

Title 3. Health & Public Safety - Chapter 310

SAFE NEIGHBORHOODS

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310.1. Purpose and Policy

310.1-1. *Purpose.* The purpose of this law is not to impose a criminal penalty but rather to serve the Nation's compelling interest to promote, protect, and improve the health, safety, and welfare of the reservation population by prohibiting sex offenders from loitering or residing in specified areas around locations where vulnerable populations, including children, regularly congregate. This law recognizes the right of sex offenders to reenter the community. Therefore, through this law the Nation balances its responsibility to sex offenders with its responsibility to protect the surrounding community by promoting regulatory measures which provide protections for the community that do not wholly prohibit sex offenders from being part of this community.

310.1-2. *Policy.* It is the policy of the Nation that due to the high rate of recidivism for sex offenders, the Nation declares that sex offenders are a serious threat to the public safety of vulnerable populations, including children, if regulatory measures are not in place that protect the community by reducing opportunity and temptation by prohibiting sex offenders from being present on or residing in specified areas designated as places where vulnerable populations commonly congregate.

310.2. Adoption, Amendment, Repeal

310.2-1. This law was adopted by the Oneida Business Committee on an emergency basis by resolution BC-02-25-26-C and then extended on an emergency basis by resolution BC-08-12-26-B.

310.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

310.2-3. 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.

310.2-4. 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.

310.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

310.3. Definitions

310.3-1. 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) "Day" means calendar day.

(b) "Immediate family" means individual's husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, and any of the these relations attained through legal adoption or marriage.

(c) "Judiciary" means the Oneida Nation Judiciary, as identified in Article V of the Constitution and Bylaws of the Oneida Nation, which is the judicial system that was

established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Public Safety and Security Commission” means the entity made up of those individuals appointed by the Oneida Business Committee to provide oversight regarding the activities and actions of public safety and security operations throughout the Reservation.

(f) “Park” means any outdoor area held open for use by the public, including, but not limited to a public park, parkway, campground, recreation or open access space area, beach, conservation area, lake access point, recreation trail/route, or Safe Route, by whatever name such area is known by.

(g) “Permanent residence” means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days.

(h) “Reservation” means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(i) “Sex offender” means a person who:

(1) Is required to register under Wis. Stats. §301.45 for any sexual offense or as otherwise ordered by a court or is found to have committed a sex offense by another jurisdiction within the meaning of Wis. Stats. §301.45(1d)(am);

(2) Is required to register under Wis. Stats. §301.45 and who has been designated a special bulletin (SBN) sex offender pursuant to Wis. Stats. §301.46 (2) and (2m); or

(3) Within the ten (10) years prior to establishing a permanent or temporary residence within the reservation, has been convicted of or found not guilty by reason of disease or mental defect of a violation of Wis. Stats. §940.30 False Imprisonment, if the victim was a minor and not offender’s child, or Wis. Stats. §940.31 kidnapping, if the victim was a minor and not offender’s child.

(j) “Temporary residence” means a place where the person abides, lodges or resides for a period of four (4) or more days within a thirty (30) day period, or for a period of fourteen (14) or more days during any calendar year and which is not the person's permanent address.

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

310.4. Prohibited Locations

310.4-1. *Prohibited Locations*. No sex offender shall enter or be present on any property upon which there exists any:

(a) school;

(b) Tribal or other licensed day care or childcare center;

(c) park or park facility;

(d) playground or green space otherwise designated as a play or recreational area by the Nation’s planning department;

(e) athletic field, including any practice field;

(f) library;

(g) community center;

(h) fitness center, recreation center, or gym;

- (i) farmers market;
- (j) place of worship;
- (k) any other place designated by the Nation as a place where vulnerable populations, including children, are known to congregate.

310.4-2. *Prohibited Locations Exceptions.* A sex offender present in a prohibited location as identified in section 310.4-1 of this law shall not be found to have committed an offense if any of the following apply:

- (a) The property also supports a place of worship, subject to the following conditions:
 - (1) Entrance and presence on the property may occur only during hours of worship or other religious program or service; and
 - (2) The sex offender shall not participate in any religious education programs that include individuals under the age of eighteen (18).
- (b) The property also supports a use lawfully attended by the sex offender's natural or adopted child, which child's use reasonably requires the attendance of the sex offender, provided that entrance and presence on the property occurs only during hours of activity related to the use by the child.
- (c) The property also supports a polling location in a local, state, or federal election, subject to the following conditions:
 - (1) The sex offender is eligible to vote;
 - (2) The polling location is the designated polling location for the sex offender; and
 - (3) The sex offender casts their ballot with whatever usual and customary assistance is available and vacates the property immediately after voting.
- (d) The property also supports a school lawfully attended by the sex offender as a student, provided that the sex offender may only remain on the property at such times that are reasonably required for their educational purposes.
- (e) The property is accessed for use of a medical facility or clinic, behavioral health clinic, police station, food security services, economic or social services, or other governmental building not otherwise enumerated in 310.4-1 of this law, provided that the sex offender vacates the property immediately after completing the activity or service that required their presence at the property.

310.5. Residence Restrictions

310.5-1. *Prohibited Location of Residence.* No sex offender shall establish a permanent residence or temporary residence within two thousand five hundred (2,500) feet of any prohibited locations identified in section 310.4-1 of this law.

310.5-2. *Measurement of Distance.* For purposes of determining the minimum distance of separation required for the permanent residence or temporary residence of a sex offender, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence of the sex offender to nearest outer property line of the prohibited locations identified in section 310.4-1 of this law.

310.5-3. *Residency Restriction Exceptions.* A sex offender residing within an area otherwise prohibited by this law does not commit an offense if any of the following apply:

- (a) The sex offender is required to serve a sentence at a jail, prison, juvenile facility, or other facility located at the otherwise prohibited location.
- (b) The sex offender had established and registered a permanent residence within a restricted area prior to the effective date of this law.

(1) In such circumstances, a sex offender who duly registered their permanent residence address before residency restrictions were adopted by the Nation shall be deemed to have received a waiver, provided that this waiver may be revoked in accordance with section 310.6-5 of this law.

(c) The prohibited location identified in section 310.4-1 of this law was established after the sex offender established a permanent residence at the location and registered that residence as required by law.

(d) The sex offender is a minor or ward under guardianship.

(e) The sex offender's most recent offense occurred more than ten (10) years ago and it has been at least ten (10) years since the sex offender has completed any period of incarceration or court mandated supervision for any offense.

310.5-5. *Prohibition of Sale, Lease, or Rental of Property.* No person or entity shall sell, lease, sublease, rent, convey, or otherwise allow a sex offender to stay in any place, structure, or part thereof with knowledge that it will be used as a permanent residence or temporary residence by any sex offender that is prohibited from establishing residence under this law.

310.6. Waiver of Residence Restrictions

310.6-1. *Petition for Residence Restriction Waiver.* A sex offender may request a waiver from the residence restrictions provided in section 310.5-1 of this law by submitting a written request for a waiver, including any pertinent rationale for a waiver, to the Oneida Police Department prior to establishing a residence that would be in violation of this law.

(a) A sex offender shall not, under any circumstance, be deemed to have established a residence that would otherwise be in violation of this law without first having received permission as evidenced through a waiver. A sex offender cited for residing within a restricted area without first receiving a waiver shall not be eligible to receive a waiver thereafter.

310.6-2. *Review of Waiver Request.* The Chief of Police or their designee shall conduct a review of the request for a waiver using any pertinent information and the following factors related to the Nation's interest in promoting, protecting, and improving the health, safety, and welfare of the community:

- (a) The nature of the offense causing the individual to be a sex offender;
- (b) Police reports related to the predicate offense if available;
- (c) Proximity of the requested residence to the victim;
- (d) The age of the offense, offender, and victim;
- (e) Recommendation of the probation or parole officer, if one exists;
- (f) Recommendation of the police department;
- (g) Recommendation of any treatment practitioner;
- (h) Proposals for safety measures and assurances by the sex offender;
- (i) Conditions to be placed on any exception or variance from the requirements of this law;
- (j) Support systems in place by the sex offender;
- (k) Who the sex offender will be or is living with at the prohibited location;
- (l) Statements of the surrounding community or victim;
- (m) Treatment, sobriety, or rehabilitative measures taken by the sex offender;
- (n) The sex offender's current employment or social activities;
- (o) The sex offender's criminal history; and
- (p) Whether the sex offender meets any of the exceptions provided for in this law.

310.6-3. *Approval or Denial of Waiver.* Within fourteen (14) days of receiving a waiver request, the Chief of Police or their designee shall issue a written decision to the sex offender by first class mail, to the address provided by the requestor, in regard to the request for a residence restriction waiver.

- (a) The decision of the Chief of Police or their designee shall be one (1) of the following:
 - (1) denial of the waiver;
 - (1) approval of the waiver; or
 - (2) approval of the waiver subject to necessary conditions.
 - (A) Conditions may include, but are not limited to, the following:
 - (i) curfew restrictions;
 - (ii) cohabitation restrictions or requirements;
 - (iii) sobriety restrictions;
 - (iv) conduct restrictions; and/or
 - (v) any other decision deemed reasonable and necessary by the Chief of Police.
- (b) Any request for a waiver which has not been approved, approved for a conditional waiver, or denied by the Chief of Police or their designee within thirty (14) days of the request shall be deemed to be denied unless the Chief of Police provides written notice to the sex offender that a one (1) time extension of ten (10) days would be required to make a decision on the waiver.
- (c) If a waiver is granted by the Chief of Police or their designee, the exemption shall only apply to the specific sex offender who had applied for the waiver at the requested residence and shall not be transferable to any other or to any other location.
- (d) A waiver expires when the sex offender who was granted the waiver changes their residence.

310.6-4. *Appeal of Waiver Decision.* A sex offender may appeal the waiver decision made by the Chief of Police or their designee by submitting a written appeal to the Oneida Public Safety and Security Commission within ten (10) days from the date the waiver decision was postmarked.

- (a) The Oneida Public Safety and Security Commission shall make a decision regarding the appeal of the Chief of Police or their designee's decision within fourteen (14) days of receipt of the appeal.
 - (1) The Oneida Public Safety and Security Commission may use a one (1) time extension of ten (10) days to make a decision on the waiver appeal by providing written notice of the extension to the Chief of Police and the sex offender.
- (b) The Oneida Public Safety and Security Commission shall make one of the following decisions in regard to the appeal:
 - (1) Uphold the Chief of Police or their designee's denial of the waiver; or
 - (2) Overturn the Chief of Police or their designee's denial of the waiver and approve:
 - (A) a waiver; or
 - (B) a waiver subject to conditions.
- (c) The decision of the Oneida Public Safety and Security Commission shall be in writing and provided to the sex offender and the Chief of Police.

310.6-5. *Revocation of Waiver.* A waiver issued by the Chief of Police or their designee or the Oneida Public Safety and Security Commission may be revoked by the Chief of Police or their designee if the sex offender is found to have violated the conditions of the waiver or there is

probable cause to believe the sex offender has committed an additional violent, heinous, or sexual criminal offense, which had occurred either before or after the waiver was issued.

- (a) The Chief of Police or their designee shall provide written notice to the sex offender that the exemption or conditional exemption has been revoked and/or further conditioned.

310.7. Map of Prohibited Locations and Residence Restriction Distances

310.7-1. The Geographic Information System Department shall maintain an official map of the reservation showing prohibited locations and the resulting residency restriction distances.

- (a) The Geographic Information System Department shall review the map on an annual basis and update the map to reflect any changes in the prohibited locations.
- (b) The map shall be made available electronically on the Nation's website.

310.7-2. The absence of a location on the map shall not be a defense to enforcement under this law where the sex offender is found to be within a prohibited location and circumstances make it clear that the sex offender had actual notice of that prohibited location.

310.8. Enforcement and Penalties

310.8-1. *Issuance of a Citation.* An individual who violates any provision of this law may be subject to the issuance of a citation by an Oneida Police Department officer.

- (a) A citation for a violation of this law or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court.
- (b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
- (c) *Notice to the Comprehensive Housing Division.* The Oneida Police Department shall provide notice to the Oneida Law Office attorney assigned to the Comprehensive Housing Division of any citation, revocation, or conditioning of a waiver issued to an individual located at a property rented or leased through the Comprehensive Housing Division.
 - (1) Any information or reports shared by the Oneida Police Department officer with the Oneida Law Office attorney shall be redacted by the Oneida Law Office attorney as agreed upon between the Oneida Law Office and the Oneida Police Department Chief of Police prior to release to the Comprehensive Housing Division for potential lease or rental enforcement.

310.8-2. *Penalties.* Upon a finding by the Trial Court that a violation of this law has occurred, the individual may be subject to the following penalties:

- (a) *Fines.* An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall adopt through resolution a citation schedule which sets forth specific fine amounts for violations of this law.
 - (1) All fines shall be paid to the Judiciary.
 - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.
 - (A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is negotiated by the Oneida Law Office and approved by the Trial Court.
 - (3) If an individual does not pay their fine the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Trial Court.
 - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

(b) *Community Service.* An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.

(1) All community service assignments shall be approved by the Trial Court. The Trial Court shall give preference to culturally relevant community service assignments or community service assignments that focus on the betterment of the individual's community.

(2) The Trial Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.

(3) The Trial Court's community service order shall specify:

(A) how many hours of community service the individual is required to complete;

(B) the time frame in which the hours shall be completed;

(C) how the individual shall obtain approval for their community service assignment;

(D) how the individual shall report their hours; and

(E) any other information the Trial Court determines is relevant.

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

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

End.

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