



Title 6. LEASING – Chapter 602 Rule #3 – COMMERCIAL LEASES

- 3.1 Purpose and Authority
- 3.2 Adoption, Amendment and Repeal
- 3.3 Definitions
- 3.4 Procedures

3.1 Purpose and Authority

3.1-1. *Purpose.* The purpose of this rule is to codify the existing Standard Operating Procedure concerning commercial leases, granting the Oneida Nation's Commercial Leases in a manner that is fair and equitable for tribal fee and trust lands to be used for commercial purposes. This rule does not apply to commercial leases granted pursuant to a condition of sale and land acquisition.

3.1-2. *Authority.* The Leasing law delegates joint rulemaking authority to the Environmental Health, Safety, and Land Division and the Land Commission pursuant to the Administrative Rulemaking law.

3.2. Adoption, Amendment and Repeal

3.2-1. This rule was a standard operating procedure that existed prior to the Administrative Rulemaking law. This rule is exempt from the administrative rulemaking requirements because it is a current and continued use of the existing standard operating procedure.

3.2-2. This rule may be amended or repealed by the Environmental Health, Safety, and Land Division and the Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

3.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

3.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

3.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to commercial leases issued pursuant to the Leasing law.

3.3. Definitions

3.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Availability List" means a list of properties available for commercial leasing.
- (b) "Approved Plans" are plans approved by the Oneida Zoning Administrator with written recommendations to the Land Commission for final approval. Such plans include, but are not limited to:
 - i. Building Plans
 - ii. Concept paper(s)
 - iii. Letter(s) of intent
- (c) "Bureau of Indian Affairs" (BIA) is the authorized agency of the Department of Interior responsible for carrying out trust responsibilities to Indian tribes and individuals.

- (d) “Business Day” means office hours of the Oneida Nation, being Monday through Friday 8:00 a.m. to 4:30p.m. not including holidays identified by the Human Resources Department.
- (e) “Business Plan” is a plan developed by an Individual, Tribal Entity, Corporation, or Limited Liability Corporation which includes the economic cycle of prosperity followed by a decline then a return to prosperity.
- (f) “CAP Rate” (capitalization rate) is the rate of return a property will produce on the owner’s investment.
- (g) “Commercial Lease” (used interchangeably with “business lease”) is a lease issued by the Environmental Health, Safety, and Land Division on behalf of the Nation for commercial purposes.
- (h) “Concept Paper” is an idea, plan, or scheme outlining the vision or goal of the business. A concept paper is not limited to the history, activity, ownership, management, market, and financials of the business.
- (i) “Cultural Properties Survey Request Form” is a mandatory registration of any projects that will involve earth moving activity. This request triggers an archives literature research by Cultural Heritage. A clearance letter from Cultural Heritage is necessary before development can occur.
- (j) “Environmental Health, Safety, and Land Division” (Division) is the approved administrative subsidiary of the Oneida Nation to execute all commercial leases on behalf of the Oneida Nation as Lessor.
- (k) “Environmental Impact Request Form” is a mandatory form that starts the NEPA review on any earth moving activity.
- (l) “Finding of No Significant Impact” (FONSI) is a statement that the proposed development project has no significant impacts to the human environment that were identified in the Environmental Assessment.
- (m) “Land Commission” is the authorized commission to approve all commercial leases on behalf of the Oneida Nation.
- (n) “Land Titles and Record Office” (LTRO) is the authorized Bureau of Indian Affairs (BIA) department to record all land transactions in trust located in Aberdeen, SD.
- (o) “Land Use Technical Unit” (LUTU) is a multi-disciplinary planning team consisting of representatives of tribal departments who analyze information to provide land use recommendations to Land Commission.
- (p) “Land Use Technical Unit Phase II” (LUTU II) is a process to determine the appropriate area for development with a multi-disciplinary planning team consisting of representatives of tribal departments who analyze information to provide land use recommendations to Land Commission.
- (q) “Letter of Intent” is an idea, plan or concept outlining the vision or goal of a business plan. It can be a condensed version of the business plan. It must provide enough information on the operations of the business. The Land Commission may request a Business Plan based on the development of property.
- (r) “National Environmental Policy Act” (NEPA) is an assessment of environmental impacts for a proposed development projects before construction begins.
- (s) “Oneida Nation Register of Deeds” (ONROD) is the authorized tribal department to record all tribal fee and trust land transactions for the Oneida Nation.

- (t) “Oneida Tribal Priorities” are commercial leasing priorities determined by the Oneida Land Commission and are as follows:
 - i. Oneida Nation Entities: Includes the Nation’s divisions, departments, programs, services, approved boards and commissions, and enterprises.
 - ii. Oneida Chartered Corporations: Are tribal corporations chartered under the laws, ordinances, and jurisdiction of the Oneida Nation.
 - iii. Individual Tribal Members: Are members enrolled with the Oneida Nation and/or businesses owned 51% or more by Tribal Members.
 - iv. Any others: are other non-Oneida Indians, non-tribal entities, or individuals.
- (u) “Oneida Nation” is a federally recognized Indian Tribe in the State of Wisconsin.
- (v) “Preliminary Plans” means plans or blueprints showing the layout of the improvements to the site.
- (w) “Preliminary Site Plans” means plans showing the layout of the site.
- (x) “Title Report” is a report that provides information on the title of the land that is owned by the Oneida Nation. Includes liens, outstanding leases, encroachments, easements, tax information, and any defects which may prevent clear title.
- (y) “Title Status Report” (TSR) is a report on trust land that provides information on the title of the land that has been recorded with the BIA and included with the Oneida Title Report.
- (z) “Tribal Fee Land” means land owned by the Oneida Nation that is taxable status land.
- (aa) “Tribal Trust Land” means land owned by the Oneida Nation that is held in trust to the United States of America.
- (bb) “Triple Net Lease” is a lease in which the lessee/tenant generally pays, but is not limited to: all of the operating expenses, real estate taxes, insurance, utilities, license fees, repairs, and maintenance service fees.

3.4. Procedures

3.4-1. Distribution of Commercial Development and Leasing list. All tribal fee and trust lands ready for commercial development will be compiled on a list as commercial lands become ready to be distributed. The ~~proposed~~ list will be placed on the Land Commission agenda semi annually, or more frequently as needed. Land that is considered ready for development, must have the following items completed:

- (a) There are no delinquent leases or debts owed to the Oneida Nation.
- (b) The LUTU has been completed.
- (c) The Land Commission has approved the LUTU(s) and LUTU Phase II recommendation, if any.
- (d) Oneida Nation Zoning submits a written report to the Land Commission on the development.
- (e) The Title Report has been completed and shows no liens, outstanding leases, encroachments and restrictions which would prevent a clear title. Such report is waived if an acquisition is less than six (6) months old when Title Insurance has been ordered in an acquisition.

3.4-2. Commercial Development and Leasing, General Interest.

- (a) An Entity, Business, or Individual may inform Environmental Health, Safety, and Land Division they are interested in leasing tribal fee and trust land for commercial

purposes. When this occurs the Commercial Leasing Specialist will send an application in accordance with sec. 3.4-3.

(b) Return of Completed Application. When the application is completed and returned, the Commercial Leasing specialist shall:

i. If the site has not been advertised and is not currently leased, refer to planning for assistance in locating a suitable site.

1. The Commercial Leasing Specialist will present this information to the Land Commission, along with planning recommendation for a decision on an option to lease, set aside land, or obtain more information, if appropriate.

ii. If the site has been advertised and is not currently leased, follow the commercial leasing process set forth in this rule.

3.4-3. Assembling the Application. The Commercial Leasing Specialist shall assemble the application packet, including:

(a) The Application, as developed by Commercial Leasing Specialist;

(b) Information regarding qualifications pursuant to this rule, including financial statement;

(c) The tribal enrollment verification form, if applicable;

(d) A deadline date and contact person;

(e) Lease Application;

(f) Land Survey with legal description, if applicable;

(g) Zoning information on the land use, including LUTU.

3.4-4. Verification of Compliance. The Commercial Leasing Specialist will receive written verification the requirements of sec. 3.4-3 and other applicable sections of this rule and Oneida laws are complied with, including: zoning approval, FONSI, any sanitary permit, utilities, Cultural Heritage letter of clearance, and anything else that is applicable.

3.4-5. Public Notice and Posting. The Commercial Leasing Specialist shall draft the public notice and publically post the notice to include:

(a) Acreage, length of lease and location of parcel available for leasing;

(b) Location of application pick-up and drop-off;

(c) Application deadline;

(d) Method of determining who will be awarded the lease.

(e) Posting shall occur at the following:

i. Kalihwisaks;

ii. Environmental Health, Safety, and Land Division website;

iii. At Environmental Health, Safety, and Land Division.

3.4-6. Receipt of Applications. Environmental Health, Safety, and Land Division administrative staff will date and time stamp applications when received and forward to the Commercial Leasing Specialist to rank.

3.4-7. Applicant Qualifications. The Commercial Leasing Specialist will collect all applications. If the applicant is an individual, the applicant must meet the following minimum criteria:

(a) Must have submitted application prior to the application deadline;

(b) Must have minimum credit score of 550, unless otherwise stated;

(c) Must have maximum debt to income ratio of 40%;

(d) Must be current with all current tribal leases and/or loans;

(e) Must be at least 21 years of age;

(f) Must not have filed for bankruptcy within past three calendar years;

- (g) If applying as a tribal member, ensure enrollment verification form is attached; and any tribal debt must be paid within 10 business days of being notified of the opportunity to lease;
 - (h) May need to have a current business plan in place incorporating present and projected use of tribal fee and/ or trust land.
- 3.4-8. Ranking of Applications. The Commercial Leasing Specialist will rank the qualified applicants according to the Oneida Tribal Priorities. Ranking occurs as follows:
- (a) The highest bidder is designated as “Applicant A”, the second highest bidder as “Applicant B”, etc.
 - (b) If no qualified applicants are received, the Land Commission may consider:
 - i. Re-advertising;
 - ii. Advertising the option to lease in other newspapers;
 - iii. Leasing below the reserve when applicants timely submitted an application;
 - iv. Offering the lease to a tribal department for the reserve lease payment;
 - v. The Commercial Leasing Specialist will send all inquiries for commercial property received from the Oneida Nation and Tribal Corporations, including the calculation of land lease fees, to the Land Commission for approval.
- 3.4-9. Calculating Lease Fees. All leases will be triple net, with the exception of tribal departments or exceptional circumstances approved by the Land Commission. Additionally and accordance with secs. 602.8 of the Leasing Law, land rate determination may include: fair market value, appraisal, present value, and/ or gross or net profit.
- 3.4-10. Land Commission Approval.
- (a) The Commercial Leasing Specialist shall submit a copy of the proposed lease to the Land Commission for approval, and include the following:
 - i. Legal review of the lease and relevant portions of the application packet;
 - ii. Draft resolution;
 - iii. Survey map and legal description;
 - ix. Disclaimer, if applicable;
 - x. Anything else that may be relevant.
 - (b) The Land Commission may decline, table for more information, or approve the lease. After approval occurs, a Land Commission resolution is executed.
- 3.4-11. Execution of Lease.
- (a) The Commercial Leasing Specialist shall obtain four original signed and notarized leases with the attachments listed in 3.4-10(a).
 - (b) The Commercial Leasing Specialist shall forward copies of the signed lease to the following:
 - i. Lessee;
 - ii. Lessor, for filing;
 - iii. ONROD for recording;
 - ix. Central Accounting;
 - x. BIA, if trust land.
- 3.4-12. Lease Compliance. The Lessee will send the Certificate of Insurance and lease fees to the Environmental Health, Safety, and Land Division.
- 3.4-13. Record Retention. All completed applications will remain on file with the Commercial Leasing Specialist for one (1) year.

End.

Original effective date: 05-16-2018
