another in fraudulently securing a license or permit.

406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any

person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet on the center of a road as further detailed in the rules developed pursuant to this law.

406.6-7. *Denial of a License or Permit.*

- (a) The Department may decline to issue a license and/or permit to an applicant if:
 - (1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.
 - (2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:
 - (A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.
 - (B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:
 - (i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;
 - (ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or
 - (iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.
 - (C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- (b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

406.7. General Requirements

406.7-1. Persons may not:

- (a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.
- (b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on the reservation's lands and waters.
- (c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or

other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

(d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).

(e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.

(f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.

(i) Stock or possess any live wildlife on the reservation without a permit.

(j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.

(k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.

(l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.

(m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.

(o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes be considered a violation of this section.

(p) Refuse to obey a Department warden's lawful order.

(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. *Possession, Registration and Transportation of Carcasses.* No person may hunt, trap, possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and

corresponding rules.

406.7-5. *Health Advisory.* ERB and the Department shall ensure that all hunting and fishing rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

406.8. Wildlife Damage and Nuisance Control

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules, including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit.* A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

- (1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;
- (2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;
- (3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;
- (4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;
- (5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required.* A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit

requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver*. A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies*. Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents*. A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of fee.

406.8-5. *Annual Migratory Bird Report*. Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access*. Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals*. The following applies

to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

- (1) Elders;
- (2) Disabled persons; and
- (3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

406.9. Hunting

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

- (1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;
- (2) Across any roadway; or
- (3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

- (a) Hunt with the use of aircraft;
- (b) Hunt within fifty (50) feet of the center of a paved road;
- (c) Hunt from a vehicle;
- (d) Hunt while under the influence of alcohol or a controlled substance;
- (e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;
- (f) Shine between the hours of 10:00 p.m. and sunrise during the months of September, October, November and December; during all other months, shining is allowed at any hour;
- (g) Hunt in a party of more than ten (10) persons;
- (h) Hunt with, or possess while hunting:
 - (1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;
 - (2) Slugs, except that a person may possess slugs during deer firearm season if he

or she also possesses the required associated permit;

(3) A handgun with a barrel length of less than five (5) inches;

(4) A concealed handgun without a valid permit from the State of Wisconsin; and/or

(5) Any of the following without a valid federal permit:

(A) A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;

(B) A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;

(C) A fully-automatic firearm;

(D) Any mechanism designed to muffle, silence or minimize the report of any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap on behalf of the permittee in the event that the permittee is physically or legally unable to take pursuant to his or her own permit, provided that, the designated hunter shall provide his or her name and contact information to the Department along with a signed statement from the original permittee naming the designated hunter. The designated hunter shall receive the Department's approval of the designation before using the permits of the original permittee.

(a) To be eligible to be named a Designated Hunter, the named person shall:

(1) Possess a valid hunting license;

(2) Be eligible for the permits for which the person is named the designated hunter; and

(3) Meet any other requirements of the rules created pursuant to this law.

(b) Designated hunters may hunt for the number of permittees as authorized by the rules developed pursuant to this law.

(c) Any wildlife taken by a designated hunter remains the property of the original permittee; the designated hunter shall transfer any wildlife taken by designation to the original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and fourteen (14) years old may only hunt if they have obtained the required license and permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this section shall remain within voice and sight contact of the youth hunters at all times.

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

³ See footnote 2.

ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

- (1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);
- (2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and
- (3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

- (1) Be at least eighteen (18) years old;
- (2) Have a valid license and any required permits; and
- (3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people and may be limited in size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

- (a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.
- (b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.
- (c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

406.10. Enforcement and Penalties

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any one (1) of the following acts or any combination thereof:

- (a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;
- (b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

406.10-5. *Contested Action Hearings.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted - BC-8-31-94-C
 Adopted - BC-4-24-96-A
 Adopted - BC-07-22-98-A
 Amended - BC-09-13-00-D
 Amended - BC-6-04-03-A
 Amended - BC-6-30-04-I
 Amended - BC-7-13-05-E
 Amended - BC-8-29-07-F
 Amended - BC-06-24-09-E

Amended - BC-08-26-10-I
 Emergency Amended - BC-06-22-11-H (Expired)
 Amended - BC-12-14-11-E
 Amended - BC-05-22-13-A
 Amended - BC-01-25-17-D
 Amended - BC-07-26-17-F

Title 4. Environment and Natural Resources - Chapter 407

ON-SITE WASTE DISPOSAL

Tsi? Yeyakotyetahkwa Olihwa'ke

The matters concerning where the garbage is kept

407.1.	Introduction	407.5.	Permits and Applications
407.2.	Adoption, Amendment and Repeal	407.6.	Inspections
407.3.	Definitions	407.7.	Administration and Enforcement
407.4.	General Requirements		

407.1. Introduction

401.1-1. *Applicability.* This law shall apply to all Oneida Tribal Entities, the Oneida Nation itself, and members of the Oneida Nation within the exterior boundaries of the Oneida Nation Reservation.

407.1-2. *Purpose.* The purpose of this law is to establish regulations to ensure that private on-site sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety. The regulations herein will set forth procedures for administration of the program; general requirements for proper siting, design, installation, inspection, and maintenance of the systems; limitations of private systems; and enforcement mechanisms and procedures. The ultimate intent of this law is to support the Oneida belief of taking care of Mother Earth. As unforeseen events may arise which are not specifically addressed in this law, this stated intent, along with the following basic principles, should define a course of action for unforeseen events.

(a) **NEED-Every building intended for human habitation or occupancy shall be provided with a properly functioning system for treatment and disposal of domestic waste.**

(b) **PUBLIC SEWERS-When public sewers become available to any building intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not exceed one (1) year. The owner shall be required to connect to public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection is available, the owner shall be required to connect sooner than the one (1) year date, and the connection shall be made from the private sewage system and be connected to the public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection sooner than the one (1) year date, and the connection shall be made according to the contractor's construction schedule. The building sewer shall be disconnected from the private sewage system and be connected to the public sewer. All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with chapter NR 113, Wisconsin Administrative Code. The top or the entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.**

(c) **DISCHARGES/FAILING SYSTEMS-Every private sewage system shall be designed, located and constructed to prevent ponding of effluent within the soil absorption system or any discharge or sewage into drain tiles, onto the ground surface, into the structure served, or into the surface waters or groundwater within the exterior boundaries or adjacent to the Oneida Nation Reservation including zones of seasonal soil saturation.**

- (d) MAINTENANCE-Every private sewage system shall be adequately maintained.
- (e) NUISANCE-Every private sewage system shall be designed and constructed to adequately dispose of all the wastewater generated in the structure or facility it is serving.

407.2. Adoption, Amendment and Repeal

- 407.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-28-88-A and amended by resolution BC-07-26-17-C.
- 407.2-2. 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.
- 407.2-3. 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.
- 407.2-4. 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.
- 407.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

407.3. Definitions

- 407.3-1. For the purposes of this law, the following definitions shall apply. All other words shall be defined according to dictionary reference.
 - (a) “Approved” means accepted or ratified by the Environmental Health and Safety Division.
 - (b) “As-Built Plan” means a final plan of any system as installed.
 - (c) “Availability of Public Sewers” means when a public sewer line either passes in front of a lot line or comes within two hundred feet (200’) of a lot line, availability of the public sewers for servicing buildings on the lot is established.
 - (d) “Bedrock” means the rocks that underlie soil materials or are at the earth’s surface. Bedrock is encountered when the weathered in-place consolidated material, larger than 2 mm in size, is greater than fifty percent (50%) by volume.
 - (e) “Building” means -a structure having walls and a roof erected or set upon an individual foundation or slab-constructed base designed or used for the housing, shelter, enclosure or support of any kind, which is intended for human habitation or occupancy. A mobile home is included in this definition. Each structure abutting another structure which does not have an ingress-egress doorway through the basement foundation walls, or structures with separate exterior or exterior abutting walls, or public use structures separated by an unpierced firewall, shall be considered as separate or individual building.
 - (f) “Cesspool” means a covered excavation in the ground which receives sewage or other organic matter and solids, permitting the liquids to seep into the soil cavities. Cesspools are prohibited.
 - (g) “Cleanout”- means a plug or cover made of material approved by the Department, joined by means of a screw thread to an opening in a pipe, which can be removed for the purpose of cleaning or examining the interior of the pipe.
 - (h) “Cleanwater Wastes” means cooling water and condensate drainage from refrigeration compressors and air-conditioning equipment, water used for impurities have

been reduced below a minimum concentration considered harmful, and cooled condensate from steam heating systems or other equipment.

- (i) “Color” means the moist color of the soil based on Munsell soil color charts.
- (j) “Community On-Site Waste Disposal System” means an on-site waste disposal system servicing more than one (1) building being served. A community sewage system may be owned by the property owners, the Nation, or special purpose district.
- (k) “Conventional Soil Absorption System” means a system that employs gravity flow from the septic or other treatment tank and applies effluent to the soil through the use of a seepage trench, bed or pit.
- (l) “Department” means the Oneida Tribal Environmental Health and Safety Division.
- (m) “Detailed Soil Map” means a map prepared by or for a state or federal agency participating in the national cooperative soil survey showing soil series, type and phases at a scale of not more than 2,000 feet to the inch and includes related explanatory information.
- (n) “Dosing Tank” means a tank used for the collection of sewage effluent from a septic or solids tank. The effluent is pumped from the dosing tank to a soil absorption field.
- (o) “Dwelling Unit” means one (1) or more rooms with provisions for living, sanitary and sleeping facilities which are used or intended to be used by one (1) person or by two (2) or more persons maintaining a common household.
- (p) “Effluent” means liquid discharge from a septic or other treatment tank.
- (q) “Existing” means prior to the adoption date of this law.
- (r) “Experimental System” means an on-site wastewater treatment system designed to overcome site limitation which would preclude the installation of any of the standard soil absorption systems defined in this law. Not all sites are suitable for experimental systems.
- (s) “Failing Private Sewage System” means a failing private sewage system is one (1) which causes or results in any or the following conditions:
 - (1) The failure to accept sewage discharges resulting in the back up of sewage into the structure served by the private sewage system.
 - (2) The discharge of sewage to the surface of the group or to a drain tile.
 - (3) The discharge of sewage to any waters within the exterior boundaries or adjacent to the Oneida Nation Reservation.
 - (4) The introduction of effluent into zones of saturation which adversely affects the operation of a private sewage system.
 - (5) The ponding of effluent within the soil absorption system.
- (t) “Grease Interceptor” means a watertight tank which is installed underground for the collection and retention of grease from cooking of food processing and which is accessible for periodic removal of the contents.
- (u) “High Groundwater” means zones of soil saturation which include: Perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated. Unless otherwise proven, the presence of soil mottles indicates the level of seasonal saturation.
- (v) “Holding Tank” means an approved watertight receptacle for the collection and holding of sewage, which requires pumping by a licensed sanitary hauler.
- (w) “Indoor Plumbing” means one (1) plumbing fixture constitutes an indoor plumbing

system.

(x) “In-Ground Pressure Distribution System” means a pressurized soil absorption system placed entirely within the natural soil and based on the mound system design.

(y) “Legal Description” means inaccurate Metes and Bounds description, a claim number, a lot and block number in a recorded subdivision, a recorded assessor’s plat or public land survey description to the nearest forty (40) acres in 1/4-1/4 sections (ie: NW 1/4 of the NE 1/4, Section 10, T24N-R18E).

(z) “Mobile Home” means a transportable structure mounted on a chassis and designed to be used with or without a permanent foundation as a dwelling as a dwelling unit. The phrase “without a permanent foundation” indicates that the support system is constructed with the intent that the mobile home thereon may be moved from time to time at the convenience of the owner.

(aa) “Modified Mound System” means a soil absorption system which utilized pressured distribution of the effluent and sandy fill materials to overcome sites with specific limiting conditions. The limiting conditions are:

(1) Depth to seasonal high groundwater of 24 to 54 inches with percolation rates of 0 to 180 minutes per inch.

(2) Depth to seasonal high groundwater of 12 to 54 inches with percolation rates of 0 to 120 minutes per inch.

(bb) “Mound System” means a system which utilized pressurized distribution of the effluent and sandy fill conditions are:

(1) Depth to fractured bedrock of twenty-four inches (24”) to fifty-four inches (54”) with percolation rates of zero (0) to sixty (60) minutes per inch

(2) Depth to seasonal high groundwater levels of twenty-four inches (24”) to fifty-four inches (54”) with percolation rates between zero (0) and one hundred twenty (120) minutes per inch.

(cc) “Nuisance” means -any source of filth, odor or probable cause of sickness, as is described in Wisconsin Statue 146.14

(dd) “Oneida Nation” means Oneida Nation, a federally recognized Indian government and a Treaty Tribe recognized by laws of the United States.

(ee) “On-Site Waste Disposal System” means a sewage treatment disposal system serving a single building with a septic tank and soil absorption field located on the same parcel as the building. This term also means an alternative substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) building, or a system located on a different parcel than the building, or a system located on a different parcel than the building. A private sewage system may be owned by the property owner or by a special purpose district.

(ff) “Percolation Test” means the method used for testing soil absorption qualities, as described in ILHR 83,09(5), Wisconsin Administrative Code. All soil Wisconsin-licensed Certified Soil Testers.

(gg) “Permeability” means the ease with which liquid move through the soil. One (1) of the soil qualities listed Certified Soil Testers.

(hh) “Plumber” means a person licensed by the State of Wisconsin as a Master Plumber or Master Plumber Restricted Sewer Services, as described in Wisconsin State Statute

145.01

(ii) “Pressure Distribution System” means a soil absorption system that employs a pump or automatic siphon and small diameter distribution pipping with small diameter perforations to introduce effluent into the soil. Plan review and departmental approval is required for each system of this type. Approval will only be given on a case by case basis. Approval shall only be given on an individual basis.

(jj) “Privy” means a structure that is not connected to a plumbing system, which is used by persons for the deposition of human body wastes.

(kk) “Privy-Pit” means a privy with earthen sidewalls and/or bottom. The privy shall be so constructed as to be insect and rodent proof as described in ILHR 53.63, Wisconsin Administrative Code

(ll) “Privy-Vault” means a privy with watertight vault consisting of one (1) of the following:

(1) concrete sidewalls and bottom(poured in place)

(2) a prefabricated concrete tank

(3) an asphalt coated steel tank

(A) The tank shall be constructed insect and rodent proof per ILHR 52.63 Wisconsin administrative Code.

(mm) “Public Sewers” means a wastewater treatment system which utilizes collection of the sewage through underground sewer pipes, which all flow to one (1) collection station, where the wastewater is then treated. Public sewers provide service to more than one (1) residence, and each residence is charged a fee for wastewater collection and treatment.

(nn) “Seepage Bed” means an excavated area larger than five feet (5’) in width which contains a bedding of aggregate and has more than one (1) distribution line.

(oo) “Seepage Pit” means an underground receptacle so constructed as to permit disposal of effluent or clear wastes by soil absorption through its flood and walls.

(pp) “Septic Tank” means a tank which receives and partially treats sewage, through processes of sedimentation, oxygenation, flotation and bacterial action so as to separate solids from liquid in the sewage, and discharges and public buildings.

(qq) “Sewage” means the liquid and water carried wastes created in and conducted away from residences, industrial establishments and public buildings.

(rr) “Soil” means the unconsolidated material over bedrock.

(ss) “Soil Absorption” means any sewage treatment system which has a solid separation tank and utilizes distribution of the sewage effluent to unsaturated soil for treatment. Systems included in this definition are: conventional septic’s, mounds, in-ground pressure distribution, at-grade, etc.

(tt) “Soil Boring” means an observation pit dug by hand or backbone, a hole dug by auguring or a soil core taken intact and undisturbed with a probe.

(uu) “Soil Mottles” means spots or streaks of contrasting soil colors usually caused by soil saturation for some period of a normal year. Soil mottles are used as indicators of the seasonal high groundwater level.

(vv) “Soil Saturation” means the state when all the pores in a soil are filled with water. Water will flow from saturated soil into a bore hole.

(ww) “Topsoil” means the undisturbed surface horizon of a soil often characterized by a

clack or dark grayish brown color due to a higher content of organic matter.

(xx) “Tribal Vendor’s Permit” means a permit issued by the Environmental Health and Safety Division for the installation of a private sewage system.

(yy) “Vent Cap” means an approved appurtenance used for covering the vent terminal of a soil absorption system, to avoid closure by mischief or debris, and still permit circulation of air within the system.

(zz) “Workmanship” means work of such character that will fully secure the results sought in all the sections of this law as intended for the safety, welfare and health protection of all individuals.

407.4. General Requirements

407.4-1.

(a) Every building or structure intended for human habitation or occupancy, within the scope of applicability of this law, shall have a Tribally-approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved only if no public sewers are available to service said buildings. Unless specifically approved by the Nation, the private sewage system to each building. A private sewage system may be owned by the property owner or by a special purpose district. The use of a community on-site waste disposal system or a system on a different parcel than the structure shall be subject to the same permit requirements and procedures as for systems serving public buildings. The private sewage system for newly constructed buildings shall be installed, inspected and approved before the building can be occupied.

(b) The type of on-site waste disposal system approved for use on a site shall be dependent upon site conditions. Approvable types of on-site waste disposal systems are:

- (1) Conventional soil absorption systems
- (2) In ground pressure distribution systems
- (3) Mound systems
- (4) Modified mound systems
- (5) At-grade systems
- (6) Holding tanks
- (7) Privies (pit and vault)

Approvable systems are not limited to this list, but systems not included on this list may only be approved by the Environmental Health and Safety Division on an individual basis.

(c) Additional restrictions

- (1) Domestic waste-all water carried wastes derived from ordinary living uses shall enter the septic or treatment tank or be discharged to a public or municipal treatment system.
- (2) Water supply-all new buildings intended for human habitation or occupancy shall be provided with a well and water supply system.
- (3) Cesspools-cesspools are prohibited.
- (4) Clear water-The discharge of surface, rain and other clear water into a private

sewage system is prohibited.

(5) Water shortener and iron filter backwash-Water softener or iron filter discharge may be directed to the private sewage system, a separate below ground surface soil absorption system or to the ground surface if a nuisance is not created.

(6) Floodplain-On-site waste disposal systems for new buildings will not be approved for construction within the floodplain. Existing buildings may have a system approved in the flood fringe subject to Departmental approval on an individual basis. All systems shall be flood-proofed to a height of at least two feet (2') above the one hundred (100) year flood elevation.

(d) Holding Tanks

(1) Holding tanks will not be approved to service any new residential construction. Holding tanks shall only be approved under the following circumstances:

(A) As a temporary method of waste containment until public sewers are available, not to exceed two (2) years from the date of installation. Extended use of the holding tanks beyond the two (2) year period will require a permit for the Environmental Health and Safety Division. The holding tanks shall be disconnected and a connection shall be made upon availability of the public sewer system, and the tanks properly abandoned in the manner as is described in ILHR 83, Wisconsin Administrative Code.

(B) As a replacement system for existing filing soil absorption systems. Holding tanks shall be approved only if no other soil absorption system can be approved for the site.

(C) As an interim measure when there are delays in funding from outside funding agencies. The site must have received written approval for an on-site soil absorption system, and funding must have been appropriated to cover all installation costs. The system must be completed as soon as the funding is made available.

(D) As an interim measure for construction reason. If an approved soil absorption system is being constructed, and progress on construction is halted severe weather (ie, winter frost conditions), then holding tanks may be installed and used only until construction of the soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this law.

(E) For an existing residence where no other soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this law.

(F) For new construction of commercial buildings only where no other soil absorption system can be permitted.

(e) Privies

(1) Privies are prohibited for all new residential construction.

(2) Privies may be permitted only when the existing building served by the privy is not provided with an indoor plumbing system. One (1) plumbing fixture constituted indoor plumbing.

(3) All privies must meet the site requirements as described in IRHR 83.10,

Wisconsin Administrative Code.

(4) When system upgrade becomes available or indoor plumbing is installed, then privy must be properly abandoned, and the building must be connected to an approved on-site waste disposal system or a public sewer system.

(5) All chemical, gas electrical, composting and other non-water using toilets must comply with all requirements of privies.

(f) Public Sewer Connection

(1) When public sewers become available to any buildings intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not to exceed one (1) year. The building sewer shall be disconnected from the private sewage systems and be connected to the public sewer.

(2) The owner shall be required to connect to public sewers sooner than the one (1) year date if the existing private sewage system meets the definition of a failing system.

(3) When funding for the connection is available, the owner shall be required to connect to the public sewer sooner than the one (1) year date. The connection shall be made according of the contractor's construction schedule.

(4) All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in the same manner as is designated in Chapter NR 113, Wisconsin Administrative Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(g) Failing systems

(1) When a failing or malfunctioning private sewage system is encountered, the sewage disposal system shall be corrected or its use discontinued within that period of time required by departmental order, with a maximum time limit of one (1) year. A failing system is identified when one (1) or more of the following conditions apply:

(A) The failure of the private sewage system to accept sewage discharges and or there is back-up of the sewage to the structure the system services.

(B) The discharge of sewage to the surface of the ground or to a drain tile.

(C) The discharge of sewage to any waters within the exterior boundaries or adjacent to the operation of private sewage system.

(D) The introduction of effluent into zones of saturation which adversely affects the operation of private sewage system.

(E) The ponding of effluent within the soil absorption system.

(h) Incorporation of provisions by reference

(1) This chapter incorporates by reference the following rules, regulations and laws, as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code governing the location, construction and use of the private sewage systems.

(A) State Statutes: 59.065, 59.07(51), 144, 145, 146.13, 146.14, and 968.10

(B) Wisconsin Administrative Codes: NR 113; ILHR 82 and ILHR 83.

(2) These rules, regulations and laws shall be available upon request from the

Environmental Health and Safety Division.

(3) These rules, regulations, and laws shall be used for purposes of this law only, and shall apply until amended or renumbered and then shall apply as amended or renumbered.

(4) References in these codes as to the responsibilities of the "State", "Department", "Department of Natural Resources", and "County" shall be directed to the "Oneida Nation" and to the "Oneida Environmental Health and Safety Division".

(i) Administration

(1) The Oneida Tribal Environmental Specialist shall be responsible for the administration of this law. The Environmental Specialist may delegate responsibilities to personnel employed by or assigned to assist the Environmental Specialist.

(j) Powers and Duties

(1) In administering this law, the Environmental Specialist shall have the following powers and duties:

(A) Perform duties, and delegate duties as may be required, to personnel assigned to or employed to assist the Environmental Specialist, to assure full and complete compliance with this law.

(B) Provide assistance to applicants preparing permit applications, and advise said applicants regarding provisions of this law.

(C) Review and approve plans for private on-site sewage treatment systems.

(D) Issue permits and perform site inspections for compliance with this law.

(E) Keep records of all permits issued, inspections made, work approved and other official actions.

(F) Report violations of this law or other land use regulations to the Tribal office designated by the Oneida Business Committee, as provided for in the Administrative Procedures Act.

(G) Have access to any premises for the purposes of performing said duties between 8:00 a.m. and 8:00 p.m. or at other times set by mutual agreement between the property owner or their agent and the Environmental Specialist. Application for permit is considered, for the purposes of this law, as the owner's consent to enter the premises.

(H) Upon reasonable cause or question as to proper compliance, revoke any Tribal sanitary permit and issue cease and desist orders requiring the cessation of any construction, alteration or use of a building which is in violation of the provisions of this law, until compliance with this law is obtained.

(I) Issue and enforce orders to plumbers, property owners, their agents or contractors of the responsible party, to assure proper owners, their agents or contractors of the responsible party, to assure proper compliance with all provisions of this law. The Environmental Specialist may delegate this authority to the Tribal office designated by the Oneida Business committee,

as provided for in the Administrative Procedures Act.

(2) Violations of this law which occur on leased land will be reported to the Oneida Land Office and the Oneida Law Office because said violations may constitute violations of the Tribal Land Lease.

(k) Repeal and effective date

(1) Tribal sanitary permits are obtained through the Oneida Environmental Health and Safety Division. Completed application shall be submitted for review to the Oneida tribal environmental Specialist. The permit shall be reviewed and processed with two (2) weeks of receiving the completed application package, except in the case of modified mound an experimental systems which may take longer to review.

(2) Every on-site waste disposal system installed, expanded, modified, or enlarged after the adoption date of this law shall require a Tribal Sanitary Permit.

(3) When a change of ownership occurs, the owner of system shall have the system inspected by a State of Wisconsin Licensed Plumber, Registered Sanitarian or other person accepted by the Environmental Health and Safety Division.

(4) A Tribal sanitary permit shall be obtained by the property owner, his/her agent or contractor, in the name of the property owner, prior to the construction of any building which requires a private sewage system. Any property owner, his/her agent or contractor, who starts construction on a building, prior to obtaining a Tribal sanitary permit, is in violations and may be subject to the penalties provided in this law.

(5) Before any private sewage system may be installed, enlarged, altered, modified or additions constructed, a Tribal sanitary permit must first be obtained by the property owner, his/her agent or contractor. Failure to comply with this requirement constitutes a violation of this law. Violations which occur on leased land may also constitute violations of the Tribal land lease.

(6) A Tribal sanitary permit shall be obtained prior to constructing or erecting a privy.

(7) If any part of a system has failed, the entire system shall be evaluated for compliance with existing codes.

407.5. Permits and Applications

407.5-1.

(a) Permit Codes

(1) The permit card issued by the Environmental Specialist to the property owner or his/her agent shall serve as the Tribal sanitary permit.

(2) The permit card shall be displayed at the site in such a manner that it will be visible from a road abutting the lot during all construction phases.

(3) The permit card may not be removed until the private sewage system has been installed, inspected and approved by the Environmental Specialist or a Tribally-authorized inspector.

(4) Failure to display the permit card shall be considered a violation of this section and may subject the property owner, his/her agent or contractor, to penalty

provisions of this law.

(b) Application Requirements

(1) The Tribal sanitary permit application shall include the following information which shall be furnished by the applicant on forms provided by the Tribal Environmental Health and Safety Division, along with all applicable fees:

(A) Names and address of the applicant (owner of the site) and the plumber employed (when applicable).

(B) Legal description of the subject site by claim number, lot block and recorded subdivision or by metes and bounds. All legal descriptions must also include a plot 1/4-1/4 section description to the nearest forty (40) acres (i.e.: NW 1/4 of the SE 1/4, Section 12, T23N-R19E).

(C) All lot dimensions.

(D) Driving directions to the site

(E) Building use (single, family, duplex, multi-family, commercial, industrial, and Tribal roll number).

(F) Plot plan. Detailed plot plan dimensions are drawn to scale showing the lot size; the location of all septic tanks; holding tanks or other treatment tanks; building sewers—sanitary and storm; wells; water mains or water service; streams and lakes; dosing or pumping chambers; distribution boxes; effluent systems; dual disposal systems; replacement system areas; and the location of the building served. Adjoining properties shall be checked to insure that the site location distances and dimensions shall be shown on the detailed plot plan.

(G) Reference points. A vertical elevation reference point and a horizontal reference point.

(H) Soil boring and percolation test data related to the undisturbed and finished grade elevations, vertical elevation reference point and horizontal reference point. Surface elevations, vertical elevation reference point and horizontal point. Surface elevations shall be given for all soil borings. All soil borings and percolation tests shall be performed by a State of Wisconsin Certified Soil Tester.

(I) Occupancy. The maximum number of bedrooms in the residence shall be indicated. The number of employees(full time and part time on an 8-hour shift), estimated number of customers in an 8-hour shift, number of washing machines and disposition of commercial/retail buildings.

(J) Other specifications. Complete specifications for pumps and controls including dose volume, elevation differences (vertical lift), pipe frictionless, pump performance curve, pump model manufacturer, and all piping information.

(K) Any other information deemed necessary by the Environmental Health and Safety Division.

(2) Pit privy permit applications shall be accompanied by soil data provided by a State of Wisconsin-license certified tester to a depth of three feet (3') below the proposed pit bottom. Soil data is not required when making application for a vault

privy. The property owner shall be furnished with a copy of the Tribal privy construction requirements when the permit for a privy is issued.

(3) The Tribal Environmental Health and Safety Division reserves the right to refuse incomplete or incorrect permit applications or to delay issuance until corrected or completed applications are received.

(c) Permit Expiration

(1) Sanitary permits for private sewage systems, which have not been installed, shall expire two (2) years after the date of issuance. Permits may be renewed following written application to the Environmental Health and Safety Division by the proper owner, his/her agent or contractor, prior to the expiration date of the original permit.

(2) There shall be a fee for the renewal of a permit.

(3) The renewal shall be based on Oneida Sanitary Ordinance requirements in effect to the time of renewal.

(4) Changed requirements may impede the renewal.

(5) The property owner, his/her agent, or contractor, shall return the original permit card and receive a new card when the permit is renewed.

(6) All permits issued prior to the effective date of this law shall expire two (2) years from issue date unless renewed.

(7) If a permit has expired and the owner wants to build on the site, a new sanitary permit must be obtained, and the site shall be subject to the currently existing requirements, including any revisions made during the elapsed time period.

(d) Permit Replacement/Transfer

(1) If a sanitary permit is lost or destroyed, a replacement permit may be obtained from the Environmental Health and Safety Division. The land owner shall submit a written request, along with the permit replacement fee, to the Environmental Health and Safety Division, and a new sanitary permit shall be issued prior to installation of the system shall be subject to the following:

(A) The new property owner shall submit a written request to the Environmental Health and Safety Division to transfer the permit.

(B) The sanitary permit card shall be returned to the Department so that a new permit card may be issued.

(C) Transfer of ownership shall not affect the expiration date or renewal requirements. Any changes other than transfer of ownership shall require a new permit.

(D) The new property owner shall submit the permit transfer fee to the Environmental Health and Safety Division.

(e) Building alteration permits

(1) A tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are

met:

(A) The system is functioning properly regarding the condition of the system shall be provided.

(B) The systems will be capable of handling the proposed wastewater load from the building to be served.

(C) The system will meet all minimum setback requirements of ILHR 83.

(3) Soil boring data to a depth of three feet (3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building serviced by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets the requirements of this law. A copy of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to ensure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(f) Change of plumbers

(1) A Tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from the that building or where the building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly, pursuant to this law. A State of Wisconsin Licensed Plumber's statement regarding the condition of the system shall be provided.

(B) The system will be capable of handling the proposed wastewater load from the building to be served.

(C) The systems will be capable of handling the proposed wastewater load from the building to be served.

(3) Soil boring data to a depth of three feet (3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building received by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets their requirements of this law. A copy of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to insure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(g) Change of Plumbers

(1) When an owner wishes to change plumbers, the owner must complete a Tribal Change of Plumbers Form, signed by the new plumber. The form must be submitted to the Environmental Health and Safety Division, along with the applicable fees.

(2) The change of plumbers shall take place prior to the installation of the private sewage system.

(h) Modified Mound and Experimental System Permits

(1) Sanitary permits of modified mounds and experimental systems shall only be approved for existing buildings. Not all sites are suitable for modified mounds and experimental systems.

(2) Sanitary permits for modified mounds and experimental systems shall be approved by the Environmental Health and Safety Division only on an individual basis.

(3) Modified mounds and experimental system sanitary permit applications are subject to all requirements of a regular sanitary permit, in addition to any additional requirements deemed necessary by the Environmental Health and Safety Division. Additional information may include, but is not limited to: more frequent inspections, additional soil borings, groundwater monitoring or contour maps.

(i) Site Evaluation

(1) A site evaluation may be necessary to determine the suitability of a lot for a private sewage system. Site evaluations will be made at the discretion of the Environmental Specialist. The evaluation shall take place within ten (10) working days of becoming aware of question of suitability and will be made prior to the issuance of the sanitary permit. The site evaluation will result in one (1) of the following:

(A) Issuance of the permit, provided all information on the application is correct and complete.

(B) Holding the application pending clarification of information or new information by the owner, the plumber or the certified Soil Tester.

(C) Denial of the permit if the site does not meet all the provisions of this law.

(2) Soil test pits shall be constructed which allow adequate visual observations of the soil provide in place. This is best accomplished by the construction of backhoe pits. The test pits shall be left in such a manner that will permit access to them for

the evaluation of the soil protection were provided. Bore holes shall be either fenced or closed within five (5) days of the date of inspection.

(3) Site evaluations shall be done prior to issuance of permits for a mound system.

(j) Permit Denial

(1) When an on-site evaluation of a proposed private sewage system or pit privy reveals that the site is compliance with the requirements of this law, the permit application shall be approved. Written justification of the denial must be supplied to the owner of the Environmental Health and Safety Division within five (5) working days of the decision.

(k) Holding Tank Agreements

(1) Prior to the issuance of a sanitary permit for the installation of a holding tank, the owner of the holding tank, or his/her agent, shall sign and register a Holding Tank Agreement with the Oneida Nation or a State of Wisconsin Licensed Plumber. The purpose of the agreement is to ensure that the holding tank wastewater will be properly disposed of.

(2) Holding tank owner shall sign a servicing Contract with the Oneida Utilities for sewage disposal and must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing contract with the Oneida Utilities for regularly scheduled servicing of the holding tank by the Tribally-licensed septic tank pumper. Copies of the servicing contract shall be attached to the holding tank agreement.

(B) The holding tanks shall be chained and locked at all times, and the chain, lock and lock keys shall be the property of the Oneida Utilities, to prevent unauthorized removal of the holding tank wastewater.

(C) The Oneida Utilities shall keep a log of the holding tank servicing dates, owner's names and servicing locations, gallons serviced, and disposal locations for all owner's names and servicing locations, gallons serviced, and disposal locations for all holding tanks on registered Servicing Contracts. This log shall be sent to the Environmental Health and Safety Division by the 15th of every month, for the previous month's activities.

(3) Holding tanks owners who contract with a Non-tribal Septic Tank Pumping Service must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing Contract with the Non-tribal Septic Tank Pumping Service for regularly scheduled servicing of the holding tanks copies of the Servicing contract shall be attached to the Holding Tank Agreement.

(B) The holding tanks shall be chained and locked at all times.

(C) All Non-Tribal Septic Tank Pumping Services must meet the following requirements:

(i) The Septic Tank Pumper must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(ii) The Septic Tank Pumper must follow all of the Nation's

disposal requirements.

(D) The Non-tribal Septic Tank Plumber shall keep a log of the holding servicing dates, owners names, and servicing locations, gallons serviced, and disposal locations of all holding tanks on registered servicing contacts. This log shall be sent to the Environmental Health and Safety Division by the 15th of every month, for the previous month's activities.

(4) The signed Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.

(5) Removal of the holding tank wastewater by persons other than those employed by the Oneida Utilities, or those State of Wisconsin-licensed Septic Tank Plumbers approved by the Environmental Health and Safety Division, shall constitute a violation of this law. Such violations which occur on Tribally-leased land shall constitute a violation of the Tribal land lease.

(I) Maintenance Program

(1) All soil absorption system tanks shall be pumped by a Tribally-licensed or State of Wisconsin-licensed septic tank pumper within two (2) years of the date of installation and at least once every two (2) years thereafter, unless upon inspection the tank is found to have less than one third (1/3) of the volume occupied by sludge and scum.

(2) All private sewage systems installed after the date of adoption of this law shall be inspected once every two (2) years for system compliance and tank integrity. Additional inspections, or inspections of systems installed prior to the date of law adoption, may be performed upon request by the system owner.

(3) Inspection of a private sewage shall be conducted by a Registered Sanitarian, the Tribal Environmental Specialist, a Master Plumber, a Journeyman Plumber or a Registered Plumber licensed by the State. Inspections may also be performed by training program and have received authorization from the Nation. Re-certification of the authorized tribal employees shall be required on a yearly basis, and shall be provided by the Environmental Health and Safety Division. The inspections shall be performed at the same time as the tank pumping.

(4) The owner of said soil absorption system shall submit information as to the condition of the system and tank, and the date of pumping, to the Tribal Environmental Health and Safety Division within ten (10) days of the date of inspection of the tank is made by an authorized Tribal employee.

(5) The owner of a holding tank shall sign and register a Holding Tank Agreement, as specified in section 407.5-1(i) of this law, and shall be subject to all requirements stated in section 407.4-1(d)(1).

(6) Non-tribal Septic Tank Pumpers who are approved by the Environmental Health and Safety Division to service on-site waste disposal systems must comply with the following requirements:

(A) The Septic Tank Pumpers must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(B) The Septic Tank Pumper must obtain a Tribal Vendor's Permit prior to

servicing any tanks.

(C) The Septic Tank Pumper must follow all of the Nation's disposal and reporting requirements.

(m) Permit fees shall be set and periodically amended by the Oneida Business Committee. Fees may be reduced by fifty percent (50%) if the inspections are performed by Indian Health Service agents. All fees must accompany permit application. Fees are payable by check to the "Oneida Nation". No out-of-state checks will be accepted. Failure to pay permit fees constitutes a violation of this law. Applicable fees are as follows:

- (1) Private Residential Building Sanitary Permit:
 - (A) Conventional soil absorption systems: \$20.00
 - (B) In-ground pressure distribution system: \$20.00
 - (C) Holding tanks: \$20.00
 - (D) Mound systems, modified mound systems, at grade systems and experimental systems: \$50.00
- (2) Public and Commercial Building Sanitary Permits:
 - (A) Conventional soil absorption systems: \$45.00
 - (B) In-ground pressure distribution systems: \$45.00
 - (C) Holding tanks: \$90.00
 - (D) Mound systems, modified mound systems, at grade systems and experimental systems: \$150.00
- (3) Other Fees:
 - (A) Sanitary renewal: \$5.00
 - (B) Change of Plumber fee: \$5.00
 - (C) Privy permits: \$5.00
 - (D) Building alteration permit fees:
 - Private Residential building \$20.00
 - Public and Commercial buildings \$45.00

407.6-1. Inspections

407.6-1. General

(a) All private sewage shall be inspected after construction and before backfilling. The inspections shall be performed within the following work day excluding Saturdays, Sundays, and holidays after receiving notice from the licensed plumber responsible for the installation.

(b) A Tribal Site Inspection form shall be completed by the Environmental specialist or Tribal inspector. A copy of the report shall be sent to the system owner.

407.6-2. Notice for inspection.

(a) The plumber employed to install the system shall notify the Environmental Specialist in person, by telephone or in writing when the on-site waste disposal system is ready for inspection.

(b) The owner shall be notified of regular inspections within twenty-four (24) hours of the inspection. If the owner cannot be reached within the twenty-four (24) hour period, the inspection shall continue as scheduled. No prior notification shall be required for compliance inspections for holding tanks.

407.6-3. Preparation for inspection

(a) When an on-site waste disposal system is ready for inspection, the plumber employed to install the system shall make such arrangements as will enable the Environmental Health and Safety Division inspector to inspect all parts of the system.

(b) The plumber shall have present the proper apparatus and equipment for conducting the inspection and shall furnish such assistance as may be necessary in making a proper inspection.

407.6-4. Holding Tank Inspections

(a) All site constructed holding tanks shall be inspected after the forms have been set and reinforcing is in place; but before any concrete has been poured. Concrete may be poured only after it has been determined that the tank, as formed, complies with the plans as approved by the Department.

(b) This inspection shall not eliminate the need for an inspection after the installation has been completed.

407.6-5. Privy Inspections

(a) All privies installed shall be inspected for compliance with this law. The home owner or his agent shall notify the Environmental Health and Safety Division for inspection immediately after the privy has been constructed.

(b) Privies may be inspected periodically after the initial inspection.

407.6-6. Mound Inspections

(a) All mound systems shall be inspected during construction by an inspector certified by the Nation. The plumber installing the mound shall notify the Environmental Specialist twenty-four (24) hours in advance of the installation. Four (4) inspections of the system shall be made during the first year of the mound operation in accordance with Tribal guidelines. Annual inspections may be made after the first year of operation, and may be more frequent if deemed necessary by the Environmental Specialist.

407.6-7. Re-inspections

(a) The Environmental Specialist may require additional inspections other than the inspection prior to backfilling, or if the initial inspection disclosed that the installation was incomplete at the time the installer indicated it would be complete, or if the system was not in conformance with the requirements stated in this law.

407.6-8. As-built Plans

(a) All on-site waste disposal systems installed, enlarged, modified, or expanded after the adoption date of this law shall require as-built plans to be registered with the Environmental Health and Safety Division.

(b) The plumber employed to install the system shall submit the as-built plans to the Environmental Health and Safety Division within five (5) days of the installation of the system.

(c) The as-built plans shall include all dimensions described in Section 407.5-1(b)(1)(F), of this law. It shall also include the location of all manhole risers installed as part of the system for which the as-built is being developed. The manhole covers and other portions of the system shall be located from two (2) permanent points (i.e., corners of the building served).

407.6-9. Covering of Work

(a) No part of the private sewage system may be backfilled until it has been inspected and

approved. If any part is covered before being inspected and approved it shall be uncovered at the discretion of the Environmental Health and Safety Division inspector or Indian Health Service Inspector.

407.6-10. Defects in Materials and Workmanship

(a) If inspection discloses defective material, design, siting or unworkmanlike construction which does not conform to the requirements of this law, the nonconforming parts shall be removed, replaced and re-inspected.

407.7. Administration and Enforcement

407.7-1. Variances

(a) A request for a variance to the conditions or requirements of this law may be made to the Environmental Specialist. The Environmental Specialist shall not have the authority to approve any variance request. The Environmental Resource Board shall issue written approval or denial of any variances requested.

(b) Parties disagreeing with the determination of the Environmental Resource Board may contest the decision by filing a complaint to the Judiciary in accordance with section 407.7-5.

407.7-2. Violations

(a) Any person who violates any provision of this law is subject to penalties and forfeitures provided for by this law and any resultant rules. Actions which constitute a violation are described in, but not limited to, the following:

- (1) Installing a new on-site waste disposal system without first obtaining a Tribal Sanitary Permit.
- (2) Modifying, altering, enlarging or constructing additions to an existing on-site waste disposal system without first obtaining a Tribal Sanitary Permit or a Building Alteration Permit.
- (3) Servicing or removing sewage from an on-site waste disposal system tank without a valid State of Wisconsin or Tribal license.
- (4) Failing to obey any requirement of an Administrative Enforcement Order.
- (5) Failing to properly display the Sanitary Permit card.
- (6) Failing to disconnect a failing private on-site waste disposal system within the Order. Building served by disconnected failing on-site systems shall be reconnected to public sewer systems.
- (7) Failing to connect a building served by a private on-site waste disposal system to a public sewer system within the time allotted by section 407-4.1(f) of this law, or the date stated in the Order.
- (8) Installing, modifying, altering, enlarging or making additions to any part of an on-site waste disposal system without a valid State Plumbing License. Privies are exempt from this requirement.
- (9) Failing to pay Tribal permit fees
- (10) Failure to correct a failing on-site waste disposal system within three (3) months of an Administrative Order. A failing on-site waste disposal system constitutes a threat to public health.
- (11) Failure to maintain a system through regularly scheduled pumping, pursuant to holding tank agreement and maintenance program of this law. Failing to

maintain a holding tank through regularly scheduled pumping constitutes a threat to public health.

407.7-3. Administrative Orders

(a) The Environmental Specialist may issue an Administrative Enforcement Order when a violation of any provision of this law occurs, to provide the owner or agent the opportunity to bring their action into compliance with the provisions of this law.

(b) The Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the right to contested the matter with the Oneida Judiciary.

407.7-4. Penalties

(a) The Environmental Resource Board is hereby granted administrative rulemaking authority to establish penalties for violations of this law. Except as provided in section 407.5-5(b), forfeitures for violations shall amount to not less than ten dollars (\$10) and not greater than fifty dollars (\$50) per violation. Each day such violation continues constitutes a separate offense.

(b) Forfeitures for violations which constitute a threat to public health shall not be less than fifty dollars (\$50) and not more than two hundred dollars (\$200) per violation. Each day such violation continues constitutes a separate offense.

407.7-5. Appeal Permit Decision. Any person wishing to contest a decision of the Department related to a permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

407.7-6. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

407.7-7. Severability

(d) Conflict with Federal Law. Should any part of this ordinance be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for purposes of that particular funding and that inoperative only for purposes of that particular funding and that particular conflict. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or departments directly affected.

407.7-8. Waiver of liability

(a) This law shall not create a liability on the part of or a cause of action against the Nation, or any employee thereof, for any private on-site sewage treatment system which may not function as designed. There shall be no liability of warranty for any site which is approved or denied. The issuance of a sanitary permit and the formal inspection of such a system does not warrant the system's function, nor is there a guarantee that the system is free of defects or that all aspects of the system comply with the requirements of this ordinance.

Adopted - BC-10-28-88-A
Amended – BC-07-26-17-C

Title 4. Environment and Natural Resources – Chapter 409

WATER RESOURCES

Ka'nekalunyuhsé Olihwa'ke

the matters of the different kinds of waters

409.1. Policy and Purpose
409.2. Authority
409.3. Definitions

409.4. Powers and Duties
409.5. Review
409.6. Enforcement; Reporting

409.1. Policy and Purpose

409.1-1. Pollution of the waters of the Oneida Reservation has aroused widespread public concern. It endangers the health and general welfare of both members and residents of the Oneida Nation. A comprehensive program directed at all present and potential sources of water pollution whether residential, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.

409.1-2. The Oneida Environmental Department (“Department”) shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private. The purpose of this law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private. To the end that these vital purposes may be accomplished, this law and all rules and orders promulgated under this law shall be liberally construed in favor of the policy objectives set forth in this law.

409.1-3. The Oneida Environmental Resource Board (“Board”) shall serve in an advisory capacity to the Department in the development and administration of the programs contemplated by this law.

409.2. Adoption, Amendment and Repeal

409.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-08-96-B and amended by resolution BC-07-26-17-G.

409.2-2. 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.

409.2-3. 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.

409.2-4. 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.

409.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

409.3. Definitions

409.3-1.

(a) “Board” shall mean the Oneida Environmental Resource Board.

- (b) “Department” shall mean the Oneida Environmental Department.
- (c) “Environmental Pollution” shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health, harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.
- (d) “Garbage” means discarded materials resulting from the handling, processing, storage and consumption of food.
- (e) “Hazardous Substance” shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives, as determined by the Department.
- (f) “Industrial Waste” shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
- (g) “Nonpoint Source” means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of the Reservation and which is not a point source as defined in Section 409.3-10.
- (h) “Other Waste” shall include all other substances, except industrial wastes, which pollute any of the waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.
- (i) “Person” means an individual, owner, operator, corporation chartered under federal, state or tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.
- (j) “Point Source” means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation. “Point Source” specifically includes any discernible, confined and discrete conveyance of storm water.
- (k) “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.)) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.
- (l) “Pollution” means contaminating or rendering unclean or impure the waters of the Reservation by the introduction to those waters of one or more pollutants as defined in Section 409.3-11, or otherwise making the waters of the Reservation injurious to public health, harmful for any of the uses described in Section 409.1-1, or deleterious to fish, bird, animal or plant life. The term “Pollution” shall include deleterious alterations to the hydrologic or morphologic characteristics of the waters of the Reservation.

- (m) “Refuse” means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.
- (n) “Reservation” shall mean the Oneida Indian Reservation as established by the Treaty of 1838, 7 Stat. 566.
- (o) “Solid Waste” shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.
- (p) “State” shall mean the State of Wisconsin.
- (q) “Storm Water” means any discharge, whether discreet or from sheet flow resulting from the movement of water across the surface of land including storm water runoff, snow melt runoff, surface runoff, and drainage.
- (r) “Nation” shall mean the Oneida Nation.
- (s) “Water Supply” means the sources and their surroundings from which water is supplied for drinking and domestic purposes.
- (t) “Waters of the Reservation” means any accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through, or border upon the Oneida Reservation. “Waters of the Reservation” includes wetlands, as that term is defined in Section 409.3-21, below.
- (u) “Wetlands” means land that has a predominance of hydric soils, is inundated or saturated by surface or ground water at a frequency and duration to support, and under normal circumstances does support, a prevalence or hydrophytic vegetation typically adapted for life in saturated soil conditions. “Normal circumstances” refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed.

409.4. Powers and Duties

409.4-1. The Department shall have general supervisory authority over the waters of the Reservation. It shall carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

409.4-2. Water Quality Standards

- (a) The Department shall set standards of water quality to be applicable to the waters of the Reservation, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon their designated uses. Water quality standards shall protect the public interest, which includes the protection of:
 - (1) the public health and welfare;
 - (2) the present and prospective future use of such waters for public and private

water supplies;

(3) the propagation of fish, aquatic life and wildlife;

(4) domestic and recreational purposes; and

(5) agricultural, cultural, religious, commercial, industrial and other legitimate uses.

(b) In adopting or revising any water quality criteria for the waters of the Reservation or any designated portion thereof, the Department shall do all the following:

(1) From time to time, but at least once every three (3) years, review water quality standards, and publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following three year(s).

(2) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.

(3) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(c) Form of Criteria: In establishing criteria, the Department shall

(1) Establish numeric values based on:

(A) 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System;
and

(B) Other scientifically defensible methods.

(2) Establish narrative criteria or criteria based upon biomonitoring methods and/or hydrologic or morphologic assessments where numerical criteria cannot be established, or to supplement numerical criteria.

409.4-3. The Department shall be responsible for the application, processing, and review of tribal water quality certifications required by Section 401 of the Federal Water Pollution Control Act, 33 USC § 1341.

409.4-4. The Department may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the Oneida Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties by means of a public hearing. The Department shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order.

409.4-5. Special/Emergency Orders

(a) The Department may issue special orders directing particular persons to secure such operating results toward the control of pollution of the waters of the Reservation as the Department prescribes, within a specified time. Pending efforts to comply with any order, the Department may permit continuance of operations on such conditions as it prescribes. If any person cannot comply with an order within the time specified, the person may, before the date set in the order, petition the Department to modify the order. The Department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the Department shall forthwith commence an action to enforce compliance with said order.

(b) The Department may issue temporary emergency orders without prior public hearing

when the Department determines that the protection of the waters of the Reservation necessitates such immediate action. Such emergency orders shall take effect at such time as the Department determines. As soon as is practicable, the Department shall schedule a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under Section 409.4-5(a).

409.4-6. The Department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues.

409.4-7. The Department may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to approval by the Board and the Oneida Business Committee, relative to methods, means and measures to be employed to control pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with the state or any political subdivision thereof concluded by direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.

409.4-8. The Department may order or cause the abatement of any nuisance affecting the waters of the Oneida Reservation.

409.4-9. In cases of noncompliance with any order issued by the Department, the Department may take the action directed by the order, and collect the costs thereof from the person to whom the order was directed by seeking a judgment for money from the Oneida Judiciary. The Department shall have all the necessary powers needed to carry out this paragraph including powers granted by the Constitution of the Oneida Nation, and any and all delegations of authority under federal environmental laws.

409.4-10. The Department may, upon receipt of the appropriate delegation of federal authority, establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660. (42 USC 300f et. seq).

409.4-11. The Department, subject to the approval of the Oneida Business Committee, may designate priority watersheds and priority lakes where the need for non-point source water pollution abatement and/or hydrologic or morphologic restoration is the most critical. The Duck-Apple-Ashwaubenon Creeks watershed is hereby designated by the Nation as a priority watershed.

409.4-12. The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section.

409.5. Review

409.5-1. Any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this law in the following manner:

- (a) They shall first file with the Department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the Department shall schedule a public hearing before the Board thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the Board may suspend such orders under terms and conditions to be fixed by the Department on application of any such petitioner. The Board shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.
- (b) The determination of the Board shall be subject to review as provided in the Oneida Administrative Procedure Act.

409.6. Enforcement; Reporting; Penalties

409.6-1.

- (a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to the waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge.
- (b) The Department may establish minimum effluent volumes for which reports are required under this Section.
- (c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee of \$_____ plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged.
- (d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.

409.6-2. Environmental Pollution: Hearings; Procedure; Review. The Board shall hold a public hearing relating to alleged or potential environmental pollution upon the filing of a complaint by the Department. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post office address at least twenty (20) days prior to the time set for the hearing. The hearing shall be held not later than ninety (90) days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the Department not later than five (5) days prior to the date set for the hearing, unless the time for answering is extended by the Board for cause shown. For purposes of any hearing under this Section, the Board may issue subpoenas and administer oaths. Within ninety (90) days after the closing of the hearing, the Board shall make and file its findings of fact and conclusions of law and order, which shall be subject to review under the Oneida Administrative Procedures Act. If the Board determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against shall be entitled to recover from the Department the reasonable

expenses of the hearing, including attorney's fees. Any situation, project or activity which upon continuance or implementation would cause, by a preponderance of the evidence, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

409.6-3. Enforcement. The Oneida Conservation Department shall enforce this law, and all rules and orders issued by the Department.

409.6-4. Penalties. Any person who violates this law, or any rule promulgated or any regular, special or emergency order issued under this law, shall forfeit not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) for each violation. Each day of continued violation is a separate offense.

409.6-5. Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

Adopted - BC-5-08-96-B

Corrected-2012-10-03

Amended – BC-07-26-17-G

Title 4. Environment and Natural Resources – Chapter 410

ALL-TERRAIN VEHICLE

Kwah Tsyok Nu O'nikasleghto'tá Kayanl'hsia

Just all over the place, the type of vehicles, their laws

410.1. Purpose and Policy

410.2. Adoption, Amendment, Repeal

410.3. Definitions

410.4. Age Requirements

410.5. Rules of Operation

410.6. Enforcement

410.7. Sanctions

410.1-1. Purpose and Policy

410.1-1. The purpose of this law is to govern the safe use of all-terrain vehicles within the Tribal jurisdiction of the Oneida Reservation to allow enforcement for protection of the community members and the environment.

410.2. Adoption, Amendment, Repeal

410.2-1. This law was adopted by the Oneida Business Committee by resolution BC-6-16-04-B and amended by resolution BC-07-26-17-E.

410.2-2. 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.

410.2-3. 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.

410.2-4. 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.

410.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

410.3. Definitions

410.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein, or defined within any section, shall be used in their ordinary and everyday sense.

(a) "Agricultural purpose" means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

(b) "All-terrain vehicle" means an engine-driven device which has a net weight of 900 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

(c) "All-terrain vehicle route" means a highway, sidewalk, dirt or gravel trail, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction as authorized under this section.

(d) "All-terrain vehicle trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle

operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

(e) “Conservation Warden” shall mean an employee of the Oneida Conservation Department empowered by the Oneida Tribe of Indians of Wisconsin to enforce the provisions of this Law and regulations promulgated pursuant to this Law. The term Conservation Warden shall include an Officer of the Oneida Police Department.

(f) “Department” means the Oneida License Department.

(g) “Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways within the Reservation, parks and upon the grounds of Tribal schools.

(h) “Immediate family” means persons who are related as spouses, as siblings or as parent and child.

(i) “Implement of husbandry” means a vehicle or piece of equipment or machinery designed for agricultural purposes, used exclusively in the conduct of agricultural operations and used principally off the highway, or a trailer-mounted bulk liquid fertilizer container.

(j) “Land under the management and control of a person’s immediate family” means land owned or leased by the person or a member of the person’s immediate family over which the owner or lessee has management control. This term excludes land owned or leased by an organization of which the person or a member of the person’s immediate family is a member.

(k) “Operator” means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(l) “Owner” means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(m) “Protective Headgear” means a helmet that is specifically designed for motorcycle or all-terrain vehicle use that meets the United States Department of Transportation standards for motorcycle helmets. A bicycle helmet is not an acceptable protective helmet.

(n) “Public utility” means any corporation, company, individual or association which furnishes products or services to the public including but not limited to, railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water.

(o) “Reservation” shall mean all the lands and waters within the exterior boundaries designated by the Treaty with the Oneida. 7 Stat. 566 (1838).

(p) “Residential area” shall mean a district where people live; occupied primarily by private residences.

(q) “Registration documentation” means an all-terrain vehicle registration certificate, a validated registration receipt, or a registration decal.

(r) “Right of way” means the privilege of the immediate use of the roadway.

(s) “Small all-terrain vehicle” means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

(t) “Tribal Lands” means all lands within the exterior boundaries of the Oneida Indian reservation as defined by the 1838 Treaty, or all land located in Wisconsin which is held in Trust by the United States of America for the benefit of the Oneida Tribe of Indians of Wisconsin.

(u) “Nation” means the Oneida Nation.

(v) “Used exclusively on private property” means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

410.4. Age Requirements

410.4-1.

(a) The minimum age to operate an all-terrain vehicle is twelve (12) years of age unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the Nation and he or she is accompanied by his or her parent.

(b) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age.

410.5. Rules of Operation

410.5-1. No person shall operate an all-terrain vehicle:

(a) In any careless way so as to endanger the safety of himself or herself or the property or the safety of another person or property.

(b) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(c) On Tribal lands without the consent of the Nation or Indian owner. Failure to post Tribal lands does not imply consent for all-terrain vehicle use.

(d) With any firearms in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case, within the Reservation and on public highways.

(e) To drive, pursue, take, catch, kill, hunt, trap or harvest any animal except as a part of normal farming operations involving the driving of livestock.

(f) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent.

(g) On the frozen surface of public waters within 100 feet of a person not in or on an all-terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(h) On any pathways or sidewalks specified for pedestrian use.

(i) On any public, church, school property, cemetery, burial ground, campground, park or business properties, airport or landing facility without consent.

(j) Without wearing the required eye protection such as goggles, sunglasses, or glasses.

(k) In any streams or creeks.

(l) On any project or program assigned land.

(m) In a manner which violates rules promulgated by the Nation.

(n) In excess of 10 mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle.

(o) Outside or off of any designated all-terrain route or trail.

410.5-2. *Rental of All Terrain Vehicles.*

(a) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

(1) Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

(2) Rent or lease an all-terrain vehicle to a person under 16 years of age.

(3) Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has required protective headgear

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person rents or leases.

(c) The Environmental Resource Board may promulgate rules to establish minimum standards for the instruction given under par. (a)1.

410.5-3. *Use of Headgear.* No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The all-terrain vehicle is being operated for an agricultural purpose.

410.5-4. *Operation on or near highways.* All-terrain vehicles may not be operated on any highways within the exterior boundaries of the Nation, except for the following:

(a) All-terrain vehicles owned by the Nation, a municipality, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the Nation, a municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

(b) The Nation, a county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle and/or public events.

(c) To cross a highway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

(d) On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

(e) To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to crossing and yields to pedestrians, and electric personal assistive mobility devices using the highway.

(f) On highways designated as all-terrain vehicle routes. Operation of all-terrain vehicles

on a highway which is an all-terrain vehicle route is authorized only for the extreme right side of the highway except that left turns may be made from any part of the highway which is safe given prevailing conditions.

(g) On highways if the all-terrain vehicle is an implement of husbandry, if used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use.

410.5-5. *Operation adjacent to highways.* All-terrain vehicles may be operated adjacent to a highway on an all-terrain vehicle route or trail if the all-terrain vehicle is operated in the following manner:

- (a) At a distance of 10 feet or more from the highway along U.S. numbered highways, state and county highways, Tribal roads, town roads, and BIA roads.
- (b) Outside of the highways along town highways.
- (c) During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.
- (d) Not in excess of the speed limits of the adjacent highway and not to exceed 35 miles per hour.
- (e) With due regard to safety and in compliance with rules promulgated by the Nation.
- (f) Not at a rate of speed that is unreasonable or improper under the circumstances.

410.5-6. *Equipment requirements.*

- (a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.
- (b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.
- (c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.
- (d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.
- (e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise.

410.5-7. *Residential Areas.*

- (a) All-terrain operators in the residential areas:
 - (1) Are prohibited from operating all-terrain vehicles from 9pm-6am.
 - (2) Shall not operate all-terrain vehicles in excess of 15 miles per hour.
 - (3) Shall not operate all-terrain vehicles on sidewalks or yards, unless the operator is on his or her own land or leases the land.
 - (4) Shall use extra caution, including yielding right of way, whenever pedestrians or other motor vehicle traffic are in the near vicinity.
 - (5) Shall not cause excessive noise with all-terrain vehicles.
 - (6) Shall not use the public driveways of Tribal service providers, unless conducting business.
 - (7) Shall not use the Tribal residential area as a riding area. In the Tribal residential area, all-terrain vehicles should only be utilized to get to and from another area.
- (A) Operators shall use the shortest distances when entering and exiting

the Tribal residential area. For example, operators going to a residence within the Tribal residential area must take the most direct route to the residence.

410.5-8. Accidents.

(a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident within 10 days after the accident to the Oneida Police Department.

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

410.5-9. Routes and Trails.

(a) The Nation shall encourage and supervise a system of all-terrain vehicle routes and trails. The Division of Land Management, in cooperation with the Conservation Department, shall establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(b) The Nation may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.

(c) The Nation shall establish uniform all-terrain vehicle route and trail signs and standards.

(d) Interference with signs and standards are prohibited.

(1) No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign or standards if the sign or standard is legally placed by the Nation, the state, any municipality or any authorized individual.

(2) No person may possess any uniform all-terrain vehicle route or trail sign or standard of the type established by the Nation for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign or standard in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

(e) Interference with trails prohibited. No person may intentionally obstruct or interfere with an all-terrain vehicle route or trail.

410.6. Sanctions.

410.6-1. The following sanctions may be imposed for violations of the All-Terrain Vehicle Law:

(a) All fines and forfeitures shall be paid to the Nation.

Violation		Sanction
(a) Unlawful rental of all-terrain vehicle	sec. 5-2.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(b) Operating all-terrain vehicle in a careless manner	sec. 5-1(a)	1 st Violation: \$25.00 2 nd Violation: \$50.00

		3 rd Violation: \$150.00
(c) Operating all-terrain vehicle on the private property of another without consent	sec. 5-1(b)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$130.00
(d) Operating all-terrain vehicle on Tribal Lands without consent	sec. 5-1(c)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00 Non-Members will be turned over to Oneida Police Department or County Sheriff's Department
(e) Transporting loaded or uncased firearm or a strung or uncased bow on all-terrain vehicle	sec. 5-1(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$500.00
(f) Drive, pursue, take, catch, kill, hunt, trap or harvest any animal from an all-terrain vehicle	sec. 5-1(e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(g) Operating all-terrain vehicle within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent	sec. 5-1(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(h) Operating all-terrain vehicle on frozen surface of public waters within 100 feet of a person or fishing shanty at a speed exceeding 10 miles per hour	sec. 5-1(g)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(i) Operate/ride all-terrain vehicle without protective headgear	sec. 5-3.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(j) Illegal operation of all-terrain vehicles on or in the vicinity of highways	sec. 5-4.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(k) All-terrain equipment violations	sec. 5-7.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(l) Failure to report all-terrain vehicle accident	sec. 5-9.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00

(m) Interference with all-terrain vehicle route or trail signs and standards	sec. 5-10(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(o) Operating on a church property, school property, cemetery, burial ground, campground, parks, business, airport or landing facility without permission	sec. 5-1(i)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$200.00
(p) Operating at a speed that is unreasonable or improper	sec. 5-6(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(q) Operating all-terrain vehicle in or on project or program assigned lands	sec. 5-1(l)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(r) Operating in excess of 10mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle	sec. 5-1(n)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(s) Owner permitting operation of all-terrain vehicle by person who does meet age requirements	sec. 4-1.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$140.00
(t) Operating an all-terrain vehicle outside or off the designated route or trail	sec. 5-1(o)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(u) Operating an all-terrain vehicle in Tribal Residential Areas	sec.5-8.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(v) Operating on any pathways or sidewalks specified for pedestrian use	sec. 5-1(h)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(w) Operating all-terrain vehicle without eye protection	sec. 5-1(j)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(x) Operating in any streams or creeks	sec. 5-1(k)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(y) Illegally operating on or adjacent to highways	sec. 5-5.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00

(z) Obstructing trail.	sec. 5-10 (e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
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410.7. Violations, Enforcement and Appeals

410.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include sanctions, fines, penalties and conditional and other orders in accordance with the schedule developed under section 410.6-1. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

410.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Emergency Adoption - BC-9-24-03-A
Emergency Adoption Extension - BC-3-31-04-C
Permanent Adoption - BC-6-16-04-B
Amended – BC-07-26-17-E

Title 6. Property and Land – Chapter 606

TRIBAL ENVIRONMENTAL QUALITY REVIEW

606.1.	Purpose	606.4.	Tribal Findings and Declaration
606.2.	Adoption, Amendment, Applicability and Repeal	606.5.	Preparation of Environmental Impact Statement
606.3.	Definitions	606.6.	Rules and Regulations

606.1. Purpose

606.1-1. It is the purpose of this law to declare a Tribal policy with regard to construction, reconstruction, rehabilitation, expansion, demolition or other physical alteration (other than routine maintenance or repair or changes necessary to conform to building or fire codes) on its lands in Sullivan County which will encourage productive and enjoyable harmony between the people and their environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and important community resources.

606.2. Adoption, Amendment, Applicability and Repeal

606.2-1. This law is adopted under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin by Oneida Business Committee Resolution # 12-21-05-D.

606.2-2. This law may be amended, or repealed, by the Oneida Business Committee or by the Oneida General Tribal Council.

606.2-3. The applicability of the provisions of this law shall be limited to the Sullivan County lands of the Tribe as identified in the Tribe's Land Claim Settlement Agreement with New York State.

606.2-4. Should a provision of this law or the application of this law be held as invalid, such invalidity shall not effect other provisions of this law.

606.2-5. Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.

606.2-6. Should the Land Claim Settlement with the State of New York fail to culminate this law shall be automatically repealed.

606.2-7. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

606.3. Definitions

606.3-1. Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this law:

- (a) "Agency" means the Oneida Environmental Health and Safety Department.
- (b) "Actions" is limited to construction, reconstruction, rehabilitation, expansion, demolition or other physical alteration of the project site (other than routine maintenance or repair or changes necessary to conform to building or fire codes)
- (c) "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.

(d) "Environmental impact statement" means a detailed statement setting forth the matters specified in section 606.5. It includes any comments on a draft environmental statement which are received pursuant to section 606.5, and the agency's response to such comments, to the extent that such comments raise issues not adequately resolved in the draft environmental statement.

(e) "Draft environmental impact statement" means a preliminary statement prepared pursuant to section 606.5.

(f) "Sullivan County lands" means those lands located in Sullivan County identified in the Land Claim Settlement with the State of New York that shall be held in trust by the United States for the benefit of the Tribe for Class III gaming and related purposes.

(g) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

606.4. Tribal Findings and Declaration

606.4-1. The Tribe finds and declares that with regard to its lands in Sullivan County:

(a) The maintenance of a quality environment for the people that at all times is healthful and pleasing to the senses and intellect of people now and in the future is a matter of Tribal concern.

(b) Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people, including their enjoyment of the natural resources.

(d) Enhancement of human and community resources depends on a quality physical environment.

(e) The capacity of the environment is limited, and it is the intent of the Tribe that it take immediate steps to identify any critical thresholds for the health and safety of the people and take all coordinated actions necessary to prevent such thresholds from being reached.

(f) It is the intent of the Tribe that, to the fullest extent possible, the policies, statutes, regulations, and ordinances of the Tribe should be interpreted and administered on its Sullivan County lands in accordance with the policies set forth in this law. However, the provisions of this law do not change the jurisdiction between or among the Agency.

(g) It is the intent of the Tribe that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities of construction, reconstruction, rehabilitation, expansion, demolition or other physical alteration of the Sullivan County lands (other than routine maintenance or repair or changes necessary to conform to building or fire codes).

(h) It is the intent of the Tribe that the Tribe and its agencies conduct their construction, reconstruction, rehabilitation, expansion, demolition or other physical alteration activities (other than routine maintenance or repair or changes necessary to conform to building or fire codes) on its Sullivan County lands with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(i) It is the intent of the Tribe that the Tribe and its agencies which regulate construction, reconstruction, rehabilitation, expansion, demolition or other physical alteration activities

(other than routine maintenance or repair or changes necessary to conform to building or fire codes) of individuals, corporations, and public agencies on the Tribe's Sullivan County lands which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage.

606.5. Preparation of Environmental Impact Statement

606.5-1. The Tribe and its agencies shall use all practicable means to realize the policies and goals set forth in this law, and shall act and choose alternatives which, consistent with the purposes for which the land is to be held in trust, social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process.

606.5-2. The Agency shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

- (a) a description of the proposed action and its environmental setting;
- (b) the environmental impact of the proposed action including short-term and long-term effects;
- (c) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (d) alternatives to the proposed action;
- (e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
- (f) mitigation measures proposed to minimize the environmental impact;
- (g) the growth-inducing aspects of the proposed action, where applicable and significant;
- (h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant;
- (i) effects of proposed action on solid waste management where applicable and significant; and
- (j) effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the New York commissioner pursuant to article fifty-five of New York's Environmental Conservation Law; and
- (j) such other information consistent with the purposes of this law as may be prescribed in guidelines issued by the Tribe pursuant to section 606.6.

606.5-3. The environmental impact statement shall also include copies or a summary of the substantive comments received by the Agency and the Agency's response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

606.5-4. The Agency may require an applicant to submit an environmental report to assist the Agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the environmental impact statement), the preparation of an environmental impact statement under this law. The Agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies or the Tribe shall make its own independent judgment of the scope, contents and adequacy of an environmental impact statement.

606.5-5. As early as possible in the formulation of a proposal for an action, the responsible the Agency shall make an initial determination whether an environmental impact statement need be prepared for the action.

606.5-6. With respect to actions involving the issuance to an applicant of a permit or other entitlement, the Agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on Agency actions shall be kept on file in the main office of the Agency for public inspection.

606.5-7. If the Agency determines that such statement is required, the Agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the Agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted. The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the Agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

606.5-8. For any action for which the Agency determines that such statement is not required and which would take place in a special groundwater protection area, as defined in section 606.5-14(a) law, the Agency shall show how such action would or would not be consistent with the comprehensive management plan of the special groundwater protection program, as implemented by the State commissioner pursuant to article fifty-five of New York law.

606.5-9. The draft statement shall be filed with the Agency and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the Tribe pursuant to section 606.6.

606.5-10. After the filing of a draft environmental impact statement the Agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the Agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the Tribe pursuant to section 606.6. If no hearing is held, the Agency shall prepare and make available the environmental impact statement within sixty days after the filing of the draft, except as otherwise provided.

606.5-11. Notwithstanding the specified time periods established by this law, the Agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the Agency as satisfactory with respect to scope, content and adequacy for purposes of paragraph four of this section.

Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement.

606.5-12. To the extent as may be prescribed by the Tribe pursuant to section 606.6, the environmental impact statement prepared together with the comments of public and federal agencies and members of the public, shall be filed with the Agency and made available to the public prior to acting on the proposal which is the subject of the environmental impact statement.

606.5-13. When the Agency decides to carry out or approve an action on the Sullivan County lands which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with the purposes for which the land is to be held in trust, social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.

606.5-14. An environmental impact statement shall be prepared for any action found to have a significant impact on the special groundwater protection area.

(a) The "special groundwater protection area" shall mean recharge watershed area within a designated sole source area contained within counties having a population of one million or more which is particularly important for the maintenance of large volumes of high quality groundwater for long periods of time.

(b) Such statement shall meet the requirements of the most detailed environmental impact statement required by this section or by any such rule or regulation promulgated pursuant to this section.

606.6. Rules and Regulations

606.6-1. As consistent with this law, the Tribe shall adopt rules and regulations consistent with 6 NYCRR Part 617 implementing the provisions of this law as applicable.

606.6-2. The rules and regulations adopted by the Tribe specifically shall include:

(a) Definition of terms used in this law;

(b) Criteria for determining whether or not a proposed action may have a significant effect on the environment, taking into account social and economic factors to be considered in determining the significance of an environmental effect;

(c) Identification on the basis of such criteria of:

(1) Actions or classes of actions that are likely to require preparation of environmental impact statements;

(2) Actions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements under this law. In adopting the rules and regulations, the

Agency shall make a finding that each action or class of actions identified does not have a significant effect on the environment;

(d) Typical associated environmental effects, and methods for assessing such effects, of actions determined to be likely to require preparation of environmental impact statements;

(e) Provision for the filing and circulation of draft environmental impact statements pursuant to section 606.5-5, and environmental impact statements pursuant to section 606.5-12;

(f) Scope, content, filing and availability of findings required to be made pursuant to section 606.5-13;

(g) Form and content of and level of detail required for an environmental impact statement; and

(h) Procedures for obtaining comments on draft environmental impact statements, holding hearings, providing public notice of Agency decisions with respect to preparation of a draft environmental statement; and for such other matters as may be needed to assure effective participation by the public and efficient and expeditious administration of the law.

(i) A model assessment form to be used during the initial review to assist the Agency in its responsibilities under this law.

606.6-3. The Tribe shall, in accordance with Tribal law, adopt and publish such additional procedures as may be necessary for the implementation by them of this law.

End.

Adopted on Emergency Basis: BC-06-29-05-B

Permanent Adoption: BC-12-21-05-D

Title 6. Property and Land – Chapter 609
PUBLIC USE OF TRIBAL LAND
Tsi? yuhwatsya'té tewatenhotúkwa? Ukwehuwé'ne
That of the earth one opens it up Oneida Nation

609.1. Purpose and Policy

609.2. Adoption, Amendment, Repeal

609.3. Definitions

609.4. Environmental Resource Board

609.5. Land Access Map

609.6. Trespass

609.7. Violations and Appeals

609.1. Purpose and Policy

609.1-1. *Purpose.* The purpose of this law is to prevent improper access, use and trespass to Tribal lands.

609.1-2. *Policy.* It is the policy of the Nation to limit access to Tribal lands to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

609.2. Adoption, Amendment, Repeal

609.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A, BC-01-13-16-C and BC-07-26-17-D.

609.2-2. 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.

609.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this law which are considered to have legal force without the invalid portions.

609.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law controls.

609.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

609.2-6. This law may not be construed to preclude the Nation from pursuing relief for criminal trespass under applicable law.

609.3. Definitions

609.3-1. This section governs the definitions of words and phrases used within this law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Designation" means the term used to describe the type of access granted to certain Tribal lands.

(b) "Fine" means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(c) "Lease" means any lease or agreement, including business site leases, entered into by the Nation and any person to allow the use of Tribal lands.

(d) "Nation" means the Oneida Nation.

(e) "Person" means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

(f) "Penalty" means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment, the imposition of a wildlife protection assessment (civil recovery value), and restitution.

(g) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 18609 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(h) “Trespass” means the unauthorized use or entry on Tribal lands, including unauthorized uses under any law, rule, permit or lease of the Nation.

(i) “Tribal Land” means all of the Nation’s trust lands, and any land or interest in land held by the Nation in fee or in any other form on the Reservation.

609.4. Environmental Resource Board

609.4-1. The Environmental Resource Board has the duty and power to carry out the intent and purposes of this law and enforce the provisions of this law. The Environmental Resource Board, or designated staff, shall:

(a) Develop, approve and maintain the Land Access Map.

(b) Hold public hearings on proposed amendments to the Land Access Map.

(c) Determine which Tribal land will be posted and ensure the appropriate signs are posted.

(d) Implement and interpret the provisions of this law.

(e) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal Land.

609.5. Land Access Map

609.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates Tribal land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” are open to all persons who are granted land access permission by the Nation through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” are open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the Nation; and persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the Nation.

(1) A Conservation Warden or Oneida Police Officer may require a person to provide proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access” are open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” are generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such designation is deemed beneficial to the Nation and where such designation does not pose significant risk of damage to the Nation’s policies and/or the land’s cultural or environmental preservation.

609.5-2. Notwithstanding the restrictions of 609.5-1, nothing in this law may be construed as preventing the following persons from entering Tribal land, regardless of the land designation:

- (a) Employees of the Nation who are performing their job duties;
- (b) Those persons who are performing grant or contractual obligations related to the Tribal land and on behalf of the Nation;
- (c) Emergency personnel who are providing, or attempting to provide, services; and
- (d) Those persons who have been granted access to the land by the Environmental Resource Board.

609.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the Nation. The Environmental Resource Board shall adopt the initial Land Access Map.

609.5-4. *General Land Designation.* Unless otherwise designated, Tribal land is designated as limited access.

609.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration must be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, must be:

- (i) published in the Nation’s newspaper; and
- (ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) In addition to accepting oral comments at the public meeting, the Environmental Resource Board shall also accept written comments, which must be submitted within five (5) business days of the date of the public meeting.

(D) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

- (2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.
- (3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:
 - (A) Existing uses of the land and buildings within the general area of the land in question.
 - (B) Suitability of the land in question to the uses permitted under the existing Land Access Map.
- (4) The Environmental Resource Board may not amend the Land Access Map unless it finds that adopting such amendment is in the Nation's best interest and is not solely for the interest of the applicant.
- (c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments must require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:
 - (1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or
 - (2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

609.6. Trespass

609.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

- (a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.
- (b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Nation's website and/or in the Nation's newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:
 - (1) A sign at least eleven inches (11") square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person is the holder of legal title to the land or by the word "occupant" if the person is a lawful occupant of the land, but not the holder of legal title.
 - (2) Markings at least one foot (1') long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.

(c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:¹

- (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
- (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
- (3) Engages in any act, or attempted act of hunting, trapping or fishing.
- (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
- (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
- (6) Parks or drives any vehicle on the land.
- (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
- (8) Uses or possesses leased or sub-leased lands beyond the possessory rights granted by such lease or sub-lease.
- (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

609.7. Violations, Enforcement and Appeals

609.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional and other orders in accordance with the citation schedule applicable to this law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. The issuance of a citation or fine under any other law relating to the same or any other matter does not preclude the issuance of a citation under this law.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

609.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for

¹ Current Tribal laws that authorize conduct described in 609.6-1(c): Protection and Management of Archeological and Historical Resources; Oneida Tribal Regulation of Domestic Animals Ordinance; Tribal Environmental Response Law; Wood Cutting Ordinance; Recycling and Solid Waste Disposal; Hunting, Fishing and Trapping Law; All-Terrain Vehicle Law; Zoning and Shoreland Protection Law.

which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-05-15-14-C
 Emergency Amended – BC-07-23-14-C
 Amended – BC-12-10-14-A
 Emergency Amended – BC 07-08-15-C
 Amended – BC-01-13-16-C
 Amended – BC-07-26-17-D



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



AGENDA REQUEST FORM

- 1) Request Date: December 7, 2022
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Petition: M. Cornelius – Chief Financial Officer Position
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 11/30/22 the OBC adopted a motion to acknowledge receipt of the
petition from Mae Cornelius regarding the Chief Financial Officer position;
and to direct the Legislative Reference Offices to complete a statement of
effect with status updates to be submitted for the 1/25/23, OBC meeting.

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

- 1) Excerpt from 11/30/22 OBC Meeting Draft Minutes
 - 2) _____
 - 3) _____
 - 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:

 - 6) Please list all other departments or person(s) you have brought your concern to:

 - 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
SOE with status updates due to the OBC at 1/25/23 meeting.

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

DRAFT**XIII. GENERAL TRIBAL COUNCIL****A. Approve notice and materials for January 30, 2023, tentatively scheduled annual General Tribal Council meeting (03:34:18)**

Sponsor: Lisa Liggins, Secretary

Motion by Marie Cornelius to direct the Secretary to schedule a special meeting no later than December 6, 2022, to approve the notice and meeting materials, seconded by Jennifer Webster.

Motion carried:

Ayes: Marie Cornelius, Daniel Guzman King, Lisa Liggins, Kirby Metoxen, Jennifer Webster

Not Present: Tina Danforth, David P. Jordan, Brandon Stevens

B. Approve three (3) requested actions - Petitioner Mae Cornelius re: Chief Financial Officer position (03:35:28)

Sponsor: Lisa Liggins, Secretary

Motion by Marie Cornelius to acknowledge receipt of the petition from Mae Cornelius regarding the Chief Financial Officer position; to direct the BC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary mailbox by Friday, December 16, 2022; and to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the January 25, 2022, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Lisa Liggins. Motion carried:

Ayes: Marie Cornelius, Daniel Guzman King, Lisa Liggins, Kirby Metoxen, Jennifer Webster

Not Present: Tina Danforth, David P. Jordan, Brandon Stevens

C. Approve three (3) requested actions - Petitioner Nancy Barton re: \$2,500 GWA payment for three (3) years (03:40:16)

Sponsor: Lisa Liggins, Secretary

Motion by Marie Cornelius to acknowledge receipt of the petition from Nancy Barton regarding \$2,500 GWA payment for 2023-2025; to direct the BC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary mailbox by Friday, December 16, 2022; and to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the January 25, 2022, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:

Ayes: Marie Cornelius, Daniel Guzman King, Lisa Liggins, Kirby Metoxen, Jennifer Webster

Not Present: Tina Danforth, David P. Jordan, Brandon Stevens

Item XIV.A.1. was addressed next.



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



AGENDA REQUEST FORM

- 1) Request Date: December 7, 2022
- 2) Contact Person(s): Clorissa N. Leeman
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Petition: N. Barton – \$2,500 GWA Payment for Three (3) Years
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On 11/30/22 the OBC adopted a motion to acknowledge receipt of the
petition from Nancy Barton regarding \$2,500 GWA payment for
2023-2025; and to direct the LRO to complete a statement of effect with
status updates to be submitted for the 1/25/23, OBC meeting.

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

- 1) Excerpt from 11/30/22 OBC Meeting Draft Minutes
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
SOE with status updates due to the OBC at 1/25/23 meeting.

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

DRAFT**XIII. GENERAL TRIBAL COUNCIL****A. Approve notice and materials for January 30, 2023, tentatively scheduled annual General Tribal Council meeting (03:34:18)**

Sponsor: Lisa Liggins, Secretary

Motion by Marie Cornelius to direct the Secretary to schedule a special meeting no later than December 6, 2022, to approve the notice and meeting materials, seconded by Jennifer Webster.

Motion carried:

Ayes: Marie Cornelius, Daniel Guzman King, Lisa Liggins, Kirby Metoxen, Jennifer Webster

Not Present: Tina Danforth, David P. Jordan, Brandon Stevens

B. Approve three (3) requested actions - Petitioner Mae Cornelius re: Chief Financial Officer position (03:35:28)

Sponsor: Lisa Liggins, Secretary

Motion by Marie Cornelius to acknowledge receipt of the petition from Mae Cornelius regarding the Chief Financial Officer position; to direct the BC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary mailbox by Friday, December 16, 2022; and to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the January 25, 2022, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Lisa Liggins. Motion carried:

Ayes: Marie Cornelius, Daniel Guzman King, Lisa Liggins, Kirby Metoxen, Jennifer Webster

Not Present: Tina Danforth, David P. Jordan, Brandon Stevens

C. Approve three (3) requested actions - Petitioner Nancy Barton re: \$2,500 GWA payment for three (3) years (03:40:16)

Sponsor: Lisa Liggins, Secretary

Motion by Marie Cornelius to acknowledge receipt of the petition from Nancy Barton regarding \$2,500 GWA payment for 2023-2025; to direct the BC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary mailbox by Friday, December 16, 2022; and to direct the Law, Finance, and Legislative Reference Offices to complete, respectively, the legal review, fiscal impact statement, and statement of effect with status updates to be submitted for the January 25, 2022, regular Business Committee meeting agenda and the first BC meeting of the month thereafter or until the final documents are submitted, seconded by Jennifer Webster. Motion carried:










Ayes: Marie Cornelius, Daniel Guzman King, Lisa Liggins, Kirby Metoxen, Jennifer Webster


Not Present: Tina Danforth, David P. Jordan, Brandon Stevens


Item XIV.A.1. was addressed next.





November 3, 2022 Legislative Operating Committee E-Poll Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures

E-POLL REQUEST: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures

 LOC
To:  David P. Jordan;  Daniel P. Guzman;  Kirby W. Metoxen;  Jennifer A. Webster;  Ethel M. Cornelius
Cc:  Rhannon R. Metoxen;  Kristal E. Hill;  Clorissa N. Leeman

 Vote by clicking Vote in the Respond group above.
This message was sent with High importance.

 Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures Packet.pdf
935 KB

 Reply  Reply All  Forward 

Thu 11/3/2022 3:42 PM

Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Oneida Personnel Policies and Procedures emergency amendments extension materials.

EXECUTIVE SUMMARY

The extension of the emergency amendments to the Oneida Personnel Policies and Procedures (“the Law”) as adopted through resolution BC-05-11-22-A is being sought for an additional six (6) month time period.

On November 24, 2021, the Oneida Business Committee adopted emergency amendments to the Law 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. After the adoption of emergency amendments to the Law through resolution BC-11-24-21-A, it became clear that additional emergency amendments to the Law would be necessary to clarify inconsistencies that arose as a result of the last emergency amendments. The Oneida Business Committee then adopted additional emergency amendments to the Law on May 11, 2022, through the adoption of resolution BC-05-11-22-A for the purpose providing 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. These emergency amendments are set to expire on November 11, 2022.

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)]. Emergency legislation takes effect immediately upon adoption by the Oneida Business Committee, and remains effective for a six (6) month period of time. [1 O.C. 109.9-5(b)]. The LPA provides the possibility to extend emergency legislation for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

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 January 18, 2023, through the adoption of resolutions BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A,

BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, and 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, BC-03-23-22-A, BC-05-11-22-E, BC-07-13-22-F, BC-09-14-22-C, and BC-10-26-22-H. [3 O.C. 302.8-2]. 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 were, and continue to be, 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.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law were, and continue to 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 emergency amendments to the Oneida Personnel Policies and Procedures expire on November 11, 2022. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month time period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the Law is being requested to allow for the emergency amendments to remain in effect while the Legislative Operating Committee finalizes the development of permanent amendments to the Law to be presented to the General Tribal Council for adoption.

The extension of the emergency amendments to the Law will become effective on November 11, 2022, when the emergency amendments as adopted through BC-05-11-22-A expire and will remain in effect for an additional six (6) month term which will end on May 11, 2023.

Attached to this e-poll please find the following materials:

- Emergency extension memo;
- Resolution, *Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures*;
- Oneida Personnel Policies and Procedures.

The LOC is now being asked to approve by e-poll the Oneida Personnel Policies and Procedures emergency amendments extension packet and forward to the Oneida Business Committee for consideration.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is not until December 7, 2022, and it is intended that these materials be presented to the Oneida Business Committee for consideration via e-poll prior to the expiration of the emergency amendments on November 11, 2022.

REQUESTED ACTION

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

DEADLINE FOR RESPONSE

November 4, 2022 at 2:30 p.m.

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



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

E-POLL RESULTS:

This e-poll was approved by David P. Jordan, Kirby Metoxen, Marie Cornelius, Jennifer Webster, and Daniel Guzman King.

RE: E-POLL REQUEST: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures



David P. Jordan

To: LOC; David P. Jordan; Daniel P. Guzman; Kirby W. Metoxen; Jennifer A. Webster; Ethel M. Cornelius; David P. Jordan
Cc: Rhianon R. Metoxen; Kristal E. Hill; Clorissa N. Leeman

Reply Reply All Forward

Thu 11/3/2022 3:45 PM

Approve

RE: E-POLL REQUEST: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures



Kirby W. Metoxen

To: LOC; David P. Jordan; Daniel P. Guzman; Jennifer A. Webster; Ethel M. Cornelius
Cc: Rhianon R. Metoxen; Kristal E. Hill; Clorissa N. Leeman

Reply Reply All Forward

Thu 11/3/2022 3:49 PM

Approve

Kirby Metoxen

Re: E-POLL REQUEST: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures



Ethel M. Cornelius

To: LOC; David P. Jordan; Daniel P. Guzman; Kirby W. Metoxen; Jennifer A. Webster
Cc: Rhianon R. Metoxen; Kristal E. Hill; Clorissa N. Leeman

Reply Reply All Forward

Thu 11/3/2022 3:56 PM

If there are problems with how this message is displayed, click here to view it in a web browser.

Support.

RE: E-POLL REQUEST: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures



Jennifer A. Webster

To: LOC; David P. Jordan; Daniel P. Guzman; Kirby W. Metoxen; Ethel M. Cornelius
Cc: Rhianon R. Metoxen; Kristal E. Hill; Clorissa N. Leeman

Reply Reply All Forward

Thu 11/3/2022 3:59 PM

Approve,
Jenny

Re: E-POLL REQUEST: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures



Daniel P. Guzman

To: LOC; David P. Jordan; Kirby W. Metoxen; Jennifer A. Webster; Ethel M. Cornelius
Cc: Rhianon R. Metoxen; Kristal E. Hill; Clorissa N. Leeman


Reply Reply All Forward

Thu 11/3/2022 7:23 PM

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Support



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: November 4, 2022
RE: Extension of the Oneida Personnel Policies and Procedures Emergency Amendments

Please find the following attached backup documentation for your consideration of extending the emergency amendments to the Oneida Personnel Policies and Procedures:

1. Resolution: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures
2. Statement of Effect: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures
3. Oneida Personnel Policies and Procedures

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*].

The emergency amendments to the Oneida Personnel Policies and Procedures will expire on November 1, 2022. The Legislative Operating Committee is now seeking an extension of the emergency amendments to the Law.

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 January 18, 2023, by the Oneida Business Committee through the adoption of resolutions BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, and 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, BC-03-23-22-A, BC-05-11-22-E, BC-07-13-22-F, BC-09-14-22-C, and BC-10-26-22-H. [*3 O.C. 302.8-2*].

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 were, and continue to be, 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 was, and continues to 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 Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month time period. [*1 O.C. 109.9-5(b)*]. A six (6) month extension of the emergency amendments to the Law is being requested to provide additional time for the Legislative Operating Committee to finalize the development of permanent amendments to the Law to be presented to the General Tribal Council for adoption.

The extension of the emergency amendments to the Law will become effective on November 11, 2022, when the emergency amendments as adopted through BC-05-11-22-A expire and will remain in effect for an additional six (6) month term which will end on May 11, 2023.

Requested Action

Adopt the Resolution: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution

Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures

- 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,** on March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of
- 13 Emergency" regarding COVID-19 which declared a Public Health State of Emergency for
- 14 the Nation until April 12, 2020, which was subsequently extended by the Oneida Business
- 15 Committee until January 18, 2023, through the adoption of resolutions BC-03-26-20-A, BC-
- 16 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-
- 17 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,
- 18 and 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,
- 19 BC-01-12-22-B, BC-03-23-22-A, BC-05-11-22-E, BC-07-13-22-F, BC-09-14-22-C, and
- 20 BC-10-26-22-H; and
- 21
- 22 **WHEREAS,** the COVID-19 pandemic interrupted many business operations and had vast effects on
- 23 employment throughout the country; and
- 24
- 25 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
- 26 legislation on an emergency basis when legislation is necessary for the immediate
- 27 preservation of the public health, safety, or general welfare of the Reservation population,
- 28 and the adoption of the legislation is required sooner than would be possible under the
- 29 Legislative Procedures Act; and
- 30
- 31 **WHEREAS,** on November 24, 2021, the Oneida Business Committee adopted emergency amendments
- 32 to the Law through the adoption of resolution BC-11-24-21-A to improve the Nation's hiring
- 33 capacity and service delivery in the tight labor markets that have resulted from the COVID-
- 34 19 pandemic; and
- 35
- 36 **WHEREAS,** after the adoption of emergency amendments to the Law through resolution BC-11-24-21-
- 37 A, it became clear that additional emergency amendments to the Law would be necessary
- 38 to clarify inconsistencies that arose as a result of the last emergency amendments; and
- 39
- 40 **WHEREAS,** the Oneida Business Committee then adopted additional emergency amendments to the
- 41 Law on May 11, 2022, through the adoption of resolution BC-05-11-22-A for the purpose
- 42 providing additional clarifications on the appeal rights and payout of accrued
- 43 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; and

WHEREAS, the emergency amendments to this Law were, and continue to be, 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 were, and continue to 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, emergency legislation is effective for a period of six (6) months, renewable for an additional six (6) months by the Oneida Business Committee; and

WHEREAS, the emergency amendments to the Law will expire on November 11, 2022; and

WHEREAS, a six (6) month extension of the emergency amendments is being requested to allow for the emergency amendments to remain in effect while the Legislative Operating Committee finalizes the development of permanent amendments to the Law to be presented to the General Tribal Council for adoption; and

NOW THEREFORE BE IT RESOLVED, that the emergency amendments to the Oneida Personnel Policies and Procedures are hereby extended for an additional six (6) month period effective November 11, 2022, and shall expire on May 11, 2023.



Statement of Effect

Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures

Summary

This resolution extends the emergency amendments to the Oneida Personnel Policies and Procedures adopted through resolution BC-05-11-22-A for an additional six (6) months in accordance with the Legislative Procedures Act.

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

Date: November 3, 2022

Analysis by the Legislative Reference Office

This resolution extends the emergency amendments to the Oneida Personnel Policies and Procedures (“the Law”) for an additional six (6) month period. The Law sets forth the Nation’s various employment related policies and procedures.

On November 24, 2021, the Oneida Business Committee adopted emergency amendments to the Law 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. After the adoption of emergency amendments to the Law through resolution BC-11-24-21-A, it became clear that additional emergency amendments to the Law would be necessary to clarify inconsistencies that arose as a result of the last emergency amendments. The Oneida Business Committee then adopted additional emergency amendments to the Law on May 11, 2022, through the adoption of resolution BC-05-11-22-A for the purpose providing 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. These emergency amendments are set to expire on November 11, 2022.

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)]. Emergency legislation takes effect immediately upon adoption by the Oneida Business Committee, and remains effective for a six (6) month period of time. [1 O.C. 109.9-5(b)]. The LPA provides the possibility to extend emergency legislation for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

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 January 18, 2023, through the adoption of resolutions BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, and 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, BC-03-23-22-A, BC-05-11-22-E, BC-07-13-22-F, BC-09-14-22-C, and BC-10-26-22-H. [3 O.C. 302.8-2]. 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 were, and continue to be, 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.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law were, and continue to 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 emergency amendments to the Oneida Personnel Policies and Procedures expire on November 11, 2022. The Legislative Procedures Act allows the Oneida Business Committee to extend emergency amendments for a six (6) month time period. [1 O.C. 109.9-5(b)]. A six (6) month extension of the emergency amendments to the Law is being requested to allow for the emergency amendments to remain in effect while the Legislative Operating Committee finalizes the development of permanent amendments to the Law to be presented to the General Tribal Council for adoption.

The extension of the emergency amendments to the Law will become effective on November 11, 2022, when the emergency amendments as adopted through BC-05-11-22-A expire and will remain in effect for an additional six (6) month term which will end on May 11, 2023.

Conclusion

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



ONEIDA NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

Table of Contents (Last update 5/11/22)

<u>SECTION I INTRODUCTION</u>	2
<u>SECTION II - RECRUITING</u>	3
<u>SECTION III – SELECTION POLICY</u>	6
<u>SECTION IV – COMPENSATION AND BENEFITS</u>	13
<u>SECTION V – EMPLOYEE RELATIONS</u>	19
<u>SECTION VI – SAFETY AND HEALTH</u>	28
<u>SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS</u>	29
<u>SECTION VIII - RECORDKEEPING</u>	30
<u>SECTION IX – PRIVACY AND CONFIDENTIALITY OF EMPLOYEE RECORDS</u>	31

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.
 - 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;
 - f) Statewide, through print and electronic media and public employment agencies;

- g) Through targeted recruiting efforts including:
 - i. The Bureau of Indian Affairs;
 - ii. The Oneida Higher Education Office.
- h) Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of HRD with the advice and consent of the affected department.
- 2) A position vacancy shall be posted for a minimum of seven (7) calendar days and shall be open to the general public, unless the position is required to be filled by an enrolled Oneida Nation member.
- 3) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Position description) to begin the re-posting process.
- f. Screening ([HR Interpretation 11-16-12](#)) ([HR Interpretation 10-22-12](#))
 - 1) 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.
 - 2) A Screening Committee consisting of the HRD Representative, the position supervisor, the Area Manager (at their option), and a member of the Personnel Commission shall be convened to conduct the screening of applicants. The Screening process shall begin as soon as practical following the closing of the position. The Screening Committee shall:
 - a) Verify that all applications were submitted on time.
 - b) Applications that are incomplete or were not submitted on or before the posted deadline date may be screened out.
 - c) Analyze the position description to establish screening criteria. These criteria shall include qualifications listed on the position description determined by the supervisor and HRD Representative to be essential to the position. ([T.O.E. WS-5-6-13](#))
 - d) Screen and identify a list of applicants to be interviewed.
 - e) Ensure there are no applicants ineligible for employment with the Nation due to termination or resignation in accordance with the applicable standard operating procedure developed by HRD.
 - 3) 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
- 5) The HRD Representative and supervisor shall construct an interview format consisting of:
- a) A set of questions related to the screening criteria qualifications; and
 - b) An interview rating scale designed to objectively evaluate each applicant's qualifications.
- 6) The HRD Office shall arrange for interviews with the listed applicants.
- g. Applicant Interviews
- 1) An Interview Committee shall be convened consisting of the members of the Screening Committee and a second member of the Personnel Commission. The Interview Committee shall interview applicants and evaluate each individually.
 - 2) No interview shall take place without an HRD Representative present.
 - 3) The HRD Representative shall total the evaluation rating scale to rank order of the applicants.
- h. Selection [\(HR Interpretation - Disqualification of Applicant 10-24-13\)](#)
- 1) The supervisor shall select one of the top two (2) applicants as ranked through the rating scale. [\(HR Interpretation - 10-17-12\)](#)
 - a) The supervisor may conduct an additional follow-up interview with the top two (2) applicants.
 - b) The selection decision shall be governed by the Oneida Preference and Indian Preference Policy. [\(HR Interpretation - 6-6-11\)](#)
 - c) The HRD Office shall notify and offer the position to the selected applicant.
 - i. Should the supervisor's first choice refuse the offer, the HRD Office shall provide the supervisor with the next two (2) ranked applicants to choose from.
 - ii. Should the top two (2) chosen applicants refuse the position offer, the supervisor may:
 - 1. Repeat the hiring selection process outlined in B.2.h.1. above with the remaining candidates; or
 - 2. Re-post the position.

- 2) The HRD Office shall notify those applicants interviewed but not selected of the decision.
- C. INTERNAL POSITION POSTING - The Oneida Nation encourages movement within and among units in order to make the best possible use of human resources to meet the Oneida Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.
1. Procedure
 - a. Internal Position Posting
 - 1) Open positions as determined by a supervisor and their Area Manager may be posted internally for a position transfer for a minimum of five (5) working days.
 - 2) At the end of the five (5) day minimum internal posting period, the HRD Representative shall schedule a screening with the open position's supervisor and the Area Manager (at their option).
 - 3) Employees who are transferred shall not lose any benefits; however:
 - a) An employee may be required to continue serving in 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 Position Structure shall be paid at the grade level corresponding to the new position.
 - c) Requests for transfers for documented medical conditions will be handled on a case-by-case basis and only when in the best interests of both the employee and the Nation.
 - d) The newly transferred employee shall be required to complete a three (3) month probation period. All conditions of the Nation's Original Probation Policy shall apply during that period.
 2. Reassignments
 - a. Title Reassignments
 - 1) Title Reassignments may be made by supervisors to:
 - a) More accurately describe or define an existing position; or
 - b) Make minor adjustments in positions within a unit or operating division.
 - 2) Title Reassignments may be made at any time with the approval of the Area Manager and HRD Representative.
 - b. Position Reassignments
 - 1) Position Reassignments may be made by supervisors to make more efficient and effective use of human resources.
 - 2) Position Reassignments may be supervisor-initiated or employee-initiated but must be made in the best interests of the operating unit.
 - 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
 - a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.

- 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
 - b. All overtime must be reported to the supervisor for evaluation.
 - c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
 - d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forty (40) hour requirements.
 - e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.
 - f. Exempt employees are not eligible for overtime.
 - 1) The HRD Office will maintain a list of exempt employees.
4. Holidays ([Work Standard, 11-7-14](#))
- a. Tribal holidays consist of the following:
 - 1) One-half Day Christmas Eve
 - 2) Christmas Day
 - 3) New Year's Day
 - 4) Memorial Day
 - 5) Veteran's Day
 - 6) Independence Day
 - 7) Labor Day
 - 8) Thanksgiving Day
 - 9) Indian Day (day after Thanksgiving)
 - 10) One-half day Good Friday
 - 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
([BC Resolution – 12-11-13A](#))
 - b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.
 - c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.
 - d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a Sunday will be observed on the following Monday. ([2019 Holiday Observance Calendar](#)) ([2018 Holiday Observance Calendar](#))
 - e. The Oneida Nation acknowledges its responsibility to make a reasonable accommodation to employees who wish time off to observe religious holidays. Requests for such time off will be granted where possible, based on the scheduling and staffing needs of affected departments. Employees wishing to take time off work for religious observances should inform their supervisor as early as possible.

- Employees may use personal time for such requests if eligible; otherwise the time off will be treated as unpaid leave.
5. Vacation/Personal Days
- a. Every 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).
 - 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 result 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.
 - 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.
 - 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 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
 - a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.
 - b. The Human Resources Department is obligated to investigate the complaint which is to be held in the strictest confidence. This investigation shall be done within five (5) working days from receiving the formal written complaint.
 - c. After investigating the complaint and the Human Resources Department finds cause to take disciplinary action due to sexual harassment violation, the employee will be disciplined accordingly

by their supervisor. This disciplinary action shall be initiated within five (5) working days from the date the supervisor receives the report from the Human Resource Department. [\(BC Actions, 7-16-93\)](#)

3. Accumulated Disciplinary Actions Warranting Termination [\(HR Interpretation, 1-29-14\)](#) (Provided that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination for drug and alcohol related violations.) [\(GTC Resolution, 01-05-09A\)](#)
 - a. The accumulation of three (3) upheld warning notices within any twelve (12) month period. (T)
 - b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)
 - c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld suspensions within any twelve (12) month period. (T)
4. Substance Abuse Disciplinary Procedure - Section was deleted. [\(GTC Resolution, 01-05-09-A\)](#)
[Click here](#) for Drug and Alcohol Free Workplace Policy.
5. Disciplinary Procedure [\(Disciplinary Flowchart\)](#)
The following procedure shall be adhered to whenever disciplinary action is taken.
 - a. Supervisor becomes aware of unsatisfactory work performance or violation.
 - 1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.
 - b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken, the time and date of its occurrence, and the specific policy section under which action is being taken.
 - c. The form will be discussed with the employee and a corrective action will be identified.
 - d. The employee being disciplined will sign the form.
 - 1) Should an employee being disciplined refuse to discuss the action with his/her supervisor, the supervisor shall so note this, with date of refusal, on the form and distribute as in 5.e.
 - e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager and General Manager within twenty-four (24) hours of the conference with the employee. [\(HR Interpretation, 12-8-16\)](#)
 - f. Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:
 - 1) The supervisor shall consult with the HRD Manager to mutually determine the length of the suspension.
 - a) Suspensions will be limited to a maximum of three (3) weeks.
 - b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.
6. Grievance [\(Grievance Flowchart\)](#)

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) 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;
 - a) The decision of the Area Manager is clearly against the weight of the evidence; and/or
 - b) Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.
 - 2) If Oneida Personnel Commission members selected to serve as the hearing body for the complaint find one or both conditions exist, the Human Resources Department shall convene the Oneida Personnel Commission to hear the grievance.

- 3) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.
- 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:
 - a) Uphold the disciplinary action; or
 - b) Overturn the disciplinary action and:
 - i. Reinstatement the employee (petitioner) with full back pay for any lost time; or
 - ii. Reinstatement 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.

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.

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.

SECTION VIII – RECORDKEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims
 - g. Disciplinary action information
 - h. Performance evaluations
 - i. Insurance coverage/changes
 - j. Transfers
2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. Oneida Nation employees shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

B. ACCOUNTING DEPARTMENT

1. Basic records to be retained include:
 - a. Attendance records
 - b. Employee Time Sheets
 - c. Earnings - in the form of computer printouts
 - d. Travel - in the form of complete travel authorization forms.
 - 1) Time sheets and travel reports shall be filled out by every employee for pay period, collected by the program head, and forwarded to the Department.
2. The Accounting Department shall retain all records for a period of seven (7) years. [\(BC Action, 10-14-09B\)](#)

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.

December 2022

December 2022

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January 2023

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Nov 27	28	29	30	Dec 1 10:00am LOC Work Session (Microsoft Teams) 1:00pm Layoff Policy amendments work meeting	2	3
4	5 9:00am LRO Staff Meeting (Legislative Reference) 1:00pm Rule Making Authority 3rd Meeting	6	7 8:30am LOC Prep (Microsoft Teams Meeting; 9:00am LOC Meeting (BC_Conf_Room) - LOC	8	9 9:00am Probate Law work meeting (Microsoft Teams Meeting) - Carolyn A. Salutz	10
11	12 10:00am Business Code (BC_Exec_Conf_Room) - 10:00am Business Code (BC_Exec_Conf_Room) -	13 10:00am LOC Work Session (Microsoft Teams) 12:15pm PUBLIC MEETING: Back Pay Law Amendments	14 8:30am Oneida Business Committee Meeting	15	16	17
18	19 10:30am Investigative Leave (Microsoft Teams Meeting) - Grace L. Elliott	20	21 8:30am LOC Prep (Microsoft Teams Meeting; 9:00am LOC Meeting (BC_Conf_Room) - LOC	22	23 12:00pm Holiday - Christmas Eve (Observed 1/2 Day)	24
25	26 8:00am Holiday - Christmas (Observed Holiday)	27	28 8:30am Oneida Business Committee Meeting	29 10:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Leeman	30	31