



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
January 2, 2019 9:00 a.m.

**I. Call to Order and Approval of the Agenda**

**II. Minutes to be Approved**

1. December 19, 2018 LOC Meeting Minutes (pg. 2)

**III. Current Business**

1. Petition: Scott Kosbab – Creating a Term Limit Law (pg. 4)
2. Employee Protection Policy Amendments (pg. 13)
3. Petition: Gina D. Powless – Rescinding the Removal Law (pg. 32)
4. Oneida Personnel Commission Bylaws (pg. 37)

**IV. New Submissions**

1. General Welfare Exclusion Act – Income Exemptions (pg. 67)

**V. Additions**

**VI. Administrative Updates**

**VII. Executive Session**

**VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
December 19, 2018  
9:00 a.m.

**Present:** David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III

**Excused:** Daniel Guzman King

**Others Present:** Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Lee Cornelius, Bonnie Pigman

**I. Call to Order and Approval of the Agenda**

David P. Jordan called the December 19, 2018 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to approve the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

**II. Minutes to be Approved**  
**December 05, 2018 LOC Minutes**

Motion by Kirby Metoxen to approve the December 05, 2018 Legislative Operating Committee meeting minutes and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

**III. Current Business**

**1. Employee Protection Policy Amendments (:54-1:45)**

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

**IV. New Submissions**

**1. Curfew Law (1:47-5:39)**

Motion by Jennifer Webster add the Curfew Law to the active files list and assign Ernest Stevens III as the sponsor; seconded Ernest Stevens III. Motion carried unanimously.

**V. Additions**

**VI. Administrative Items**

**1. LOC Response to the TAP Laws and Policy Subcommittee Memorandum (5:40-7:46)**

Motion by Jennifer Webster to approve the LOC response to the TAP Laws and Policy Subcommittee memorandum and send to the recipients identified in the memorandum



and add the Trust Enrollment Committee; seconded by Ernest Stevens III. Motion carried unanimously.

**VII. Executive Session**

**VIII. Adjourn**

Motion by Kirby Metoxen to adjourn the December 19, 2018 Legislative Operating Committee meeting at 9:07 a.m.; seconded by Ernest Stevens III. Motion carried unanimously.



Legislative Operating Committee  
January 2, 2019

# Petition: Scott Kosbab – Creating a Term Limits Law

<b>Submission Date:</b> 11/21/18	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This petition has the following summary of purpose:*

- 1) *To adopt "TERM LIMITS LAW" specifying that two (2) entire consecutive terms per person are maximum allowable term limits for assignments to the ONEIDA BUSINESS COMMITTEE and all BOARDS, COMMISSIONS, COMMITTEES, AD-HOC TASK FORCES, and CORPORATE BOARDS.*
- 2) *"TERM LIMITS LAW" will not prevent any person from serving more than two (2) terms if there has been two (2) entire terms between the specific assignment [sic].*
- 3) *"TERM LIMITS LAW" will limit reimbursement(pay) to not exceed \$100 per meeting and be limited to one (1) meeting every other week or twenty-six each year.*
- 4) *ALL ELECTED CHAIRPERSONS ARE EXEMPT FROM TERM LIMIT LAW"*

**11/14/18 OBC:** Motion by David P. Jordan to acknowledge the receipt of the petition from Scott Kosbab regarding Creating a Term Limits law, seconded by Jennifer Webster. Motion carried.

Motion by Jennifer Webster to assign the petition to a GTC meeting agenda to be tentatively held on February 24, 2019 at 10:00 a.m., seconded by David P. Jordan. Motion carried.

Motion by Jennifer Webster to direct the OBC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary by Friday, November 30, 2018, seconded by David P. Jordan. Motion carried.

Motion by David P. Jordan to direct the Law, Finance, and Legislative Reference Offices to complete and submit the legal review, fiscal impact statement, and statement of effect, respectively, for a special Business Committee meeting to be scheduled by the Secretary between January 2, 2019, and January 18, 2019, seconded by Trish King. Motion carried.

**11/21/18 LOC:** Motion by Kirby Metoxen to add the Petition: Scott Kosbab – Creating Term Limits law to the Active Files List and assign David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**Next Steps:**

- Accept the statement of effect for the Petition: Scott Kosbab – Creating a Term Limits Law and forward to the Oneida Business Committee.





## Statement of Effect

*Petition: Scott Kosbab – Creating a Term Limits Law*

### Summary

This petition requests the General Tribal Council to consider creating a Term Limits law which would provide the maximum allowable consecutive terms limits for all elected and appointed positions, except elected chairpersons, and limit the amount of reimbursement a person in an elected or appointed position is eligible to receive. This petition would result in a legislative impact as it conflicts with the Oneida Nation Law Enforcement Ordinance and the Boards, Committees, and Commissions law. Additionally, the development of a Term Limits law would be required to comply with the Legislative Procedures Act.

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

*Date: January 2, 2019*

### *Analysis by the Legislative Reference Office*

On November 1, 2018, the Petition: Scott Kosbab – Creating a Term Limits Law (“the Petition”) was submitted to the Business Committee Support Office by Scott Kosbab and has since been verified by the Oneida Trust Enrollment Department. On November 14, 2018, the Oneida Business Committee accepted the verified Petition and requested that the Legislative Reference Office complete a statement of effect for a special Business Committee meeting to be scheduled by the Secretary between January 2, 2019, and January 18, 2019.

The purpose of this Petition is to “1) To adopt "TERM LIMITS LAW" specifying that two (2) entire consecutive terms per person are maximum allowable term limits for assignments to the ONEIDA BUSINESS COMMITTEE and all BOARDS, COMMISSIONS, COMMITTEES, AD-HOC TASK FORCES, and CORPORATE BOARDS. 2) "TERM LIMITS LAW" will not prevent any person from serving more than two (2) terms if there has been two (2) entire terms between the specific assignment [sic]. 3) "TERM LIMITS LAW" will limit reimbursement (pay) to not exceed \$100 per meeting and be limited to one (1) meeting every other week or twenty-six each year. 4) ALL ELECTED CHAIRPERSONS ARE EXEMPT FROM TERM LIMIT LAW.”

### *The Legislative Process*

The Petition requests the General Tribal Council to adopt a Term Limits law. The process for the adoption of laws of the Nation was set forth by the General Tribal Council through the Legislative Procedures Act (“the LPA”). The LPA intends to ensure that there is a standard process for developing legislation for the Nation. [1 O.C. 109.1-2]. Although the LPA is not construed to impede the constitutional right of a member of the Nation under Article III, Section 4 of the Oneida Nation Constitution and Bylaws to petition for a special meeting of the General Tribal Council, the lawmaking requirements provided by the LPA do apply to all legislation considered by the Oneida Business Committee or the General Tribal Council. [1 O.C. 109.1-3, 109.1-1].

A person who is interested in pursuing the development of a law may submit a written request for legislation to the Legislative Reference Office, who shall then place the request for legislation on the agenda of the next duly called Legislative Operating Committee meeting. [1 O.C. 109.5-1, 109.5-2]. General Tribal Council delegated the Legislative Operating Committee the responsibility for the development of laws of the Nation. The Legislative Operating Committee is comprised of those Oneida Business Committee members who do not hold officer positions. [1 O.C. 110.4-1(b)]. The Legislative Operating Committee shall then either accept or deny the request, except that the Legislative Operating Committee shall not deny a request for legislation directed by a General Tribal Council law, resolution, or motion. [1 O.C. 109.5-2(a)-(b)].

Once the Legislative Operating Committee accepts a request for legislation and directs that a law be developed in accordance with the LPA, a draft of the proposed law is created through research, review of other similar laws, collaboration with affected entities, and community engagement efforts. Once a draft of the proposed law is approved by the Legislative Operating Committee a legislative analysis of the draft legislation is completed. The purpose of the legislative analysis is to describe the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. [1 O.C. 109.3-1(g)]. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].

Next, the Legislative Operating Committee moves forward with obtaining a public review of the proposed legislation. The Legislative Operating Committee determines a public meeting date and then a public meeting notice is created that contains the date, time and place of the public meeting, the time period for the public comment period, and the name, address, phone number, and other appropriate information on where to submit comments on the proposed legislation. [1 O.C. 109.8-2]. At least ten (10) business days before the public meeting is held the public meeting notice is published in the Kalihwisaks, while the public meeting notice, proposed draft of the legislation, legislative analysis, and fiscal impact statement if available, are published on the Oneida Register found at <https://oneida-nsn.gov/government/register/>, and electronically noticed to all managers and directors. [1 O.C. 109.8-2]. The managers and directors who receive the public meeting materials are then required by law to direct employees of the Nation who have special knowledge or expertise on the proposed legislation to provide public comments. [1 O.C. 109.8-4(a)].

The public meeting on the proposed legislation shall be presided over by at least one (1) member of the Legislative Operating Committee. [1 O.C. 109.8-3(a)]. The purpose of the public meeting is to solicit oral comments from members of the community on the proposed legislation. [1 O.C. 109.8-3]. After the public meeting concludes, the Legislative Operating Committee holds open a public comment period for at least five (5) business days. [1 O.C. 109.8-1(a)]. During the public comment period individuals may submit written comments including data, views, arguments, or concerns to the Oneida Business Committee Secretary or the Legislative Reference Office in person or through United States mail, interoffice mail, e-mail, or fax. [1 O.C. 109.8-1(c), 109.4-4(b)].

Once the public comment period has concluded, the Legislative Operating Committee is required by the LPA to consider fully all written comments and oral testimony received during the public comment period and any public meeting on the proposed legislation. [1 O.C. 109.8-4]. The Legislative Operating Committee accomplishes this responsibility through the development of a public comment review memorandum that provides the Legislative Operating Committee's consideration of every comment received, and demonstrates any changes made to the proposed legislation based on the public comments.

A fiscal impact statement is also required for all proposed legislation. [1 O.C. 109.6-1]. A fiscal impact statement provides an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)]. The Legislative Operating Committee may direct that a fiscal impact statement be submitted by any agency who may receive funding if the legislation is enacted, may administer a program if the legislation is enacted, may have financial information concerning the subject matter of the legislation, or the Finance Department. [1 O.C. 109.6-1].

After all the requirements of the LPA are met and the Legislative Operating Committee is satisfied with proposed legislation, the Legislative Operating Committee shall forward the proposed legislation, legislative analysis, and fiscal impact statement to the Oneida Business Committee for consideration. [1 O.C. 109.9-1]. The Oneida Business Committee shall then either consider the adoption of the legislation or forward the legislation to the General Tribal Council for consideration. [1 O.C. 109.9-1(a)-(b)]. A law is adopted, amended, or repealed upon adoption of a resolution. [1 O.C. 109.9-2]. For those laws considered by the Oneida Business Committee a majority vote is required for the adoption of the law, while amendments and repeals of a law are handled in accordance with the laws governing Oneida Business Committee Action. [1 O.C. 109.9-2(a)]. For those laws considered by the General Tribal Council, adoption, amendment, and repeal of laws are done in accordance with the laws governing General Tribal Council action. [1 O.C. 109.9-2(b)]. Any action by the General Tribal Council to overrule previous passed motions or resolution required a two-thirds (2/3) vote. [1 O.C. 113.3-1(a)(3)].

Once legislation is adopted through resolution by either the Oneida Business Committee or the General Tribal Council the law shall become effective ten (10) business days after the date of adoption, unless a different effective date is specified. [1 O.C. 109.9-3]. The Legislative Operating Committee is then responsible for publishing the law in the Oneida Code of laws by the effective date. [1 O.C. 109.9-4]. The Oneida Code of Laws can be found at <https://oneida-nsn.gov/government/register/laws/>.

Although through this Petition the General Tribal Council can direct the creation of a Term Limits law, the development of that law would have to follow the process and procedures set forth by the LPA.

### ***Term Limits***

The Petition asks the General Tribal Council to consider the adoption of a Term Limits law that would specify that a person serving a position on the Oneida Business Committee, a corporate

board of the Nation, an ad-hoc task force, or any other board, committee, or commission of the Nation:

- is limited to serving two (2) consecutive terms on the entity; and
- is not prohibited from seeking a position on an entity the person previously served two (2) consecutive terms as long as there has been two (2) consecutive terms since the person's specific assignment.

There is currently no legislation of the Nation that addresses term limits of those individuals elected to the Oneida Business Committee. The Constitution and Bylaws of the Oneida Nation ("the Constitution") provides many details on the various requirements for the Oneida Business Committee such as:

- Who may run for office with the Oneida Business Committee - a person must be age twenty-one (21) or over and physically reside in either Brown or Outagamie Counties;
- How many members may sit on the Oneida Business Committee - overall the Oneida Business Committee will be comprised of nine (9) members;
- What officer positions must be held on the Oneida Business Committee – it is necessary to have a chairperson, a vice chairperson, a treasurer, and a secretary;
- What constitutes a quorum – a quorum is a majority of the body including the chairperson or vice chairperson;
- How regular meetings will be established – regular meetings are established by resolution of the Oneida Business Committee;
- Notice requirements for special meetings – it is required that there be at least three (3) day advance notice by the chairperson to all members or upon written request of a majority of the Oneida Business Committee stating the time, place, and purpose of the special meeting;
- How vacancies are filled - General Tribal Council may at any regular special meeting fill any vacancies that occur on the Oneida Business Committee for an unexpired term;
- How Oneida Business Committee members are removed – removal is at the discretion of the General Tribal Council by a two-thirds (2/3) majority vote at any regular or special meeting of the General Tribal Council pursuant to a duly adopted ordinance, which is the Nation's Removal law; and
- How often Oneida Business Committee members are elected – elections occur every three years in the month of July.

*[see Constitution Article III, Section 3 and Article III, Section 4].*

Although the Constitution provides many details regarding election to the Oneida Business Committee and composition of the Oneida Business Committee, term limits for those individuals elected to serve a position on the Oneida Business Committee were not included.

Boards, committees, and commissions of the Nation are governed by the Boards, Committees, and Commissions law. The Boards, Committees, and Commissions law governs the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. *[1 O.C. 105.1-1]*. The Boards, Committees, and Commissions law applies to all boards, committees, and commissions of the Nation created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership. *[1 O.C. 105.3-1(h)]*. This law also applies to task force or ad hoc entities, which are defined as group of persons gathered to

pursue a single goal, the accomplishment of which means the disbanding of the group. [1 O.C. 105.3-1(r)]. The goals of a task force or ad hoc entity are generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term. [1 O.C. 105.3-1(r)]. The Oneida Business Committee and corporations of the Nation are not subject to the provisions of the Boards, Committees, and Commissions law. [1 O.C. 105.1-1(a)-(b)].

The Boards, Committees, and Commissions law does not directly provide for term limits for those individuals elected or appointed to serve on a board, committee, or commission of the Nation. The Boards, Committees, and Commissions law does however require that every board, committee, or commission of the Nation have bylaws that conform to the requirements of the law. [1 O.C. 105.10-1]. Task forces and ad hoc entities are exempted from the requirement to have bylaws, but must have, at minimum, mission or goal statements for completion of the task. [1 O.C. 105.10-1(c)]. All bylaws are required to include information on the membership of the board, committee or commission, such as the number of members on an entity, if members are appointed or elected, and qualifications for membership. [1 O.C. 105.10-3(a)(5)]. It is within this section of the bylaws that a board, committee, or commission of the Nation can include information on term limits, and whether serving a certain number of consecutive terms on a board, committee, or commission then bars qualification for membership.

Although the Boards, Committees, and Commissions law does not provide for term limits for those individuals sitting on a board, committee, or commission of the Nation, there are other laws of the Nation which do address this matter. The Election law, as adopted by the General Tribal Council through resolution GTC-04-23-17-A, provides that an Election Board member is elected to a term of three (3) years, not to exceed two (2) consecutive terms. [1 O.C. 102.4-2]. The Oneida Nation Law Enforcement Ordinance provides that those individuals appointed by the Oneida Business Committee to serve on the Oneida Police Commission are not allowed to serve more than three consecutive terms. [3 O.C. 301.6-2]. The Petition's request to have a Term Limits law limit an individual to serving two (2) consecutive terms on a board, committee, or commission of the Nation would directly conflict with the Oneida Nation Law Enforcement Ordinance's provision on term limits.

The only other board, committee, or commission of the Nation to currently have term limits is the Oneida Nation Commission on Aging, and this is a requirement only found in the bylaws of the commission. The bylaws of the Oneida Nation Commission on Aging contain a provision that limits a commissioner to serving two (2) consecutive terms in accordance with Wisconsin Statute 46.82(4)(c). The Oneida Nation Commission on Aging's bylaws do allow a commissioner who has completed two (2) consecutive terms to be eligible to serve another term as long as a period of not less than one (1) year has lapsed since the commissioner's previous terms. This provision of the bylaws would conflict with the Petition's request to have a Term Limits law provide that an individual is not prohibited from seeking a position on an entity the person previously served two (2) consecutive terms as long as there has been two (2) consecutive terms since the person's specific assignment.

There is currently no legislation of the Nation that address corporate entities of the Nation, or more specifically, term limits for those individuals serving a position on a corporate entity of the Nation.



### ***Term Limit Exemption for Elected Chairpersons***

The Petition requests the General Tribal Council to consider allowing the proposed Term Limits law to provide an exemption from all provisions of the Term Limits law to all elected chairpersons. The application and impact of the Petition's proposed exemption for all elected chairpersons from the provisions of the Term Limits law is currently unclear as there is not enough information provided for it to be known whether this exemption would apply to only those chairpersons that were elected by the Nation's membership to specifically hold a chairperson position, such as the Oneida Business Committee chairperson position, or if the exemption would apply to all individuals holding a chairperson position on an elected entity of the Nation, even if that chairperson position was selected not by the membership of the Nation, but by the specific board, committee, or commission in accordance with the board, committees or commission's bylaws [*O.C. 105.10-3(b)(5)*], or other governing document or process.

Provisions regarding term limits are only provided for in the Election law, the Oneida Nation Law Enforcement Ordinance, and the Oneida Nation Commission on Aging's bylaws. Of the three (3) entities governed by those documents only the Election Board and the Oneida Nation Commission on Aging are elected bodies. Neither the Election law, nor the Oneida Nation Commission on Aging's bylaws allow for an exemption from term limits for the chairperson.

### ***Stipends and Reimbursement***

The Petition asks the General Tribal Council to consider the adoption of a Term Limits law that would limit the amount of reimbursement or pay an individual serving a position on the Oneida Business Committee, a corporate board of the Nation, an ad-hoc task force, or any other board, committee, or commission of the Nation can receive up to one hundred dollars (\$100) per meeting. The Petition also requests that the proposed Term Limits law limit the number of meetings that a member of the Oneida Business Committee, a corporate board of the Nation, an ad-hoc task force, or any other board, committee, or commission of the Nation are allowed to receive reimbursement for to one (1) meeting every other week, or twenty-six (26) meetings a year.

Stipends and reimbursement for general boards, committees, and commissions of the Nation are governed by the Boards, Committees, and Commissions law. The Oneida Business Committee is delegated the authority to set stipend amounts by resolution. [*O.C. 105.13-2*]. The Oneida Business Committee adopted resolution BC-09-26-18-D titled, "*Boards, Committees, and Commissions Law Stipends*" which sets forth stipend amounts to be paid to a member of a board, committee, or commission of the Nation.

In regard to stipends or reimbursement for attendance at a meeting, a member of a board, committee, or commission shall receive a meeting stipend for a regular or emergency meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. [*O.C. 105.13-3*]. An individual serving on an appointed board, committee, or commission is limited to receiving no more than one (1) seventy-five dollar (\$75) meeting stipend per month. [*O.C. 105.13-3(a), BC-09-26-18-D*]. An individual serving on an elected

board, committee, or commission is limited to receiving no more than two (2) one hundred dollar (\$100) meeting stipends per month. [1 O.C. 105.13-3(b), BC-09-26-18-D].

Additionally, a member of a board, committee, or commission can also receive a stipend for a joint meeting with the Oneida Business Committee where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting. [1 O.C. 105.13-4]. A joint meeting stipend does not count towards the general limitation on meeting stipends. [1 O.C. 105.13-4(a)(1)]. An individual serving on an appointed board, committee, or commission is eligible to receive a seventy-five dollar (\$75) stipend for a joint meeting with the Oneida Business Committee. [BC-09-26-18-D]. An individual serving on an elected board, committee, or commission is eligible to receive a one hundred dollar (\$100) stipend for a joint meeting with the Oneida Business Committee. [BC-09-26-18-D].

In addition to stipends or reimbursement for attendance at meetings, the Boards, Committees and Commissions law and Oneida Business Committee resolution BC-0-26-18-D identify other stipends available to members of boards, committees, and commissions. Other stipends include:

- *Oneida Judiciary Hearing Stipends.* If a member of a board, committee or commission is required by official subpoena to attend a Judiciary hearing, that member is eligible for a stipend of fifty dollars (\$50). [1 O.C. 105.13-5, BC-09-26-18-D];
- *Board, Committee or Commission Hearing Stipend.* If a member of a board, committee, or commission that maintains hearing authority conducts a hearing administered by the board, committee, or commission, the member is eligible for a stipend of fifty dollars (\$50). [1 O.C. 105.13-6, BC-09-26-18-D];
- *Pow-wow Activity Stipends.* A member of the Oneida Pow-wow Committee is eligible to receive a stipend of twenty-five dollars (\$25) per hour for services he or she provides during each Pow-wow, not to exceed two hundred dollars (\$200) per day, contingent upon available budgeted funds. [1 O.C. 105.13-7, BC-09-26-18-D];
- *Election Activity Stipends.* A member of the Oneida Election Board is eligible to receive a stipend of ten dollars (\$10) per hour for services he or she provides during an election including, but not limited to, managing the polling site, recounts, and lot drawings. [1 O.C. 105.13-7, BC-09-26-18-D];
- *General Tribal Council Meetings Stipends.* A member of the Oneida Election Board is eligible to receive a stipend of one hundred dollars (\$100) for attendance and service provided at a General Tribal Council meeting of the Nation. [1 O.C. 105.13-7, BC-09-26-18-D];
- *Interviews and Job Selection Pre-Screening Stipends.* A member of the Oneida Personnel Commission is eligible to receive a stipend of twenty-five dollars (\$25) for up to four (4) hours of participating in interviews and/or job description pre-screens conducted by the Human Resource Department, and a stipend of fifty dollars (\$50) for more than four (4) hours of participating in interviews and/or job description pre-screens conducted by the Human Resource Department. [1 O.C. 105.13-7, BC-09-26-18-D]; and
- *Conferences and Training Stipends.* A member of a board, committee, or commission is eligible to receive a stipend of one hundred dollars (\$100) per day for attendance at a conference or training that is required by law, bylaw, or resolution. This is in addition to

any reimbursement in accordance with the Nation's policy for travel and per diem. [1 O.C. 105.13-8, BC-09-26-18-D].

The Petition's request to have the proposed Terms Limit law restrict reimbursement to up to one hundred dollars (\$100) per meeting for up to one (1) meeting every other week, or twenty-six (26) meetings a year conflicts with the stipend provisions found in the Boards, Committees, and Commissions law and Oneida Business Committee resolution BC-09-26-18-D. It would be unnecessary for a Terms Limits law to address restrictions on meeting stipends for boards, committees, and commissions of the Nation as details on both general meeting stipends and joint meeting stipends are already provided for in the Boards, Committees, and Commissions law and the Oneida Business Committee resolution BC-09-26-18-D. Additionally, the restriction of stipends to only allow for stipends and/or reimbursement for meetings in the proposed Term Limits law does not recognize the various other stipends or reimbursement a member of a board, committee, or commission is eligible to receive under the Boards, Committees, and Commissions law.

In regard to a task force or ad hoc committee, the Boards, Committees, and Commissions law provides that members of a task force or ad hoc committees and subcommittees shall not be eligible for stipends unless a specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council. [1 O.C. 105.13-10]. The Petition's allocation of a stipend of up to one hundred dollars (\$100) for up to one (1) meeting a week conflicts with this provision of the Boards, Committees, and Commissions law as it does not require an explicit exemption to be made by the Oneida Business Committee or General Tribal Council.

There is no current legislation that provides for the amount or frequency of stipends or reimbursement for members of the Oneida Business Committee or corporate entities of the Nation.

### **Conclusion**

After a review of all applicable laws and policies of the Nation, it has been determined that the adoption of the Petition: Scott Kosbab – Creating a Term Limits Law would have a legislative impact.

The Petition's request to have a Term Limits law limit an individual to serving two (2) consecutive terms on a board, committee, or commission of the Nation would directly conflict with the Oneida Nation Law Enforcement Ordinance which allows an individual appointed to the Oneida Police Commission to serve up to three (3) consecutive terms. [3 O.C. 301.6-2].

The Petition's request to have the proposed Terms Limit law restrict reimbursement to up to one hundred dollars (\$100) per meeting for up to one (1) meeting every other week, or twenty-six (26) meetings a year conflicts with the stipend provisions found in the Boards, Committees, and Commissions law and Oneida Business Committee resolution BC-09-26-18-D.

Additionally, the development of a Term Limits law would have to follow the process and procedures set forth by the Nation's Legislative Procedures Act.

### **Requested Action**

Accept the statement of effect for the Petition: Scott Kosbab – Creating a Term Limits Law.





Legislative Operating Committee  
January 2, 2019

# Employee Protection Policy Amendments

<b>Submission Date:</b> 4/18/18	<b>Public Meeting:</b> 12/3/18
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> 4/25/18

**Summary:** *The purpose of the Employee Protection Policy is to give protection to employees who give information that is intended to protect the Nation. The processes set forth in the Personnel Policies & Procedures may be sufficient protection for employees who act to protect the Nation's interests. The request is the LOC consider amendments or rescinding the law.*

**12/20/17LOC:** Motion by Jennifer Webster to add Employee Protection Policy to the Active Files List with a high priority and David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**2/21/18LOC:** Motion by Jennifer Webster to reprioritize the active files list lowering the Drug and Alcohol Free Law for Elected and Appointed Officials to medium, Employee Protection to medium, removing Hall of Fame Repeal, and to bump up Wellness Court, UCC Codes, and Industrial Hemp to High Priority; seconded by Daniel Guzman King. Motion carried unanimously.

**4/18/18 LOC:** Motion by Jennifer Webster to change the status to Emergency Amendments; seconded by Daniel Guzman King. Motion carried unanimously.

**4/18/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Jo Anne House, Tani Thurner, Laura Laitinen-Warren. The purpose of this work meeting was to discuss an update and plan for the emergency amendments.

**4/20/18:** E-Poll conducted.

**4/25/18 OBC:** Motion by Kirby Metoxen to adopt resolution 04-25-18-G Employee Protection Policy Emergency Amendments, seconded by Brandon Stevens. Motion carried unanimously.

**5/2/18 LOC:** Motion by Kirby Metoxen to enter the Employee Protection Emergency Amendments E-poll into the record; seconded by Ernest Stevens III. Motion carried unanimously.

**5/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the drafted permanent amendments. Drafting attorney will update the draft.

- 6/15/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Matthew J. Denny. The purpose of this work meeting was to discuss HRD's potential involvement in the disclosure portion of the Employee Protection Policy.
- 6/22/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Brandon Stevens, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Laura Laitinen-Warren. The purpose of this work meeting was to review potential options for revisions to the law – specifically the disclosure section. The LRO will conduct further research, and the drafting attorney will update the draft.
- 7/11/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to review requested research on other Tribal Employee Protection/Whistleblower laws and to review potential models for the draft.
- 8/23/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds. Due to a majority of the meeting attendees not making the meeting, this work meeting was spent answering some questions regarding the draft, and discussing next steps.
- Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Loucinda Conway, Man from Hotline Development Company. Audit provided information on the Whistleblower hotline and how it will work.
- 9/5/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to obtain more direction from the LOC on how to proceed with this law now that more information on Audit's Whistleblower hotline was obtained.
- 9/5/18 LOC:** Motion by Jennifer Webster to approve the memo [*Regarding 8/27 GTC Directive*] and forward to the Oneida Business Committee: seconded by Daniel Guzman King. Motion carried unanimously.
- 9/27/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins, Fawn Billie. The purpose of this work meeting was to review research and statistics on the Employee Protection law, and then discuss and decide on an option to move this law forward. Drafting attorney and analyst will move forward with finalizing draft and analysis and bring back to LOC.
- 9/26/18/ OBC:** Motion by Lisa Summers to adopt resolution 09-26-18-F Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council's August 27, 2018 Directive with one amendment [to include language which requires bimonthly updates to the Oneida Business Committee at the second regular meeting of the month], seconded by Kirby Metoxen. Motion carried.
- 10/3/18 LOC:** Motion by Kirby Metoxen to remove the emergency designation from the Employee Protection Policy amendments; seconded by Ernest Stevens III. Motion carried unanimously.
- 10/9/18:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Loucinda Conway, Jackie Johnson, Mary Graves. The purpose of this work meeting was to obtain Internal Audit's comments on the proposed draft, and find out if it is consistent with the Hotline policies.

**10/17/18 LOC:** Motion by Jennifer Webster to accept the draft and legislative analysis of the amendments to the Employee Protection Policy and defer to a work meeting; seconded by Ernest Stevens III. Motion carried unanimously.

**10/17/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Rosa Laster. The purpose of this work meeting was to begin reviewing the legislative analysis and making policy considerations. LRO will prepare a public meeting packet for the next LOC meeting.

**12/3/18:** Public Meeting Held.

**12/19/18 LOC:** Motion by Jennifer Webster to accept the public comments and public comment review memorandum and defer to a work meeting for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

**12/19/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider the public comments that were received during the public comment period.

### **Next Steps:**

- Accept the updated public comment review memorandum.
- Approve the fiscal impact statement memorandum and forward to the Finance Department directing that a fiscal impact statement of the proposed Whistleblower Protection law be prepared for inclusion on the February 6, 2019 Legislative Operating Committee meeting agenda



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney  
DATE: January 2, 2019  
RE: Whistleblower Protection Law: Public Meeting Comment Review

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On December 3, 2018, a public meeting was held regarding the proposed Whistleblower Protection law (“the Law”). The public comment period was then held open until December 10, 2018. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

On December 19, 2018, the Legislative Operating Committee reviewed and considered all oral and written comments received during the public meeting and public comment period. David P. Jordan, Jennifer Webster, Kirby Metoxen, and Ernest Stevens III were present for this consideration. This memorandum demonstrates the consideration of the oral and written comments received within the public meeting and public comment period.

#### Comment 1 – Thank you:

**Pat Campbell (oral):** Good afternoon, Pat Campbell, Gaming Employee Relations Representative. I’d just like to say I think you did a great job with it. The old policy was so confusing, especially for us as advocates when they were sending people to us. So, I think with the new Fraud Hotline and with the new policy, I think you did a great job. Thank you for making it easier for us, too.

#### *Response*

The commenter thanks the Legislative Operating Committee for the work done on the development of this Law, and states that the Law is much less confusing than the prior Employee Protection Policy.

There is no recommended revision based on this comment.

#### *LOC Consideration*

The Legislative Operating Committee appreciates the gratitude and agrees that there is no revision to the Law needed based on this comment.

#### Comment 2 – Training on the Whistleblower Protection Law:

**Barb Kolitsch (written):** Please don’t mandate training. Employee protection (current law) is covered in new employee orientation and supervisor training. Announcing a new law should include basic communication about the law to employees of the Nation. Please allow HR the

discretion as to how it would be best to communicate the new law. Just a note to further support this – we have a law in place right now that requires annual 4 hours of training, and it doesn't make sense to mandate training in a law.

### ***Response***

The commenter requests that the Law itself does not mandate training, and instead decisions on how or when to train on the provisions of the Law be left to the discretion of the Nation's Human Resources Department.

Currently, there is no provision in the Law that requires any mandatory training on the provisions of the Law.


It would be a policy decision of the Legislative Operating Committee to determine if any training should be required at the time of adoption of this Law.

### ***LOC Consideration***

The Legislative Operating Committee affirmed its decision to not include any form of mandatory training on this matter in the Law, and does not think that any additional training on the Law will be necessary.



TO: Lawrence E. Barton, Chief Financial Officer  
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer  
Rae M. Skenandore, Financial Management Analyst

FROM: David P. Jordan, Legislative Operating Committee Chairman 

DATE: January 2, 2019

RE: Whistleblower Protection Law Fiscal Impact Statement

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The Legislative Procedures Act requires that a fiscal impact statement, which provides an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation, be provided for all proposed legislation of the Nation.

The Legislative Procedures Act provides that the fiscal impact statement be submitted by all agencies as directed by the Legislative Operating Committee. In accordance with the Legislative Procedures Act the Legislative Operating Committee is requesting that the Finance Office provide a fiscal impact statement for the proposed Whistleblower Protection law for inclusion on the February 6, 2019, Legislative Operating Committee meeting agenda.

The final draft of the proposed Whistleblower Protection law has been attached to this memorandum for your convenience. Your cooperation with this request is greatly appreciated.

**Requested Action**

Provide a fiscal impact statement of the proposed Whistleblower Protection law for inclusion on the February 6, 2019, Legislative Operating Committee meeting agenda.



**Title 2. Employment – Chapter 211  
WHISTLEBLOWER PROTECTION**

211.1 Purpose and Policy  
211.2 Adoption, Amendment, Repeal  
211.3 Definitions

211.4 Disclosure of Information  
211.5 Protection from Retaliation

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**211.1. Purpose and Policy**

211.1-1. The purpose of this law is to give protection to employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this law to protect the Nation's interests.

**211.2. Adoption, Amendment, Repeal**

211.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_-\_\_.

211.2-2. 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.

211.2-3. 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.

211.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control, provided that this law repeals the following:

- (a) The Employee Protection Policy adopted by emergency pursuant to BC-04-20-95-B, permanently adopted pursuant to BC-12-06-95-B and subsequently amended pursuant to BC-01-20-99-B, BC-06-30-04-J, and BC-02-25-15-C.

211.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**211.3. Definitions**

211.3-1. This section shall govern the definitions of words as phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Employee" means any individual hired by the Nation and on the Nation's payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, political appointees, and contracted persons.
- (b) "Entity" means a department, program, service, board, committee, or commission of the Nation.
- (c) "Nation" means the Oneida Nation.
- (d) "Official" means an individual elected or appointed to serve on a board, committee, or commission of the Nation, including the Oneida Business Committee.

**211.4. Disclosure of Information**

211.4-1. Whistleblowing occurs when an employee discloses information that the employee reasonably believes provides evidence that protects the Nation from any adverse actions of its employees that may result in a detrimental effect to the Nation. Adverse action that may result in a detrimental effect to the Nation includes, but is not limited to:

- (a) Any dishonest or fraudulent act;
- (b) Deceptive business practices;
- (c) Theft;

- 43 (d) Extortion;
- 44 (e) Bribery;
- 45 (f) Embezzlement;
- 46 (g) Blackmail;
- 47 (h) Tampering and/or falsifying records contracts, or reports;
- 48 (i) Forgery;
- 49 (j) Misappropriate and/or misuse of the Nation's funds;
- 50 (k) Disclosure of confidential information;
- 51 (l) Destruction, removal, or inappropriate use of property of the Nation;
- 52 (m) Unsafe working conditions;
- 53 (n) Poor management;
- 54 (o) Unethical conduct and conduct that violates a law and/or policy of the Nation.

55 211.4-2. An employee shall be protected from retaliatory action that results from making a  
56 disclosure of information as directed within this law. Retaliatory action includes all action whether  
57 disciplinary or otherwise.

- 58 (a) Disciplinary action that may be retaliatory includes, but is not limited to:
  - 59 (1) dismissal;
  - 60 (2) demotion;
  - 61 (3) transfer;
  - 62 (4) removal of duty;
  - 63 (5) refusal to restore;
  - 64 (6) layoff;
  - 65 (7) furlough;
  - 66 (8) suspension; and/or
  - 67 (9) reprimand.
- 68 (b) Action other than disciplinary action that may be retaliatory may include, but is not  
69 limited to:
  - 70 (1) loss of hours;
  - 71 (2) rescheduling shifts outside of normal shift changes;
  - 72 (3) change of job requirements without notice;
  - 73 (4) verbal or physical harassment;
  - 74 (5) reduction of pay;
  - 75 (6) denial of educational benefits;
  - 76 (7) reassignment; and/or
  - 77 (8) failure to increase base pay.
- 78 (c) Any action that can be reasonably justified as taken in good faith based on documented  
79 employee performance shall be excluded from classification as retaliatory action.

80 211.4-3. An employee shall make a disclosure of information through the:

- 81 (a) use of the anonymous Fraud hotline; or
- 82 (b) submission of a written disclosure to the Nation's Internal Audit Department.

83 211.4-4. Once a disclosure of information is made, the disclosing employee shall be provided an  
84 incident number confirming receipt of the disclosure.

85 211.4-5. The Internal Audit Department shall then have the authority to review the disclosure and  
86 conduct an investigation and/or an internal audit into the disclosure, if deemed appropriate. Upon  
87 the conclusion of the investigation the Internal Audit Department shall, where necessary, report  
88 their findings to an appropriate entity for action to address the findings, including, but not limited  
89 to, the:

- 90 (a) Oneida Business Committee;



- 91 (b) Oneida Law Office or other legal prosecuting agency;
- 92 (c) Human Resources Department;
- 93 (d) Oneida Police Department or other law enforcement agency;
- 94 (e) Audit Committee; and/or
- 95 (f) any other entity of the Nation.

96

97 **211.5. Protection from Retaliation**

98 211.5-1. If an employee alleges retaliatory action has been threatened or taken based on the  
99 employee's disclosure of information under this law, the employee may file a complaint for the  
100 retaliatory action in accordance with the grievance procedures provided in the Nation's laws and  
101 policies governing employment.

102 211.5-2. The employee shall be protected from the retaliatory action if the following is found:

- 103 (a) the employee made a disclosure of information;
  - 104 (1) The confirmation of disclosure that is provided when information is disclosed,
  - 105 as well as any resulting findings by the Internal Audit Department, shall be used as
  - 106 a reference to prove a disclosure of information.
- 107 (b) the individual alleged to have taken retaliatory action against the disclosing employee
- 108 was aware or became aware the disclosing employee had disclosed information;
- 109 (c) the action taken against the disclosing employee was retaliatory as a result of the
- 110 disclosure of information.

111 211.5-3. An individual who is found to have retaliated against an employee who made a disclosure  
112 of information pursuant to this law shall be subject to:

- 113 (a) disciplinary action, up to and including termination, pursuant to the Nation's laws and
- 114 policies governing employees, if an employee of the Nation;
- 115 (b) sanctions and penalties pursuant to the Nation's laws and policies governing sanctions
- 116 and penalties, if an official of the Nation;
- 117 (c) removal pursuant to the Nation's laws and policies governing removal, if an elected
- 118 official; and/or
- 119 (d) termination of appointment pursuant to the Nation's laws and policies governing
- 120 boards, committees, and commissions, if an appointed official.

121

122 *End.*

123

124 Adopted - BC-\_\_-\_\_-\_\_-\_\_

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126



# WHISTLEBLOWER PROTECTION LAW LEGISLATIVE ANALYSIS

## SECTION 1. EXECUTIVE SUMMARY

REQUESTER: LOC	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To repeal the Employee Protection Policy and replace it with a Whistleblower Protection Law that incorporates the Nation’s new anonymous Fraud Hotline; to ban retaliation against employees; to direct all whistleblower disclosures to the Fraud Hotline or Internal Audit Department; to provide a grievance and complaint process for employees who have been retaliated against; and to provide disciplinary actions and other consequences for employees and officials who retaliate against whistleblowers.		
Purpose	To give protection to employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects [see 211.1-1].		
Affected Entities	All employees of the Nation. All elected and appointed officials of the Nation. Internal Audit Department, Audit Committee, Human Resources Department, Personnel Commission, Judiciary, Oneida Business Committee, Oneida Law Office, Oneida Police Commission, Oneida Nation School Board, Oneida Gaming Commission.		
Affected Legislation	Employee Protection Policy, Personnel Policies and Procedures (Blue Book), Boards, Committees and Commissions Law, Removal Law and Internal Audit Law.		
Enforcement/Due Process	Employees of the Nation who retaliate against an employee may be subject to disciplinary action, up to and including termination. Elected and appointed officials of the Nation who retaliate against an employee may be subject to sanctions and penalties, removal from office or termination of appointment [see 211.5-3].		
Public Meeting	A public meeting was held on December 3, 2018.		
Fiscal Impact	See fiscal impact statement prepared by Finance Dept. in accordance with the Legislative Procedures Act.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Employee Protection Policy was first adopted by the Oneida Business Committee on April 20,
- 3 1995. The purpose of the law is to protect employees who give information that is intended to protect
- 4 the Nation from fraud, theft or other detrimental effects. The current Employee Protection Policy
- 5 provides a process for how employees make disclosures, a process to request “protected status” that
- 6 allows protected employees to bypass the normal complaint and grievance process in the Personnel
- 7 Policies and Procedures, and the ability of protected employees to receive a “protective order” from the
- 8 Personnel Commission if they are retaliated against.
- 9 **B.** Amendments to the Employee Protection Policy were added to the Legislative Operating Committee’s
- 10 Active Files List on December 20, 2017. Over the course of developing amendments, the LOC
- 11 determined that the proposed changes to the law were substantial enough that the Whistleblower
- 12 Protection Policy should be considered a new law that repeals and replaces the Employee Protection
- 13 Policy.
- 14 **C.** The proposed Whistleblower Protection Law is intended to work in conjunction with the Nation’s new
- 15 anonymous Fraud Hotline, which became effective on December 1, 2018. The anonymous Fraud
- 16 Hotline is intended to be a centralized way for employees to report fraud, unlawful, unethical or other
- 17 types of inappropriate behavior without fear of retaliation. The Fraud Hotline is administered by a third

18 party and is available 24 hours per day, seven days per week. Reports from the Fraud Hotline are sent  
19 to the Internal Audit Department for follow-up and potential investigations.

- 20 **D.** This proposed law repeals the Employee Protection Policy and replaces it with a new Whistleblower  
21 Protection Law. The intent of the law is to ban retaliation against employees; to direct all whistleblower  
22 disclosures to the Fraud Hotline or Internal Audit Department; to provide a grievance and complaint  
23 process for employees who have been retaliated against; and to provide disciplinary actions and other  
24 consequences for employees and officials who retaliate against whistleblowers.

### 25 26 **SECTION 3. CONSULTATION AND OUTREACH**

- 27 **A.** The Legislative Operating Committee (LOC) held work meetings with Internal Audit, Human  
28 Resources Equal Employment Opportunity (EEO) and HRD Training and Development in the  
29 development of this law and analysis. In addition, representatives from the Gaming Commission,  
30 School Board and Police Commission were invited to attend a work meeting to provide input regarding  
31 the Employee Protection Policy. The LOC received data regarding historical Employee Protection  
32 Policy caseload from staff of the following entities: Oneida Personnel Commission, Oneida Nation  
33 School Board, Oneida Nation Gaming Commission, and Oneida Nation Police Commission.
- 34 **B.** The following Oneida laws were reviewed in the drafting of this analysis: Personnel Policies and  
35 Procedures, Boards, Committees and Commissions Law, Removal Law, Internal Audit Law, and Code  
36 of Ethics. In addition, the following laws were reviewed in drafting this analysis:
- 37     ▪ Ho Chunk Nation Employment Relations Act
  - 38     ▪ Mashantucket Pequot Tribal Whistleblower Law
  - 39     ▪ Little Traverse Band of Odawa Indians Whistleblower Protection
  - 40     ▪ Seminole Nation Whistleblower Protection
  - 41     ▪ Osage Nation Whistleblower Protection Law

### 42 43 **SECTION 4. PROCESS**

- 44 **A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 45 **B.** The law was added to the Active Files List under Employee Protection Policy on 12/20/2017.
- 46 **C.** At the time this legislative analysis was developed, the following work meetings were held/scheduled  
47 regarding the development of this law and legislative analysis:
- 48     ▪ April 18, 2018: LOC Work Meeting.
  - 49     ▪ May 16, 2018: LOC Work Meeting.
  - 50     ▪ June 15, 2018: Work Meeting with HRD EEO.
  - 51     ▪ June 22, 2018: LOC Work Meeting.
  - 52     ▪ July 11, 2018: LOC Work Meeting.
  - 53     ▪ August 23, 2018: Work Meeting with HRD EEO and HRD Training and Development.  
54         Representatives from the Gaming Commission, Police Commission and School Board were also  
55         invited to this meeting.
  - 56     ▪ August 23, 2018: Work Meeting with Internal Audit Department.
  - 57     ▪ September 27, 2018: LOC Work Meeting.
  - 58     ▪ October 9, 2018: Work Meeting with Internal Audit Department.
  - 59     ▪ October 17, 2018: LOC Work Meeting.
  - 60     ▪ December 19, 2018: LOC Work Meeting.

### 61 62 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 63 **A. *Repeal of Employee Protection Policy.*** Adoption of the proposed Whistleblower Protection Law will  
64 repeal and replace the current Employee Protection Policy [see 211.2-4(a)]. This analysis provides  
65 comparisons between the current Employee Protection Policy and the proposed Whistleblower  
66 Protection Law.

- 67 **B. What is “Whistleblowing”?** A whistleblower is an employee who shares evidence or provides  
 68 information that protects the Oneida Nation from adverse actions of its employees [see 211.4-1].  
 69     ▪ Examples in the law include: any dishonest or fraudulent act, deceptive business practices,  
 70 theft, extortion, bribery, embezzlement, blackmail, tampering and or falsifying records,  
 71 forgery, misappropriation or misuse of the Nation’s funds, disclosure of confidential  
 72 information, destruction, removal or inappropriate use of property of the Nation, unsafe  
 73 working conditions, poor management, or unethical conduct or violation of a law or policy of  
 74 the Nation.
- 75 **C. Ban on Retaliation.** Employees who make whistleblower disclosures under this law are protected from  
 76 retaliation [see 211.4-2]. Examples of retaliation listed in this law include:  
 77     ▪ *Disciplinary Actions* such as dismissal, demotion, transfer, removal of duty, refusal to restore,  
 78 layoff, furlough, suspension, and/or reprimand.  
 79     ▪ *Non-Disciplinary Actions* such as loss of hours, rescheduling shifts outside of normal shift  
 80 changes, change of job requirements without notice, verbal or physical harassment, reduction  
 81 of pay, denial of educational benefits, reassignment, and/or failure to increase base pay.
- 82 **D. Where to Submit Whistleblower Disclosures.** Employees will now submit all whistleblower  
 83 disclosures using the Fraud Hotline or by submitting in writing to the Internal Audit Department [see  
 84 211.4-3]. Previously, employees also had the option of submitting their disclosures to the Personnel  
 85 Commission, Oneida Nation School Board, Oneida Police Commission, Oneida Gaming Commission,  
 86 or to a supervisor, law enforcement official, attorney, or employee advocate. Now, all employees will  
 87 submit whistleblower disclosures to one centralized location.  
 88

89 **Chart 1. Comparison of Where to Submit Whistleblower Disclosures.**

Employee Protection Policy (current)	Whistleblower Protection Law (proposed)
<p><i>Employee Submits to one of the following:</i></p> <ul style="list-style-type: none"> <li>▪ Internal Audit,</li> <li>▪ Gaming Commission,</li> <li>▪ School Board,</li> <li>▪ Police Commission,</li> <li>▪ Personnel Commission, or</li> <li>▪ Supervisor, Law Enforcement Agency, Attorney retained by employee, or Employee Advocate, who will direct the disclosure to one of the “appropriate agencies” listed above.</li> </ul>	<p><i>Employee Submits to one of the following:</i></p> <ul style="list-style-type: none"> <li>▪ Anonymous Fraud Hotline</li> <li>▪ Internal Audit</li> </ul>

- 90
- 91     ▪ **Anonymous Fraud Hotline.** An Anonymous Fraud Hotline has been developed by the  
 92 Internal Audit Department. The hotline is operated by a third-party vendor and is available 24  
 93 hours per day, seven days per week. The purpose of the hotline is to provide a centralized and  
 94 anonymous way to report fraud, unlawful, unethical and other types of improper behavior. For  
 95 more details regarding the hotline, see Section 9 “Other Considerations.”
- 96     ○ **Contents of Disclosure.** The proposed Whistleblower Protection Law does not describe any  
 97 specific information that must be included in the disclosure. In comparison, the current  
 98 Employee Protection Policy requires employees to submit a written, dated, signed disclosure  
 99 that is hand carried, mail certified or delivered by law enforcement. The current Employee  
 100 Protection Policy also requires employees to identify themselves in the disclosure and identify  
 101 the person and persons against whom the claim is made, and provide date, times and summary  
 102 of the misconduct.
- 103 **E. Receipt of Disclosure.** After submitting their disclosure, employees will receive an incident number.  
 104 This incident number confirms that the employee’s disclosure was received. This will allow employees

to provide evidence of their disclosure should they be retaliated against and need to file a complaint or grievance in the future [see 211.4-4].

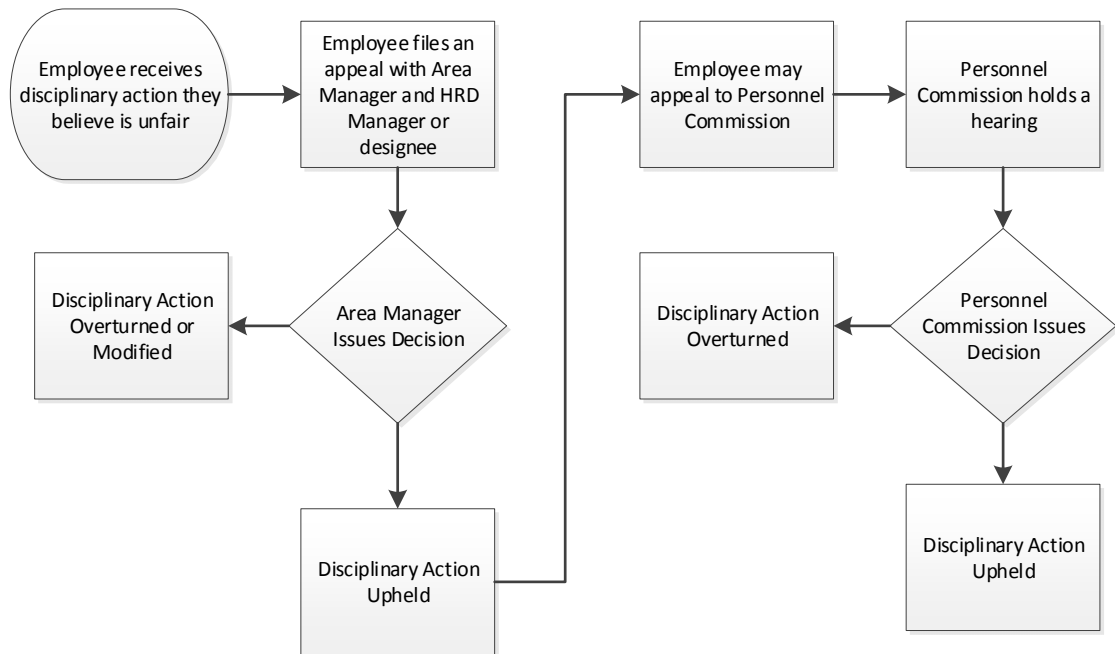
- **Comparison to Employee Protection Policy.** The current Employee Protection Policy requires the agency to provide a signed and dated receipt to the employee when they submit their disclosure. In contrast, the proposed Whistleblower Protection Law requires the employee be provided with an incident number.

**F. Investigation.** After receiving a disclosure from the Fraud Hotline or directly from the employee, Internal Audit has the authority to review and conduct an investigation and/or an audit. Once Internal Audit’s investigation is complete, they will report their findings to the appropriate entity for further action, if necessary. For example, the findings could be reported to the Oneida Business Committee, Oneida Law Office, Human Resources Department, Oneida Police Department or other law enforcement agency, the Audit Committee, or any other entity of the Nation [see 211.4-5].

**G. Protection from Retaliation.** If an employee feels they have been retaliated against, they can file a complaint using the complaint and grievance processes in the Nation’s Personnel Policies and Procedures, also known as “the Blue Book” [see 211.5-1].

- **Disciplinary Actions.** Chart 2 illustrates the grievance process in the Personnel Policies and Procedures for disciplinary actions, such as suspensions or termination of employment. If a disciplinary action is overturned, the employee can be reinstated with back pay. [See *Personnel Policies and Procedures - Section V Employee Relations, 5. Complaints, Disciplinary Actions and Grievances*].

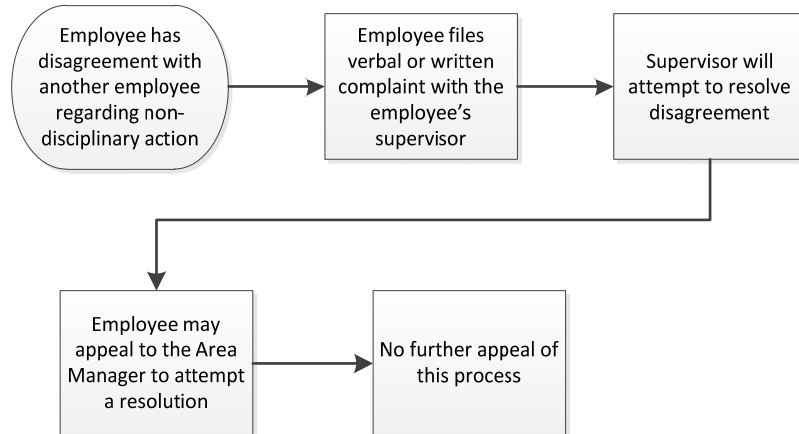
**Chart 2. Grievance Process for Disciplinary Actions in Personnel Policies and Procedures**



- **Comparison to Employee Protection Policy.** The current Employee Protection Policy allows employees who have been granted protection to skip a step in the grievance process and go straight to the Personnel Commission if they feel they have been retaliated against. This ability to skip a step in the grievance process is removed in the proposed Whistleblower law [see *current Employee Protection Policy, 2 O.C. 211.5-2(b)*].

- 136 ■ **Non-Disciplinary Actions.** Chart 3 depicts the complaint process in the Personnel Policies and  
137 Procedures for non-disciplinary complaints, such as loss of hours or change of schedule. [See  
138 *Personnel Policies and Procedures - Section V Employee Relations, 5. Complaints,*  
139 *Disciplinary Actions and Grievances*].

141 **Chart 3. Complaint Process for Non-Disciplinary Actions in Personnel Policies and**  
142 **Procedures**



- 143 ○ **Comparison to Employee Protection Policy.** The current Employee Protection Policy  
144 allows employees who have been granted protection to skip the Complaint Process in the  
145 Personnel Policies and Procedures and go straight to their Division Director if they have  
146 received a non-disciplinary action that is retaliatory. This ability to skip the complaint  
147 process and go to the division director is removed in the proposed Whistleblower  
148 Protection law [see current *Employee Protection Policy, 2 O.C. 211.5-2(a)*].
- 149 **H. Requirements for Protection:** To be protected from retaliation under this law, the employee must  
150 have made a whistleblower disclosure and provide proof of the disclosure in the form of the incident  
151 number provided by the Fraud Hotline or Internal Audit. In addition, the individual who retaliated  
152 against the whistleblower must have been aware the whistleblower disclosed information. Finally,  
153 the action taken against the whistleblower must be retaliatory as a result of the disclosure [see 211.5-  
154 2].
- 155 **I. Punishment for Retaliation.** Individuals who retaliate against employees of the Nation in violation  
156 of this law will be subject to the following consequences [see 211.5-3].
  - 157 ■ *Employees of the Nation.* Employees who retaliate against another employee for making a  
158 whistleblower disclosure will be subject to disciplinary action, up to and including  
159 termination, in accordance with the Personnel Policies and Procedures.
  - 160 ■ *Appointed officials.* May have their appointment terminated, in accordance with the Nation's  
161 Boards, Committees and Commissions Law, or may receive sanctions and penalties in  
162 accordance with the Nation's laws.
  - 163 ■ *Elected officials.* May be subject to removal from office in accordance with the Nation's  
164 Removal Law. Elected officials may also be subject to sanctions and penalties in accordance  
165 with the Nation's laws.

## 167 SECTION 6. EFFECT ON EXISTING LEGISLATION

- 168 **A. Employee Protection Policy.** This law repeals the current Employee Protection Policy and replaces it  
169 with a new Whistleblower Protection Law.
- 170 **B. References to Other Laws.** The following laws of the Nation are referenced in this law. This law does  
171 not conflict with any of the referenced laws.
- 172

- 173       ▪ *Personnel Policies and Procedure.* Reference to the Nation’s grievance procedure [see 211.5-1]  
174       and disciplinary process [see 211.5-3(a)] in the Personnel Policies and Procedures.
- 175       ▪ *Boards, Committees and Commissions Law.* Reference to the termination of appointed officials in  
176       the Boards, Committees and Commissions Law [see 211.5-3(d)].
- 177       ▪ *Removal Law.* Reference to the removal process for elected officials in the Removal Law [see  
178       211.5-3(c)].

## 180 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 181 **A. *Elimination of “Protected Status” and Ability to Skip a Step in the Complaint and Grievance Process.***  
182       Under the current Employee Protection Policy, employees can receive a formal “protected status” upon  
183       making their disclosure to one of the five appropriate agencies. Once an employee is granted protected  
184       status, it allows the employee to skip a step in the complaint and grievance process and go directly to  
185       the Personnel Commission or their Division Director if they are retaliated against [see current  
186       *Employee Protection Policy, 2 O.C. 211.5-2*]. The proposed Whistleblower Protection Law eliminates  
187       this formal “protected status” and the right to skip a step in the complaint and grievance process. If an  
188       employee is retaliated against, they must file a complaint or grievance using the standard complaint and  
189       grievance process in the Personnel Policies and Procedures. At the time this analysis was developed,  
190       the LOC determined that the process in the Personnel Policies and Procedures is sufficient for  
191       whistleblower protection.
- 192 **B. *Elimination of Protective Orders to Human Resources Department.*** Under the current Employee  
193       Protection Policy, a protected employee who has been retaliated against may request a “protective  
194       order” from the Personnel Commission. This protective order directs the Human Resources Department  
195       to monitor the actions of that employee’s supervisor. Under the proposed Whistleblower Protection  
196       Law, employees will no longer be able to request protective orders from the Personnel Commission. If  
197       an employee is retaliated against, they must file a complaint or grievance using the standard complaint  
198       and grievance process in the Personnel Policies and Procedures. At the time this analysis was  
199       developed, the LOC determined the process in the Personnel Policies and Procedures is sufficient for  
200       whistleblower protection.
- 201 **C. *Impact on Boards, Committees, Commissions and Entities.*** Under the proposed Whistleblower  
202       Protection Law, the following entities listed in the Employee Protection Policy will no longer be  
203       responsible for receiving employee protection or whistleblower disclosures: Personnel Commission,  
204       Gaming Commission, School Board, and Police Commission. All whistleblower disclosures under  
205       this law will now be reported to the Fraud Hotline or Internal Audit department, which will  
206       investigate disclosures and forward findings to relevant entities for further action, if needed.

## 208 **SECTION 9. OTHER CONSIDERATIONS**

209 *The following is provided for information:*

- 210
- 211 **A. *Data on Employee Protection Requests from Personnel Commission.*** The following information  
212       shows how often the current Employee Protection Policy has been used by employees in recent years.  
213       Note that as of June 2018, the Oneida Nation employed approximately 2,880 people [Source: HRD 3<sup>rd</sup>  
214       *Quarter Report*].
- 215       ▪ **Number of Disclosures.** Chart 4 depicts the number of employee protection disclosures made by  
216       employees to the Personnel Commission (OPC). In other words, the number of times employees  
217       shared information with the Personnel Commission and requested protection.
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**Chart 4. Number of Employee Protection Disclosures Submitted to Personnel Commission**

YEAR	Number of Employee Protection Disclosures
2012	2
2013	1
2014	3
2015	0
2016	1
2017	4
2018 (January-April)	1
<b>TOTAL, 2012-2018</b>	<b>12</b>

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o SOURCE: Personnel Commission, communication with staff via email 9/17/2018

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- **Number of Employees Granted Protection.** Of the twelve (12) requests for Employee Protection between 2012-2018, two (2) employees were granted employee protection. In addition, two (2) additional employees were granted “interim protection” at the time the OPC was dissolved in April 2018. “Interim protection” was granted during the Personnel Commission’s initial investigation.

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**B. Data on Employee Protection Requests from Other Entities.**

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- **Internal Audit Department** estimates the department received a total of two or three requests for Employee Protection from employees of the Nation over the last five years. [Source: Internal Audit staff.]

234

- **Oneida Nation School Board** reports they have not received any Employee Protection requests from School System employees in recent years. [Source: Oneida Nation School Board, communication with staff via email 10/9/18.]

235

- **Oneida Police Commission** reports they received one (1) request for Employee Protection over the last two years. [Source: Oneida Police Commission, communication with staff via email 10/31/18.]

236

- **Oneida Gaming Commission** reports they have no record of receiving any Employee Protection requests in the last five years. It was reported that Gaming employees likely submitted their requests to the Personnel Commission. [Source: Oneida Gaming Commission, communication with staff via email 10/31/18.]

237

- **Oneida Judiciary.** In April 2018, the Oneida Business Committee dissolved the Personnel Commission. The Personnel Commission’s responsibilities regarding Employee Protection were transferred to the Oneida Judiciary. According to data provided by the Oneida Law Office, two existing employee protection cases transferred to the Judiciary in April 2018. In addition, two new cases were filed with the Judiciary between April and August of 2018.

238

**C. Data on Retaliation and Protective Orders from Personnel Commission.**

239

- **Number of Retaliation Grievances Filed by Employees with Protected Status.** One (1) retaliation grievance was filed by a protected employee between 2012 and April 2018. This means that of the employees who requested and received employee protection, only one employee later alleged they were retaliated against. [Source: Personnel Commission, communication with staff via email 9/17/2018].

240

- **Number of Protective Orders issued by Personnel Commission.** Two (2) protective orders were issued by the Personnel Commission between 2012 and April 2018. An employee may request a protective order if they have made a disclosure, have been granted protection, and later have been found to be retaliated against. A protective order directs the Nation’s Human Resources Department to monitor the actions of the employee’s supervisor. [Source: Personnel Commission, communication with staff via email 9/17/2018].

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264 **D. Comparison Between Employee Protection Policy and Whistleblower Policy.** This law repeals and  
 265 replaces the Employee Protection Policy with a new Whistleblower Protection Law. Chart 5 illustrates  
 266 some of the differences and similarities between the two laws:  
 267

268 **Chart 5. Comparison Between Employee Protection Policy and Whistleblower Policy.**

	<b>Employee Protection Policy (Current)</b>	<b>Whistleblower Protection Law (Proposed)</b>
<i>Defines and prohibits retaliation?</i>	Yes.	Yes.
<i>Directs employees where and how to make their disclosures?</i>	Yes, employees are directed to make their disclosures to one of several appropriate agencies.	Yes, employees are directed to make disclosures using the anonymous Fraud Hotline or to Internal Audit
<i>Allows employees to report anonymously?</i>	No, employees must disclose their identity in their written complaint.	Yes, employees can choose to remain anonymous using the Fraud Hotline.
<i>Provides employees with documentation (proof) that they made a disclosure?</i>	Yes, employees receive a signed and dated receipt.	Yes, employees will receive an incident number from the hotline or Internal Audit.
<i>Employees may be granted a formal “protected status” from the agency after submitting their disclosure?</i>	Yes, employees may be granted formal “protected status” from an agency.	No, employees do not receive a formal designation of “protected status” from the agency.
<i>Allows protected employees to skip a step in the complaint and grievance process if they are retaliated against?</i>	Yes, employees who have been granted protection may appeal directly to the Personnel Commission or Division Director if they feel they have been retaliated against.	No, if an employee feels they have been retaliated against, they must use the normal complaint and grievance process in the Personnel Policies and Procedures.
<i>Employees who have been retaliated against can request a “protective order” from the Personnel Commission?</i>	Yes, employees who have been granted protection and are later retaliated against may request a “protective order” directing HRD to monitor the actions of their supervisor.	No, employees cannot request a “protective order.” Employees will need to use the normal grievance process in the Personnel Policies and Procedures if they are retaliated against.

269  
 270 **E. Comparison to other Tribal Nations.** A review of whistleblower protection laws from other tribal  
 271 nations indicates whistleblower laws are generally brief, one to two documents that include a few basic  
 272 provisions. Some laws, such as those from the Ho Chunk Nation and Seminole Nation, are only one  
 273 paragraph long. The Whistleblower laws reviewed typically include the following core components:  
 274 ■ Ban on retaliation against employees for whistleblowing.  
 275 ■ Direct employees where to make whistleblower disclosures. (For example: Attorney General,  
 276 Human Resources Department, Office of Inspector General).  
 277 ○ In Oneida’s proposed Whistleblower Law, employees will report their disclosures to the  
 278 anonymous Fraud Hotline or Internal Audit Department.

- 279       ▪ In addition, some whistleblower laws describe remedies for employees that have been retaliated  
280 against, such as job reinstatement, back pay for lost wages, and damages.  
281       ○ Oneida’s proposed Whistleblower Law directs employees to use the grievance process in  
282 the Personnel Policies and Procedures, which allows the Area Manager or Personnel  
283 Commission to overturn disciplinary actions, reinstate employees who have been  
284 terminated, and award back pay.
- 285 **F. Grandfather Clause for Current Protected Employees & Pending Cases.** Based on data received from  
286 the Judiciary and Personnel Commission, there are a small number of employees who currently have  
287 protected status under the Employee Protection Policy. In addition, there may be at least one (1)  
288 employee protection related case pending in the Judiciary. Therefore, the LOC intends to include a  
289 grandfather clause in the adopting resolution to ensure the following:
- 290       ▪ Employees who currently have protected status will still retain some form of protection upon  
291 adoption of this law.  
292       ▪ Pending cases involving the Employee Protection Policy will be allowed to proceed.  
293       ▪ The LOC should determine the details of how the grandfather clause will be implemented. The  
294 LOC may want to consider the following:
- 295       ○ Will employees who have been granted protection be allowed to keep their protected status,  
296 and if so, for what length of time?  
297       ○ Will employees with protected status be allowed to use the grievance process in the  
298 Employee Protection Policy after it is repealed? Or will they instead be directed to follow  
299 the grievance process in the Whistleblower Protection Law for future retaliation  
300 grievances?
- 301       ▪ **Recommendation:** The details of the grandfather clause in the adopting resolution is a policy  
302 decision.
- 303 **G. Fraud Hotline.** The anonymous Fraud Hotline is administered by a third-party vendor (Lighthouse  
304 Services) and is available 24 hours per day, seven days per week. The purpose of the hotline is to  
305 provide a centralized, anonymous way to report issues of fraud, unlawful, unethical and other types of  
306 improper behavior.
- 307       ▪ **Hotline Process.** A report of the call will be generated by the third-party vendor, who will send the  
308 report to Internal Audit. Internal Audit will review all hotline reports and determine whether an  
309 investigation is needed. If necessary, Internal Audit will conduct a confidential investigation. Once  
310 Internal Audit’s investigation is complete, they will report their findings to the appropriate entity  
311 for further action, if necessary. For example, the findings could be reported to the Oneida Business  
312 Committee, Oneida Law Office, Human Resources Department, Oneida Police Department or other  
313 law enforcement agency, the Audit Committee, or any other entity of the Nation.  
314       ▪ **Hotline Implementation.** The Fraud Hotline became effective on December 1, 2018. Training was  
315 provided to employees of the Nation between November 19 – 30, 2018. In addition, Internal Audit  
316 reports that refresher trainings will be offered in the future.
- 317 **H. Whistleblower Law in Absence of Hotline.** This law has been drafted so that in the future, if the Fraud  
318 Hotline is ever eliminated or malfunctions, the Whistleblower Protection Law and the protections it  
319 provides will still function. For example, if the hotline is unavailable, employees will still be able to  
320 submit disclosures directly to Internal Audit in writing.
- 321 **I. Reference to Sanctions and Penalties.** This law references sanctions and penalties. The Legislative  
322 Operating Committee (LOC) is currently drafting a Sanctions and Penalties Law to increase  
323 accountability among elected and appointed officials of the Nation. Currently, the only reprimand  
324 available for appointed and elected officials is termination of appointment or removal from office.  
325 However, there may be instances of misconduct that do not rise to the level of removal. In these cases,  
326 other sanctions such as verbal warnings, written warnings, suspension or fines may be more  
327 appropriate. The proposed Sanctions and Penalties law will create a formal complaint process and allow  
328 for corrective actions against officials who violate laws, bylaws and SOPs of the Nation. At the time

329 this analysis was drafted, the LOC intends to present a Sanctions and Penalties Law to GTC for  
330 consideration once the draft is complete and all legislative requirements are met.

331 **J. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

332 ■ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except  
333 emergency legislation [*see Legislative Procedures Act 1 O.C. 109.6-1*].

334 ■ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating  
335 Committee and may be prepared by any agency who may receive funding if the legislation is  
336 enacted; who may administer a program if the legislation is enacted; who may have financial  
337 information concerning the subject matter of the legislation; or by the Finance Office, upon request  
338 of the Legislative Operating Committee [*see Legislative Procedures Act 1 O.C. 109.6-1(a) and*  
339 *(b)*].

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Legislative Operating Committee  
January 2, 2019

# Petition: G. Powless – Rescinding the Removal Law

<b>Submission Date:</b> 11/21/18	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This Petition, received on November 21, 2018, asks the General Tribal Council “to rescind Chapter 4, Removal Law, for purposes of making the removal of elected officials an easier process. General Tribal Council shall utilize the requirements outlined in the Oneida Constitution for petitioning a GTC meeting, and, any and all issues regarding elected officials that may require disciplinary actions such as suspensions or removals shall be reviewed and decided upon by General Tribal Council, with the option of General Tribal Council appointing a sub-committee or an outside investigative firm to investigate serious allegations that may require criminal charges.”*

**11/14/18 OBC:** Motion by Trish King to acknowledge receipt of the petition from Gina D. Powless regarding Rescinding the Removal law; Seconded by David P. Jordan. Motion carried.

Motion by David P. Jordan to assign the petition to a GTC meeting agenda to be tentatively held on February 24, 2019, at 10:00 a.m.; Seconded by Jennifer Webster. Motion carried.

Motion by David P. Jordan to direct the OBC Direct Report Offices to complete and submit their administrative impact statements of the petitions to the Secretary by Friday, November 30, 2018; Seconded by Jennifer Webster. Motion carried.

Motion by Trish King to direct the Law, Finance, and Legislative Reference Offices to complete and submit the legal review, fiscal impact statement, and statement of effect, respectively, for a special Business Committee meeting to be scheduled by the Secretary between January 2, 2019, and January 18, 2019; Seconded by David P. Jordan. Motion carried.

**11/21/18 LOC:** Motion by Kirby Metoxen to add the Petition: G. Powless – Rescinding the Removal Law to the active files list and assign Kirby Metoxen as the sponsor; Seconded by Jennifer Webster. Motion carried unanimously.

**Next Step:**

- Approve the Petition: G. Powless – Rescinding the Removal Law statement of effect and forward to the Oneida Business Committee for consideration.



## Statement of Effect

*Petition: G. Powless – Rescinding the Removal Law*

### Summary

This Petition asks the General Tribal Council to rescind, or do away with, the Removal Law from the Oneida Code of Laws for purposes of making the removal of elected officials an easier process.

*Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office*

*Date: January 2, 2019*

### Analysis by the Legislative Reference Office

On October 29, 2018, the Petition: G. Powless – Rescinding the Removal Law (“Petition”) was submitted to the Oneida Business Committee Support Office by Gina D. Powless and has since been verified by the Oneida Trust Enrollment Department. On November 14, 2018, the Oneida Business Committee (“OBC”) accepted the verified Petition and directed the Legislative Reference Office to complete a statement of effect for a special Business Committee meeting to be scheduled by the Secretary between January 2, 2019 and January 18, 2019.

The purpose of this Petition is to ask the General Tribal Council (“GTC”) to “rescind Chapter 4, Removal Law, for purposes of making the removal of elected officials an easier process. General Tribal Council shall utilize the requirements outlined in the Oneida Constitution for petitioning a GTC meeting, and, any and all issues regarding elected officials that may require disciplinary actions such as suspensions or removals shall be reviewed and decided upon by the General Tribal Council, with the option of General Tribal Council appointing a sub-committee or an outside investigative firm to investigate serious allegations that may require criminal charges.”

The Removal Law (“Law”) was originally created by the GTC in 1979 pursuant to Article III, Section 3 of the Constitution and By-Laws of the Oneida Nation (“Constitution”) [*See resolution GTC-04-16-79, titled Ordinance for the Removal of Oneida Tribal Business Committee Members*]. Article III, Section 3 of the Constitution expressly states that:

The General Tribal Council may at its discretion remove any official on the Business Committee by a two-thirds majority vote at any regular or special meeting of the Tribal Council, *pursuant to a duly adopted ordinance*. Such ordinance shall fix the specific causes for removal and ensure that the rights of the accused are protected, including his receiving in writing a statement of the charges against him and assurance on sufficient notice thereof where he shall be afforded every opportunity to speak in his own defense.

[Emphasis added].

The GTC has since amended the 1979 version of the Law, the current version being adopted and minimally amended, respectively, by resolutions GTC-1-09-06-A and BC-05-28-14-B to replace

the previous Removal Law, adopted by resolutions BC-1-03-96-B and GTC-1-17-98-A, because the GTC felt that the previous law was too “confusing and unclear in some areas...” [*Resolution GTC-1-09-06-A, p.1*]. The GTC also felt that it was more logical to have different processes for the removal of elected officials versus appointed officials since “officials come to office in a different manner,” and thus, made the current Removal Law apply “to elected officials only,” as opposed to both elected and appointed officials. [*Id*].

With respect to the process, the Law provides that any eligible voter of the Nation may file a petition with the Tribal Secretary seeking the removal of an elected official so long as the petition contains the requisite number of eligible voter signatures. [*1 O.C. 104.5-1*]. The Tribal Secretary must then serve the elected official with a certified copy of the petition and forward another to the Judiciary so that it can schedule a preliminary review to determine whether the allegations set forth in the petition would constitute sufficient grounds for removal. [*1 O.C. 104.5-6 & 104.6-1*]. If the Judiciary determines that sufficient grounds would exist, it is next required to conduct a hearing under Section 104.7 of the Law to determine whether each allegation contained in the petition can be proven by clear and convincing evidence. [*1 O.C. 104.6-2 & 104.7-3*]. If it finds clear and convincing evidence, the Judiciary must then put its findings in written form and forward them to the Tribal Chair. [*1 O.C. 104.7-3*]. Upon receipt, the Tribal Chair is required to call a special GTC meeting to consider the Judiciary’s findings. An elected official may only be removed from office upon a two-thirds (2/3) majority vote in the affirmative. [*1 O.C. 104.8-3*].

Along with the Constitution, numerous other laws of the Nation refer to and rely upon the existence of a Removal Law to govern the process for removing an elected official when his or her conduct comes into question. For example, the Election law, codified in Chapter 102 of the Oneida Code of Laws, provides that members of the election board shall be removed “pursuant to the Oneida Removal Law.” [*1 O.C. 102.4-4*].

Likewise, the Boards, Committees and Commissions law provides that removal of an elected official shall be “pursuant to any law and/or policy of the Nation regarding removal” [*1. O.C. 105.6-2(b)*]. The Boards, Committees and Commissions law further states that “[a]ll other processes for the election of a member . . . shall be as directed by the Nation’s laws and/or policies governing elections.” [*1 O.C. 105.8-2*]. The Election law governs elections of members to an entity, and thus, by reference subjects these elected officials to the Removal Law. Since the Boards, Committees and Commissions law mandates that every board, committee and commission of the Nation create bylaws that conform to its requirements, the elected boards, committees and commissions will have bylaws that refer to and rely upon the Removal Law to dictate the process for removing elected officials from their respective boards, committees and commissions. [*See 1 O.C. 105.10-1, “All entities of the Nation shall have bylaws that conform to the requirements of this law.”*].

The Petition seeks to rescind, or do away with, the Nation’s Removal Law. However, it does not propose that the law be replaced by a new law governing the removal of elected officials. Instead, it suggests that removal of elected officials shall adhere to the process “outlined in the Oneida Constitution for petitioning a GTC meeting.” The Constitution expressly requires that removal of any official on the Business Committee happen “pursuant to a duly adopted ordinance.” Therefore, to do away with the Removal Law without replacing it with a new law to govern, at the very least,

the removal of officials of the Business Committee, would be in direct conflict with the Article III, Section III of the Constitution.

In addition, a rescission of the Removal Law without replacement would have a legislative impact on those laws and bylaws that refer to and rely upon a Removal Law to govern the process for removing elected officials, other than then those on the Business Committee, from office. If the Removal Law was rescinded without adequate replacement, those laws and policies would have to be amended to reflect the same in accordance with the Legislative Procedures Act.

### **Conclusion**

All applicable laws and policies of the Nation were reviewed in developing this statement of effect, including the Constitution and By-Laws of the Oneida Nation. For the reasons above, adoption of the Petition: G. Powless – Rescinding the Removal Law would be in direct conflict with the Constitution and By-Laws of the Oneida Nation. In addition, a rescission of the Removal Law would have a legislative impact on the various Laws of the Nation that refer to and rely upon a duly enacted Removal Law to govern the removal of elected officials from the Nation’s boards, committees and commissions.

### **Requested Action**

Accept the statement of effect for Petition: G. Powless – Rescinding the Removal Law.





Legislative Operating Committee  
January 2, 2019

# Oneida Personnel Commission By-laws Amendments

<b>Submission Date:</b> 9/6/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *Last term the Personnel Commission had requested changes to the entity’s By-laws that would outline more specifically the qualifications for appointed commissioners. The Personnel Commission was dissolved by the Oneida Business Committee on April 11, 2018 and, on August 27, 2018, the General Tribal Council rescinded the dissolution. The Personnel Commission By-laws now need to be amended to comply with the amended Comprehensive Policy Governing Boards, Committees and Commissions, which was adopted on September 26, 2018, through resolution BC-09-26-18-C, and is hereinafter known as the Boards, Committees and Commissions law.*

**9/6/17 LOC:** Motion by Jennifer Webster to add Personnel Commission By-laws Amendments to the active files list with Kirby Metoxen as the sponsor; Seconded by Ernie Stevens III. Motion carried unanimously.

**9/6/17:** *Work Meeting.* Present: Jenny Webster, Clorissa Santiago, Candice Skenandore, David P. Jordan, Maureen Perkins, Ernest Stevens III, and Tani Thurner. LOC is currently waiting for a fiscal impact statement from the Finance Office. When that is received the LOC may approve an adoption packet and forward to the BC for consideration.

**11/1/17 LOC:** Motion by Kirby Metoxen to approve the 60-day active files list update and continue development of all the items on the active files list; Seconded by Ernie Stevens III. Motion carried unanimously.

**5/2/18LOC:** Motion by Jennifer Webster to remove the Oneida Personnel Commission By-laws amendments from the active files list; Seconded by Kirby Metoxen. Motion carried unanimously.

*Note: The Personnel Commission was dissolved on April 11, 2018. See resolution BC-04-11-18-A.*

**8/27/18 GTC:** The General Tribal Council adopted a motion to “rescind the actions of the Oneida Business Committee related to the dissolution of the Oneida Personnel Commission, and to rescind the amendments to the Blue Book from April 11, 2018 to today.”

**9/12/18 OBC:** Motion by Trish King to direct the Legislative Operating Committee to present the By-laws for the Oneida Personnel Commission at the next regular Oneida Business Committee meeting with updated qualifications to address the issue of understanding hearing authorities and responsibilities; Seconded by Brandon Stevens. Motion carried unanimously.

**9/19/18 LOC:** Motion by Jennifer Webster to add the Oneida Personnel Commission By-laws to the active files list with David P. Jordan as the sponsor; Seconded by Daniel Guzman King. Motion carried unanimously.

**9/19/18:** *Work Meeting.* Present: Jennifer Falck, Clorissa Santiago, Kristen M. Hooker, Maureen Perkins, Brandon Wisneski, Jennifer Webster, David P. Jordan, Daniel Guzman King, Rosa Laster. The purpose of the meeting was to discuss potential amendments to the Oneida Personnel Commission By-laws that would comply with the pending draft Boards, Committees and Commissions law, as well as the directive from the Oneida Business Committee at its meeting on September 12, 2018. Next step is to draft the amendments to the By-laws and conduct a Legislative Operating Committee E-Poll to meet the Oneida Business Committee’s deadline of September 26, 2018 to present it with a draft of the amended By-laws.

**9/20/18:** E-Poll conducted for the amendments to the Oneida Personnel Commission By-laws.

**9/26/18 OBC:** Motion by David P. Jordan to defer the Oneida Personnel Commission By-laws to a Business Committee Work Session for further review and discussion; Seconded by Ernest Stevens III. Motion carried unanimously.

**9/26/18 OBC:** Motion by Lisa Summers to adopt resolution BC-09-26-18-C Amendments to the Comprehensive Policy Governing Boards, Committees and Commissions with two (2) changes: [1] request that the language in line 84 of the resolution be changed to a six (6) month deadline to complete the new by-laws; and 2) to eliminate the postmark allowance referenced in lines 112-114 of draft 3]; Seconded by David P. Jordan. Motion carried.

*Per resolution BC-09-26-18-C: “The Oneida Business Committee directs that boards, committees, and commissions of the Nation shall have six (6) months from the adoption of [the Amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions (“Law”)] to present bylaws for adoption. Within thirty (30) days, the Legislative Reference Office shall provide at least two (2) informational bylaw meetings with the various boards, committees, and commissions of the Nation. The purpose of the informational bylaws meetings will be for the Legislative Reference Office to: a. provide an update on the revised bylaw requirements as a result of the amendments to the Law; b. provide a template for the development of revised bylaws; and c. offer assistance to boards, committees, and commissions in the development and drafting of updated bylaws.”*

- 10/3/18 LOC:** Motion by Ernest Stevens III to enter the Personnel Commission By-laws E-poll results into the record; Seconded by Kirby Metoxen. Motion carried unanimously.
- 10/16/18:** *OBC Work Session.* Present: David P. Jordan, Brandon Stevens, Ernest Stevens III, Daniel Guzman King, Maureen Perkins, Kristen M. Hooker, Jennifer Webster, Tehassi Hill, Lisa Liggins, JoAnne House. Per the September 26, 2018 OBC Meeting, the draft OPC By-laws were deferred back to an OBC Work Session for further discussion and consideration. The purpose of this meeting was to carry out the OBC's directive. At the meeting, a decision was made to defer the OPC By-laws to a separate meeting between the LRO, Tribal Secretary Lisa Summers and LOC Chairperson David P. Jordan for discussion and consideration. Next steps are to schedule a meeting between the LRO, Tribal Secretary Summers and LOC Chairperson Jordan; update the proposed OPC By-laws as a result of the meeting and bring the updated proposed OPC By-laws back to an OBC Work Session for further consideration and discussion.
- 10/17/18:** *Informational Meeting.* Present: Jennifer Falck, Kristen M. Hooker, Maureen Perkins, Jennifer Webster, Dale Webster (ONCOA), Marlene Summers (ONCOA), Lois Strong (ONCOA), Sandra Reveles (OPC), Carol Silva (OPC), Brooke Doxtator (OBCSU), Bonnie Pigman (OTEC), Chad Wilson (ERB), Dylan Benton (OTEC/Library), Chris Cornelius (OLC). Per resolution BC-09-26-18-C, adopting the amendments to the Comprehensive Policy Governing Boards, Committees and Commissions (n/k/a Boards, Committees and Commissions law), the LRO was directed to hold two (2) informational meetings for the Nation's Boards, Committees and Commissions to provide them with: (1) an update on the new By-laws requirements mandated by the Boards, Committees and Commissions law; (2) a template for the Boards, Committees and Commissions to use when revising their respective By-laws; and (3) assistance to the Boards, Committees and Commissions in the development and drafting of their By-laws. This was the first of the two informational meetings.
- 10/24/18:** *Informational Meeting.* Present: Jennifer Falck, Kristen M. Hooker, Maureen Perkins, Clorissa Santiago, Donald McLester (OLC), Chris Cornelius (OLC), Ronald King, Jr. (Pardon & Forgiveness), Jeanette Ninham (Pardon & Forgiveness), Vicki Cornelius (OEB & Powwow), Bonnie Pigman (OTEC), Lisa Liggins (School Board & OTEC), Rochelle Powless (ONCOA), Terry Hetzel (HRD), Patty Hoeft (Oneida Law Office), Brooke Doxtator (OBCSO), Arthur Elm (SEOTS), Diane Hill (SEOTS). Per resolution BC-09-26-18-C, adopting the amendments to the Comprehensive Policy Governing Boards, Committees and Commissions (n/k/a Boards, Committees and Commissions law), the LRO was directed to hold two (2) informational meetings for the Boards, Committees and Commissions to provide them with: (1) an update on the new By-laws requirements mandated by the Boards, Committees and Commissions law; (2) a template for the Boards, Committees and Commissions to use when revising their respective By-laws; and (3) assistance to the Boards, Committees and Commissions in the development and drafting of their By-laws. This was the second of the two informational meetings.
- 11/20/18:** *OBC Work Session.* Present: Maureen Perkins, David P. Jordan, Brandon Stevens, Kirby Metoxen, Laura Laitinen-Warren, Patricia King, Jennifer Webster, Jessica

Wallenfang, Chris Cornelius, Brian Doxtator, Jo Anne House. At the September 26, 2018 OBC Meeting, the draft OPC By-laws that were before the OBC for adoption were deferred back to an OBC Work Session for further discussion and consideration. Per the OBC's directive, the LRO attended the October 16, 2018 OBC Work Session wherein a decision was made to: (1) defer the OPC By-laws to a separate meeting between the LRO, LOC Chair and Secretary Summers to go over the concerns Secretary Summers has with the current OPC By-laws draft; and (2) bring the results of the discussion back to the next OBC Work Session for consideration. With Secretary Summers out on leave, the meeting between the LRO, LOC Chair and the Secretary did not occur. The purpose of this meeting was to try to address Secretary Summers concerns and go over any additional concerns that the BC has with the current OPC By-laws draft. The next steps are for the LRO to draft some proposed revisions to the current OPC By-laws draft that reflect the discussions that took place during the OBC Work Session and bring the revisions back to the LRO for consideration and directive.

**11/30/18:** *LOC Work Meeting.* Present: Maureen Perkins, Ernie Stevens III, Daniel Guzman-King, Jennifer Webster, David P. Jordan, Kristen M. Hooker, Kirby Metoxen. The purpose of this meeting was to go through the proposed revisions that were made to the draft OPC By-laws amendments during the November 20, 2018 OBC Work Session. Next steps are to: (1) update the draft OPC By-laws amendments based on the directive of the LOC during this work meeting; (2) compile some training options from HRD to bring back to a LOC work meeting for consideration by the LOC in finalizing the training section of the draft amendments; and (3) schedule a work meeting with the LOC to finalize the draft OPC By-laws amendments so they can be forwarded to the OBC for final consideration/comment.

**12/6/18:** *Work Meeting.* Present: Maureen Perkins, Kristen M. Hooker, Barbara Kolitsch, Nicolas Reynolds. The purpose of this meeting was to discuss, per the LOC's directive, training options for PC members that could be offered through the HRD. The LOC further directed that these options be compiled and brought back to a LOC Work Meeting for consideration of whether to include them as mandatory training in the proposed draft of the OPC By-Laws Amendments.

**12/14/18:** *LOC Work Meeting.* Present: Maureen Perkins, Kristen M. Hooker, Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Daniel Guzman-King, Jennifer Webster, Kirby Metoxen. The purpose of this meeting was to go through the revisions to the OPC By-Laws that were proposed during the November 30, 2018 LOC Work Meeting and the December 6, 2018 Work Meeting with the HRD. The Next steps are to: (1) email the draft version of the OPC By-Laws Amendments to the entire Oneida Business Committee for review and comment; and (2) bring any comments from the OBC back to an LOC Work Meeting for consideration.

**12/26/18:** *LOC Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernie Stevens III. During this work meeting, the LRO informed the LOC that no comments were received from the Oneida Business Committee in response to the draft OPC By-Laws Amendments that were sent to the OBC via email on November 30, 2018. The LOC informed the LRO

that HRD had expressed a desire during its last OBC Work Session to have a dress code added to the OPC By-Laws Amendments. The next steps are to: (1) revise the current draft of the OPC By-Laws Amendments to include a proposed dress code for LOC consideration; (2) send the current draft of the OPC By-Laws Amendments to certain HRD representatives for further consideration and comment; and (3) bring any comments from those members of the HRD back to a LOC Work Meeting for consideration.

**Next Steps:**

- Accept the Oneida Personnel Commission By-Laws Amendments.
- Forward the Personnel Commission By-Laws Amendments to the Oneida Business Committee for consideration.

1

1

## ONEIDA PERSONNEL COMMISSION BY-LAWS

2

3 **Article I. Authority**

4 1-1. *Name.* The name of this entity shall be the Oneida Personnel Commission, and may  
5 be referred to as the OPC.

6

7 1-2. *Establishment.* The OPC was created by the General Tribal Council as the Personnel  
8 Selection Committee and renamed the Personnel Commission by the  
9 Oneida Business Committee through resolution BC-04-13-90-A. The  
10 Oneida Business Committee dissolved the Personnel Commission on April  
11 11, 2018 through resolution BC-04-11-18-A. On August 27, 2018, the  
12 General Tribal Council rescinded the dissolution of the Personnel  
13 Commission and the OPC was recreated by the Oneida Business  
14 Committee through resolution BC-09-26-18-F.

15

16 1-3. *Authority.*

17 (a) The OPC was created by the General Tribal Council to represent the Oneida  
18 community-at-large in the selection of the Nation's employees and to shield  
19 those employees from inconsistent and unfair treatment by:

- 20 (1) Protecting against issues of nepotism;
- 21 (2) Enforcing Oneida and Indian preference;
- 22 (3) Hearing and deciding appeals of disciplinary action filed by  
23 employees of the Nation; and
- 24 (4) Carrying out all other powers and duties delegated by the laws of  
25 the Nation, including but not limited to, the Oneida Personnel  
26 Policies and Procedures.

27 (b) The OPC does not have authority to:

- 28 (1) Enter into contracts;
- 29 (2) Create policy or legislative rules; or
- 30 (3) Evaluate or rate a candidate on criteria qualifications unrelated to  
31 the following subject matter during candidate interviews:
  - 32 (A) Oneida/Indian preference;
  - 33 (B) Nepotism;
  - 34 (C) Conflicts of interest;
  - 35 (D) Veteran status; and
  - 36 (E) Physical capacity requirements.

37

38 1-4. *Office.* The official mailing address of the OPC shall be:

39 Oneida Personnel Commission  
40 P.O. Box 365  
41 Oneida, WI 54155

42

43 1-5. *Membership.*

44 (a) *Number of Members.* The OPC shall be made up of five (5) members and  
45 Pro Tem members to be selected by the Oneida Business Committee

- 46 Support Office in the event of an incumbent member's recusal based on a  
 47 conflict of interest.
- 48 (1) Each member shall hold office until his or her term expires, until his  
 49 or her resignation, or until his or her appointment is terminated in  
 50 accordance with the Boards, Committees and Commissions law.
- 51 (b) *Appointment.* Each member shall be appointed in accordance with the  
 52 Boards, Committees and Commissions law to serve a five (5) year term.  
 53 The first term shall be staggered with one (1) member receiving a one (1)  
 54 year term; one (1) member receiving a two (2) year term; one (1) member  
 55 receiving a three (3) year term; one (1) member receiving a four (4) year  
 56 term and ~~one two~~ (12) members receiving a five (5) year term. Each  
 57 appointment after the initial staggered terms shall receive a five (5) year  
 58 term.
- 59 (c) *Vacancies.*
- 60 (1) *Filling of Vacancies.* Vacancies shall be filled in accordance with  
 61 the Boards, Committees and Commissions law.
- 62 (2) *Resignation.* A member may resign at any time verbally at a meeting  
 63 or by delivering written notice to the Oneida Business Committee  
 64 Support Office and the OPC Chairperson or his/her designee.
- 65 (A) *Effective Date of Resignation.* A resignation is effective  
 66 upon acceptance by motion of a member's verbal resignation  
 67 or upon delivery of the written notices.
- 68 (3) *Terms of Replacement Member.* A replacement member shall hold  
 69 office through the unexpired portion of the term of the member  
 70 whom he or she has replaced.
- 71 (A) A replacement member is defined as a member who fills a  
 72 vacancy caused by resignation, removal or termination.
- 73 (d) *Qualifications.* OPC members shall meet the following qualifications:
- 74 (1) Be an enrolled member of the Oneida Nation;
- 75 (2) Be at least twenty-one (21) years of age;
- 76 (3) Shall not be an employee of the Nation;
- 77 (4) Be available for meetings, training, interviews, prescreening,  
 78 reassignments, grievance hearings and other duties as needed. Three  
 79 (3) unexcused absences to attend to such duties may be reported to  
 80 the Oneida Business Committee, if deemed appropriate by the OPC,  
 81 for recommended termination;
- 82 (5) Be free of any and all direct conflicts of interest or appearances of  
 83 conflict as defined under various laws and policies of the Nation,  
 84 including but not limited to, the oath of office, the Oneida Rules of  
 85 Civil Procedure, the Oneida Personnel Policies and Procedures and  
 86 other laws/policies regarding employment, the Code of Ethics, and  
 87 the Boards, Committees and Commissions law; and
- 88 (6) Have a minimum of two (2) years supervisory experience along with  
 89 hiring experience, an Associate Degree, or equivalent experience or  
 90 education.
- 91 (e) *Duties and Responsibilities.* OPC members shall abide by the following:



- 92 (1) Both formal and informal communications to any entity on behalf  
 93 of the OPC must come from a member of the OPC through OPC  
 94 directive. Specific policy governing all communications of the OPC  
 95 may be set forth in an OPC Communications SOP to provide  
 96 procedural guidance, consistent herewith, on determining when,  
 97 how, and by which OPC member(s) communications are made;  
 98 (2) Uphold all laws and policies of the Nation, including but not limited  
 99 to, the Boards, Committees and Commissions law;  
 100 (3) Conduct grievance hearings in accordance with the Oneida  
 101 Personnel Policies and Procedures and the Oneida Judiciary Rules  
 102 of Civil Procedure; ~~and~~  
 103 (A) If a conflict exists between the Oneida Personnel Policies  
 104 and Procedures and the Oneida Judiciary Rules of Civil  
 105 Procedure, the Oneida Personnel Policies and Procedures  
 106 shall govern.  
 107 (B) Appeals from OPC decisions to the Judiciary shall be  
 108 governed by the Oneida Code of Laws, Title 8. Judicial  
 109 System.  
 110 (4) Exclusively use the official Oneida e-mail address provided by the  
 111 Nation upon appointment to the OPC to electronically conduct  
 112 business on behalf of the OPC; ~~and~~  
 113 (4)(5) Dress Code. OPC members are expected to be clean, well-groomed  
 114 and dressed in business casual attire when conducting activities on  
 115 behalf of the OPC, including but not limited to, employee interviews  
 116 and grievance hearings.  
 117 (A) By way of example, business casual attire does not include:  
 118 (i) Tattered jeans or shorts;  
 119 (ii) Shirts with language or graphics that are vulgar;  
 120 sexually explicit, or may otherwise be offensive;  
 121 (iii) Attire that is revealing or provocative;  
 122 (iv) Flip-flops or any type of loose footwear;  
 123 (v) Sweat suits;  
 124 (vi) See-through blouses or shirts;  
 125 (vii) Sports bras, halter tops, or similar attire;  
 126 (viii) Tank tops;  
 127 (ix) Clothing that allows bare midriffs; or  
 128 (x) Clothing that is ripped or stained.

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- 130 1-6. *Termination.* An OPC member's appointment may be terminated in accordance with the  
 131 Boards, Committees and Commissions law.  
 132 (a) Any member whose appointment is terminated by the Oneida Business  
 133 Committee after the adoption of these bylaws, as may be amended from  
 134 time to time, shall not be eligible for re-appointment to the OPC for a  
 135 minimum of five (5) years following his or her termination.  
 136

- 137 1-7. *Trainings.*

- 138 (a) OPC members must complete the following training prior to participating  
 139 in any screenings, interviews and/or grievance hearings on behalf of the  
 140 OPC:  
 141 (1) Four (4) hours of e-Learning on interview certification and four (4)  
 142 hours of orientation through the Oneida Human Resources  
 143 Department, which shall include:  
 144 (A) EEO training;  
 145 (B) Training on Tribal laws, rules and regulations; and  
 146 (C) Training on the Oneida Personnel Policies and Procedures.  
 147 (2) Training on the grievance process, which shall include:  
 148 (A) A presentation developed by the Oneida Judicial System on  
 149 the Oneida Judiciary Rules of Civil Procedure, an estimated  
 150 three (3) hours in length;  
 151 (B) Up to three (3) hours of training in formal opinion writing  
 152 and the basics of evidence; and  
 153 (C) Two (2) hours of training in professional ethics, including  
 154 issues of confidentiality.  
 155 (3) Any other training deemed necessary by the Oneida Business  
 156 Committee.  
 157 (b) After serving on the OPC for one (1) year, all OPC members shall either  
 158 accumulate a minimum of eight (8) hours of training annually in the above  
 159 subject matter or shall review annually the lessons and materials connected  
 160 with the above subjects.  
 161 (c) Completion of all training, including training under Section 1-7(b), shall be  
 162 confirmed by receipt of a certificate or some other written documentation  
 163 and kept on file with the OPC.  
 164

## 165 **Article II. Officers**

- 166 2-1. *Officers.* There shall be a Chairperson, a Vice-Chairperson and a Secretary.  
 167  
 168 2-2. *Responsibilities of the Chairperson.* The duties, responsibilities and limitations of the  
 169 Chairperson are as follows:  
 170 (a) Shall preside over all meetings of the OPC;  
 171 (b) Shall be a member of all subcommittees of the OPC, may call emergency  
 172 meetings, and shall keep the OPC informed as to the business of the OPC;  
 173 (c) Shall, with the assistance of the Secretary, submit annual and semi-annual  
 174 reports to the General Tribal Council as required by the Boards, Committees  
 175 and Commissions law;  
 176 (d) Shall, with the assistance of the Secretary, submit quarterly reports to the  
 177 Oneida Business Committee as required by the Boards, Committees and  
 178 Commissions law; and  
 179 (e) Shall, with the assistance of the Secretary, forward notice of meeting  
 180 location, agenda and materials in the manner prescribed herein.  
 181  
 182 2-3. *Responsibilities of the Vice-Chairperson.* The duties, responsibilities and limitations of the  
 183 Vice-Chairperson are as follows:

- 184 (a) In the absence of the Chairperson, shall conduct meetings of the OPC and  
 185 appoint a temporary Vice-Chairperson for those meetings; and  
 186 (b) Shall work with the Chairperson in all matters that concern the OPC.  
 187
- 188 2-4. *Responsibilities of the Secretary.* The duties, responsibilities and limitations of the  
 189 Secretary are as follows:  
 190 (a) Shall keep accurate minutes and/or assure that accurate minutes are kept of  
 191 all OPC meetings as required by the Boards, Committees and Commissions  
 192 law and as further prescribed herein;  
 193 (b) Along with the Chairperson, shall provide notice of regular, joint and  
 194 emergency meetings, as well as agendas and materials, in the manner  
 195 prescribed herein;  
 196 (c) Shall act as custodian of the records;  
 197 (d) Shall attend to, or ensure proper attendance to, all correspondence and  
 198 present to the OPC all official communications received by the OPC;  
 199 (e) Shall, along with the Chairperson, submit annual and semi-annual reports  
 200 to the General Tribal Council, as well as quarterly reports to the Oneida  
 201 Business Committee as required by the Boards, Committees and  
 202 Commissions law; and  
 203 (g) Shall work with the Business Committee Support Office to administer the  
 204 budget.  
 205
- 206 2-5. *Standing and Special Committees.* Standing and special committees may be created when  
 207 deemed necessary by the OPC. In accordance with the Boards, Committees  
 208 and Commissions law, OPC members who attend any meetings of a  
 209 standing or special committee shall not be eligible to receive a stipend for  
 210 their attendance.  
 211
- 212 2-6. *Selection of Officers.* Officers of the OPC shall be appointed by the OPC for two (2) year  
 213 terms. Officers may hold only one (1) officer position.  
 214 (a) Each officer shall hold his or her office until:  
 215 (1) The member resigns; or  
 216 (2) The member has his or her appointment terminated in the manner  
 217 set forth in the Boards, Committees and Commissions law.  
 218 (b) A vacancy of any officer position shall be filled by the OPC for the  
 219 unexpired term at the next regular or emergency meeting.  
 220
- 221 2-7. *Budgetary Sign-Off Authority and Travel.*  
 222 (a) Two (2) of the three (3) OPC Officers must sign-off on budgetary requests.  
 223 (b) The OPC shall follow the Nation's policies and procedures regarding  
 224 purchasing, travel and sign-off authority.  
 225 (c) The OPC shall approve a member's request to travel on behalf of the OPC  
 226 by a majority vote at a regular or emergency OPC meeting.  
 227 (d) The OPC must review its budget on a monthly basis and have one or more  
 228 members in attendance at all budget meetings.  
 229

- 230 2-8. *No Authorized Personnel.* The Oneida Business Committee Support Office and the Oneida  
 231 Human Resources Department shall assist the OPC with administrative  
 232 duties relating to the employee selection and grievance process.  
 233 (a) The Oneida Human Resources Department shall be responsible for the  
 234 scheduling of employee interviews.  
 235

236 **Article III. Meetings**

- 237 3-1. *Regular Meetings.* Regular meetings shall occur on a monthly-basis. The regular meeting  
 238 time, place and agenda shall be determined by the OPC at a regular meeting.  
 239 If no alternative designation is made by the OPC, the regular meeting shall  
 240 be the last Tuesday of every month. Notice of meeting location, agenda and  
 241 materials shall be forwarded by the Chairperson with the assistance of the  
 242 Secretary. Meetings shall run in accordance with Robert's Rules of Order  
 243 or another method approved by the Oneida Business Committee. Meetings  
 244 shall comply with the Nation's Open Records and Open Meetings law.  
 245

- 246 3-2. *Emergency Meetings.* Emergency meetings shall only be called when time sensitive issues  
 247 require immediate action. Emergency meetings of the OPC may be called  
 248 by the Chairperson or upon written request of any two (2) members. Notice  
 249 of the meeting location, agenda and materials shall be forwarded by the  
 250 Chairperson with the assistance of the Secretary.  
 251 (a) Within seventy-two (72) hours after an emergency meeting, the OPC shall  
 252 provide the Nation's Secretary with notice of the meeting, the reason for the  
 253 emergency meeting, and an explanation of why the matter could not wait  
 254 for a regular meeting.  
 255

- 256 3-3. *Joint Meetings.* Joint meetings with the Oneida Business Committee shall be held in March  
 257 and September of each year. Notice of the meeting location, agenda and  
 258 materials shall be forwarded by the Chairperson with the assistance of the  
 259 Secretary.  
 260

- 261 3-4. *Quorum.* A majority of the OPC members shall constitute a quorum for the  
 262 transaction of business, which shall include the Chairperson or Vice-  
 263 Chairperson.  
 264

- 265 3-5. *Order of Business.* The regular meetings of the OPC shall follow the order of business as  
 266 set out herein:  
 267 (a) Call to Order  
 268 (b) Roll Call  
 269 (c) Approving of Previous Meeting Minutes  
 270 (d) Reports  
 271 (e) Old Business  
 272 (f) New Business  
 273 (g) Adjournment  
 274

- 275 3-6. *Voting.* Voting shall be in accordance with the simple majority vote of the OPC

members present at a duly called meeting.

- (a) The Chairperson shall vote only in case of a tie.
- (b) The OPC is permitted to e-poll; provided, it does so in accordance with the procedures set forth in the Boards, Committees and Commissions law.

#### Article IV. Expectations

4-1. *Behavior of Members.* Members are expected to treat each other in accordance with the Nation's core values of The Good Mind as expressed by Onʌyoteʔa'ka, which includes:

- (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.
- (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
- (c) Kaʔnikuhli-yó. The openness of the good spirit and mind.
- (d) Kaʔtshatstásla. The strength of belief and vision as a People.
- (e) Kalihwi-yó. The use of the good words about ourselves, our Nation, and our future.
- (f) Twahwahtsilayʌ. All of us are family.
- (g) Yukwatsístayʌ. Our fire, our spirit within each one of us.

Failure to treat each other with respect shall be cause for a recommendation for termination from the OPC. Appointed members of the OPC serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the OPC, a member of the OPC may have his or her appointment terminated by the Oneida Business Committee.

4-2. *Prohibition of Violence.* Intentionally violent acts committed by a member of the OPC that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property during a meeting or when acting in an official capacity are strictly prohibited and grounds for an immediate recommendation for termination of appointment from the OPC and/or the imposition of sanctions and/or penalties according to laws and policies of the Nation.

4-3. *Drug and Alcohol Use.* Use of alcohol and prohibited drugs by a member of the OPC when acting in his or her official capacity is strictly prohibited. Prohibited drugs are defined as 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.

4-4. *Social Media.* OPC members shall abide by the Nation's Social Media Policy. OPC members shall further refrain from posting, attaching or writing anything relating to OPC business or activities on any social media outlet except for notices of meetings and notices of meeting cancellations.

- 322  
323 4-5. *Conflict of Interest.* OPC members shall abide by all laws of the Nation governing conflicts  
324 of interest. Members must submit a Conflict of Interest Disclosure form  
325 upon Oath of Office and annually.  
326

327 **Article V. Stipends and Compensation**

- 328 5-1. *Stipends.* OPC members are eligible for the following stipends as set forth in the  
329 Boards, Committees and Commissions law and resolution BC-09-26-18-D,  
330 titled Boards, Committee and Commissions Law Stipends:  
331 (a) One (1) monthly meeting stipend.  
332 (b) One (1) stipend per day for participating in interviews and/or job description  
333 pre-screens conducted by the Human Resources Department.  
334 (c) Stipends for holding grievance hearings.  
335 (d) Stipends for Judiciary hearings.  
336 (1) A member of the OPC may receive a stipend for attending an Oneida  
337 Judiciary hearing if that member is specifically subpoenaed.  
338 (e) Stipend for each full day of training that is required by law, bylaw or  
339 resolution.  
340 (f) A member shall receive a stipend for his or her attendance at a duly called  
341 joint meeting as defined under the Boards, Committees and Commissions  
342 law.  
343

- 344 5-2. *Compensation.* OPC members are not eligible for any other type of compensation for duties  
345 /activities they perform as members of the OPC.  
346 (a) OPC members shall not act in any other official or personal business  
347 capacity or on behalf of any other entity or individual while acting in the  
348 capacity of an OPC member or on behalf of the OPC.  
349

350 **Article VI. Records and Reporting**

- 351 6-1. *Agenda Items.* Agendas shall be maintained in a consistent format as identified in Article  
352 III, Section 3-5 of these bylaws.  
353  
354 6-2. *Minutes.* All minutes shall be typed in a consistent format and shall be submitted to  
355 the Oneida Business Committee Support Office within thirty (30) days after  
356 approval by the OPC.  
357  
358 6-3. *Attachments.* Handouts, attachments, memoranda, etc. shall be attached to the  
359 corresponding minutes and the agenda, minutes and attachments shall be  
360 kept electronically by the Oneida Business Committee Support Office.  
361  
362 6-4. *Oneida Business Committee Liaison.* The OPC shall regularly communicate with the  
363 Oneida Business Committee member who is their designated liaison. The  
364 frequency and method of communication shall be agreed upon by the OPC  
365 and the Liaison.  
366  
367 6-5. *Audio Recordings.* The OPC shall audio record meetings and submit the recordings to the

368 Oneida Business Committee Support Office within two (2) business days  
369 for purposes of maintaining the audio records.  
370 (a) Audio recordings of executive session portions of a meeting are not  
371 required.  
372

373 **Article VII. Amendments**

374 7-1. *Amendments to Bylaws.* Any amendments to these bylaws shall conform to the  
375 requirements of the Boards, Committees and Commissions law and any  
376 other policy of the Nation. Amendments to these bylaws shall be approved  
377 by the Oneida Business Committee prior to implementation.



1

1

## ONEIDA PERSONNEL COMMISSION BY-LAWS

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20 (1) Protecting against issues of nepotism;  
21 (2) Enforcing Oneida and Indian preference;  
22 (3) Hearing and deciding appeals of disciplinary action filed by  
23 employees of the Nation; and  
24 (4) Carrying out all other powers and duties delegated by the laws of  
25 the Nation, including but not limited to, the Oneida Personnel  
26 Policies and Procedures.  
27 (b) The OPC does not have authority to:  
28 (1) Enter into contracts;  
29 (2) Create policy or legislative rules; or  
30 (3) Evaluate or rate a candidate on criteria qualifications unrelated to  
31 the following subject matter during candidate interviews:  
32 (A) Oneida/Indian preference;  
33 (B) Nepotism;  
34 (C) Conflicts of interest;  
35 (D) Veteran status; and  
36 (E) Physical capacity requirements.  
37

38 1-4. *Office.* The official mailing address of the OPC shall be:  
39 Oneida Personnel Commission  
40 P.O. Box 365  
41 Oneida, WI 54155  
42

43 1-5. *Membership.*  
44 (a) *Number of Members.* The OPC shall be made up of five (5) members and  
45 Pro Tem members to be selected by the Oneida Business Committee

- 46 Support Office in the event of an incumbent member's recusal based on a  
 47 conflict of interest.
- 48 (1) Each member shall hold office until his or her term expires, until his  
 49 or her resignation, or until his or her appointment is terminated in  
 50 accordance with the Boards, Committees and Commissions law.
- 51 (b) *Appointment.* Each member shall be appointed in accordance with the  
 52 Boards, Committees and Commissions law to serve a five (5) year term.  
 53 The first term shall be staggered with one (1) member receiving a one (1)  
 54 year term; one (1) member receiving a two (2) year term; one (1) member  
 55 receiving a three (3) year term; one (1) member receiving a four (4) year  
 56 term and one (1) member receiving a five (5) year term. Each appointment  
 57 after the initial staggered terms shall receive a five (5) year term.
- 58 (c) *Vacancies.*
- 59 (1) *Filling of Vacancies.* Vacancies shall be filled in accordance with  
 60 the Boards, Committees and Commissions law.
- 61 (2) *Resignation.* A member may resign at any time verbally at a meeting  
 62 or by delivering written notice to the Oneida Business Committee  
 63 Support Office and the OPC Chairperson or his/her designee.
- 64 (A) *Effective Date of Resignation.* A resignation is effective  
 65 upon acceptance by motion of a member's verbal resignation  
 66 or upon delivery of the written notices.
- 67 (3) *Terms of Replacement Member.* A replacement member shall hold  
 68 office through the unexpired portion of the term of the member  
 69 whom he or she has replaced.
- 70 (A) A replacement member is defined as a member who fills a  
 71 vacancy caused by resignation, removal or termination.
- 72 (d) *Qualifications.* OPC members shall meet the following qualifications:
- 73 (1) Be an enrolled member of the Oneida Nation;
- 74 (2) Be at least twenty-one (21) years of age;
- 75 (3) Shall not be an employee of the Nation;
- 76 (4) Be available for meetings, training, interviews, prescreening,  
 77 reassignments, grievance hearings and other duties as needed. Three  
 78 (3) unexcused absences to attend to such duties may be reported to  
 79 the Oneida Business Committee, if deemed appropriate by the OPC,  
 80 for recommended termination;
- 81 (5) Be free of any and all direct conflicts of interest or appearances of  
 82 conflict as defined under various laws and policies of the Nation,  
 83 including but not limited to, the oath of office, the Oneida Rules of  
 84 Civil Procedure, the Oneida Personnel Policies and Procedures and  
 85 other laws/policies regarding employment, the Code of Ethics, and  
 86 the Boards, Committees and Commissions law; and
- 87 (6) Have a minimum of two (2) years supervisory experience along with  
 88 hiring experience, an Associate Degree, or equivalent experience or  
 89 education.
- 90 (e) *Duties and Responsibilities.* OPC members shall abide by the following:
- 91 (1) Both formal and informal communications to any entity on behalf

- 92 of the OPC must come from a member of the OPC through OPC  
 93 directive. Specific policy governing all communications of the OPC  
 94 may be set forth in an OPC Communications SOP to provide  
 95 procedural guidance, consistent herewith, on determining when,  
 96 how, and by which OPC member(s) communications are made;
- 97 (2) Uphold all laws and policies of the Nation, including but not limited to,  
 98 the Boards, Committees and Commissions law;
- 99 (3) Conduct grievance hearings in accordance with the Oneida  
 100 Personnel Policies and Procedures and the Oneida Judiciary Rules  
 101 of Civil Procedure;
- 102 (A) If a conflict exists between the Oneida Personnel Policies  
 103 and Procedures and the Oneida Judiciary Rules of Civil  
 104 Procedure, the Oneida Personnel Policies and Procedures  
 105 shall govern.
- 106 (B) Appeals from OPC decisions to the Judiciary shall be  
 107 governed by the Oneida Code of Laws, Title 8. Judicial  
 108 System.
- 109 (4) Exclusively use the official Oneida e-mail address provided by the  
 110 Nation upon appointment to the OPC to electronically conduct  
 111 business on behalf of the OPC; and
- 112 (5) *Dress Code.* OPC members are expected to be clean, well-groomed  
 113 and dressed in business casual attire when conducting activities on  
 114 behalf of the OPC, including but not limited to, employee interviews  
 115 and grievance hearings.
- 116 (A) By way of example, business casual attire does not include:
- 117 (i) Tattered jeans or shorts;
- 118 (ii) Shirts with language or graphics that are vulgar;  
 119 sexually explicit, or may otherwise be offensive;
- 120 (iii) Attire that is revealing or provocative;
- 121 (iv) Flip-flops or any type of loose footwear;
- 122 (v) Sweat suits;
- 123 (vi) See-through blouses or shirts;
- 124 (vii) Sports bras, halter tops, or similar attire;
- 125 (viii) Tank tops;
- 126 (ix) Clothing that allows bare midriffs; or
- 127 (x) Clothing that is ripped or stained.
- 128
- 129 1-6. *Termination.* An OPC member's appointment may be terminated in accordance with the  
 130 Boards, Committees and Commissions law.
- 131 (a) Any member whose appointment is terminated by the Oneida Business  
 132 Committee after the adoption of these bylaws, as may be amended from  
 133 time to time, shall not be eligible for re-appointment to the OPC for a  
 134 minimum of five (5) years following his or her termination.
- 135
- 136 1-7. *Trainings.*
- 137 (a) OPC members must complete the following training prior to participating

- 138 in any screenings, interviews and/or grievance hearings on behalf of the  
 139 OPC:  
 140 (1) Four (4) hours of e-Learning on interview certification and four (4)  
 141 hours of orientation through the Oneida Human Resources  
 142 Department, which shall include:  
 143 (A) EEO training;  
 144 (B) Training on Tribal laws, rules and regulations; and  
 145 (C) Training on the Oneida Personnel Policies and Procedures.  
 146 (2) Training on the grievance process, which shall include:  
 147 (A) A presentation developed by the Oneida Judicial System on  
 148 the Oneida Judiciary Rules of Civil Procedure, an estimated  
 149 three (3) hours in length;  
 150 (B) Up to three (3) hours of training in formal opinion writing  
 151 and the basics of evidence; and  
 152 (C) Two (2) hours of training in professional ethics, including  
 153 issues of confidentiality.  
 154 (3) Any other training deemed necessary by the Oneida Business  
 155 Committee.  
 156 (b) After serving on the OPC for one (1) year, all OPC members shall either  
 157 accumulate a minimum of eight (8) hours of training annually in the above  
 158 subject matter or shall review annually the lessons and materials connected  
 159 with the above subjects.  
 160 (c) Completion of all training, including training under Section 1-7(b), shall be  
 161 confirmed by receipt of a certificate or some other written documentation  
 162 and kept on file with the OPC.  
 163

## 164 **Article II. Officers**

- 165 2-1. *Officers.* There shall be a Chairperson, a Vice-Chairperson and a Secretary.  
 166  
 167 2-2. *Responsibilities of the Chairperson.* The duties, responsibilities and limitations of the  
 168 Chairperson are as follows:  
 169 (a) Shall preside over all meetings of the OPC;  
 170 (b) Shall be a member of all subcommittees of the OPC, may call emergency  
 171 meetings, and shall keep the OPC informed as to the business of the OPC;  
 172 (c) Shall, with the assistance of the Secretary, submit annual and semi-annual  
 173 reports to the General Tribal Council as required by the Boards, Committees  
 174 and Commissions law;  
 175 (d) Shall, with the assistance of the Secretary, submit quarterly reports to the  
 176 Oneida Business Committee as required by the Boards, Committees and  
 177 Commissions law; and  
 178 (e) Shall, with the assistance of the Secretary, forward notice of meeting  
 179 location, agenda and materials in the manner prescribed herein.  
 180  
 181 2-3. *Responsibilities of the Vice-Chairperson.* The duties, responsibilities and limitations of the  
 182 Vice-Chairperson are as follows:  
 183 (a) In the absence of the Chairperson, shall conduct meetings of the OPC and

- 184                   appoint a temporary Vice-Chairperson for those meetings; and  
 185                   (b)       Shall work with the Chairperson in all matters that concern the OPC.  
 186
- 187 2-4.   *Responsibilities of the Secretary.* The duties, responsibilities and limitations of the  
 188                   Secretary are as follows:  
 189                   (a)       Shall keep accurate minutes and/or assure that accurate minutes are kept of  
 190                   all OPC meetings as required by the Boards, Committees and Commissions  
 191                   law and as further prescribed herein;  
 192                   (b)       Along with the Chairperson, shall provide notice of regular, joint and  
 193                   emergency meetings, as well as agendas and materials, in the manner  
 194                   prescribed herein;  
 195                   (c)       Shall act as custodian of the records;  
 196                   (d)       Shall attend to, or ensure proper attendance to, all correspondence and  
 197                   present to the OPC all official communications received by the OPC;  
 198                   (e)       Shall, along with the Chairperson, submit annual and semi-annual reports  
 199                   to the General Tribal Council, as well as quarterly reports to the Oneida  
 200                   Business Committee as required by the Boards, Committees and  
 201                   Commissions law; and  
 202                   (g)       Shall work with the Business Committee Support Office to administer the  
 203                   budget.
- 204 2-5.   *Standing and Special Committees.* Standing and special committees may be created when  
 205                   deemed necessary by the OPC. In accordance with the Boards, Committees  
 206                   and Commissions law, OPC members who attend any meetings of a  
 207                   standing or special committee shall not be eligible to receive a stipend for  
 208                   their attendance.  
 209
- 210 2-6.   *Selection of Officers.* Officers of the OPC shall be appointed by the OPC for two (2) year  
 211                   terms. Officers may hold only one (1) officer position.  
 212                   (a)       Each officer shall hold his or her office until:  
 213                   (1)       The member resigns; or  
 214                   (2)       The member has his or her appointment terminated in the manner  
 215                   set forth in the Boards, Committees and Commissions law.  
 216                   (b)       A vacancy of any officer position shall be filled by the OPC for the  
 217                   unexpired term at the next regular or emergency meeting.  
 218
- 219 2-7.   *Budgetary Sign-Off Authority and Travel.*  
 220                   (a)       Two (2) of the three (3) OPC Officers must sign-off on budgetary requests.  
 221                   (b)       The OPC shall follow the Nation's policies and procedures regarding  
 222                   purchasing, travel and sign-off authority.  
 223                   (c)       The OPC shall approve a member's request to travel on behalf of the OPC  
 224                   by a majority vote at a regular or emergency OPC meeting.  
 225                   (d)       The OPC must review its budget on a monthly basis and have one or more  
 226                   members in attendance at all budget meetings.  
 227
- 228 2-8.   *No Authorized Personnel.* The Oneida Business Committee Support Office and the Oneida  
 229                   Human Resources Department shall assist the OPC with administrative

- 230 duties relating to the employee selection and grievance process.  
 231 (a) The Oneida Human Resources Department shall be responsible for the  
 232 scheduling of employee interviews.  
 233

### 234 **Article III. Meetings**

235 3-1. *Regular Meetings.* Regular meetings shall occur on a monthly-basis. The regular meeting  
 236 time, place and agenda shall be determined by the OPC at a regular meeting.  
 237 If no alternative designation is made by the OPC, the regular meeting shall  
 238 be the last Tuesday of every month. Notice of meeting location, agenda and  
 239 materials shall be forwarded by the Chairperson with the assistance of the  
 240 Secretary. Meetings shall run in accordance with Robert's Rules of Order  
 241 or another method approved by the Oneida Business Committee. Meetings  
 242 shall comply with the Nation's Open Records and Open Meetings law.  
 243

244 3-2. *Emergency Meetings.* Emergency meetings shall only be called when time sensitive issues  
 245 require immediate action. Emergency meetings of the OPC may be called  
 246 by the Chairperson or upon written request of any two (2) members. Notice  
 247 of the meeting location, agenda and materials shall be forwarded by the  
 248 Chairperson with the assistance of the Secretary.

249 (a) Within seventy-two (72) hours after an emergency meeting, the OPC shall  
 250 provide the Nation's Secretary with notice of the meeting, the reason for the  
 251 emergency meeting, and an explanation of why the matter could not wait  
 252 for a regular meeting.  
 253

254 3-3. *Joint Meetings.* Joint meetings with the Oneida Business Committee shall be held in March  
 255 and September of each year. Notice of the meeting location, agenda and  
 256 materials shall be forwarded by the Chairperson with the assistance of the  
 257 Secretary.  
 258

259 3-4. *Quorum.* A majority of the OPC members shall constitute a quorum for the  
 260 transaction of business, which shall include the Chairperson or Vice-  
 261 Chairperson.  
 262

263 3-5. *Order of Business.* The regular meetings of the OPC shall follow the order of business as  
 264 set out herein:

- 265 (a) Call to Order
- 266 (b) Roll Call
- 267 (c) Approving of Previous Meeting Minutes
- 268 (d) Reports
- 269 (e) Old Business
- 270 (f) New Business
- 271 (g) Adjournment

272  
 273 3-6. *Voting.* Voting shall be in accordance with the simple majority vote of the OPC  
 274 members present at a duly called meeting.

275 (a) The Chairperson shall vote only in case of a tie.

- 276 (b) The OPC is permitted to e-poll; provided, it does so in accordance with the  
 277 procedures set forth in the Boards, Committees and Commissions law.  
 278

279 **Article IV. Expectations**

280 4-1. *Behavior of Members.* Members are expected to treat each other in accordance with the  
 281 Nation's core values of The Good Mind as expressed by Onʌyote'a'ka,  
 282 which includes:

- 283 (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.  
 284 (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.  
 285 (c) Kaʔnikuhli·yó. The openness of the good spirit and mind.  
 286 (d) Kaʔtshatstásla. The strength of belief and vision as a People.  
 287 (e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our  
 288 future.  
 289 (f) Twahwahtsílayaʌ. All of us are family.  
 290 (g) Yukwatsístayʌ. Our fire, our spirit within each one of us.  
 291

292 Failure to treat each other with respect shall be cause for a recommendation  
 293 for termination from the OPC. Appointed members of the OPC serve at the  
 294 discretion of the Oneida Business Committee. Upon the recommendation of  
 295 a member of the Oneida Business Committee or the OPC, a member of the  
 296 OPC may have his or her appointment terminated by the Oneida Business  
 297 Committee.  
 298

299 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a member of the OPC that  
 300 inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm  
 301 on another person, or damage to property during a meeting or when acting  
 302 in an official capacity are strictly prohibited and grounds for an immediate  
 303 recommendation for termination of appointment from the OPC and/or the  
 304 imposition of sanctions and/or penalties according to laws and policies of  
 305 the Nation.  
 306

307 4-3. *Drug and Alcohol Use.* Use of alcohol and prohibited drugs by a member of the OPC when  
 308 acting in his or her official capacity is strictly prohibited. Prohibited drugs  
 309 are defined as marijuana, cocaine, opiates, amphetamines, phencyclidine  
 310 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other  
 311 substance included in Schedules I through V, as defined by Section 812 of  
 312 Title 21 of the United States Code. This also includes prescription  
 313 medication or over-the-counter medicine used in an unauthorized or  
 314 unlawful manner.  
 315

316 4-4. *Social Media.* OPC members shall abide by the Nation's Social Media Policy. OPC  
 317 members shall further refrain from posting, attaching or writing anything  
 318 relating to OPC business or activities on any social media outlet except for  
 319 notices of meetings and notices of meeting cancellations.  
 320

321 4-5. *Conflict of Interest.* OPC members shall abide by all laws of the Nation governing conflicts



322 of interest. Members must submit a Conflict of Interest Disclosure form  
 323 upon Oath of Office and annually.  
 324

### 325 **Article V. Stipends and Compensation**

326 5-1. *Stipends.* OPC members are eligible for the following stipends as set forth in the  
 327 Boards, Committees and Commissions law and resolution BC-09-26-18-D,  
 328 titled Boards, Committee and Commissions Law Stipends:

- 329 (a) One (1) monthly meeting stipend.
- 330 (b) One (1) stipend per day for participating in interviews and/or job description  
 331 pre-screens conducted by the Human Resources Department.
- 332 (c) Stipends for holding grievance hearings.
- 333 (d) Stipends for Judiciary hearings.  
 334 (1) A member of the OPC may receive a stipend for attending an Oneida  
 335 Judiciary hearing if that member is specifically subpoenaed.
- 336 (e) Stipend for each full day of training that is required by law, bylaw or  
 337 resolution.
- 338 (f) A member shall receive a stipend for his or her attendance at a duly called  
 339 joint meeting as defined under the Boards, Committees and Commissions  
 340 law.

341  
 342 5-2. *Compensation.* OPC members are not eligible for any other type of compensation for duties  
 343 /activities they perform as members of the OPC.

- 344 (a) OPC members shall not act in any other official or personal business  
 345 capacity or on behalf of any other entity or individual while acting in the  
 346 capacity of an OPC member or on behalf of the OPC.

### 348 **Article VI. Records and Reporting**

349 6-1. *Agenda Items.* Agendas shall be maintained in a consistent format as identified in Article  
 350 III, Section 3-5 of these bylaws.  
 351

352 6-2. *Minutes.* All minutes shall be typed in a consistent format and shall be submitted to  
 353 the Oneida Business Committee Support Office within thirty (30) days after  
 354 approval by the OPC.  
 355

356 6-3. *Attachments.* Handouts, attachments, memoranda, etc. shall be attached to the  
 357 corresponding minutes and the agenda, minutes and attachments shall be  
 358 kept electronically by the Oneida Business Committee Support Office.  
 359

360 6-4. *Oneida Business Committee Liaison.* The OPC shall regularly communicate with the  
 361 Oneida Business Committee member who is their designated liaison. The  
 362 frequency and method of communication shall be agreed upon by the OPC  
 363 and the Liaison.  
 364

365 6-5. *Audio Recordings.* The OPC shall audio record meetings and submit the recordings to the  
 366 Oneida Business Committee Support Office within two (2) business days  
 367 for purposes of maintaining the audio records.

368 (a) Audio recordings of executive session portions of a meeting are not  
369 required.  
370

371 **Article VII. Amendments**

372 7-1. *Amendments to Bylaws.* Any amendments to these bylaws shall conform to the  
373 requirements of the Boards, Committees and Commissions law and any  
374 other policy of the Nation. Amendments to these bylaws shall be approved  
375 by the Oneida Business Committee prior to implementation.



# Oneida Personnel Commission Bylaw Amendments Legislative Analysis

## SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: David P. Jordan	DRAFTER: Kristen M. Hooker	ANALYST: Maureen Perkins
Complies with Boards, Committees and Commissions Law	These amendments comply with the Oneida Business Committee directive established by resolution BC-09-26-18-C that all Boards, Committees and Commissions of the Nation; excluding the Oneida Business Committee or standing committees of the OBC and Tribal corporations, amend their bylaws to comply with the requirements established by the Boards, Committees and Commissions law. Additional information and requirements included in these bylaws beyond what is required in the Boards, Committees and Commissions law is not prohibited [see O.C. 105.10].		
Intent of the Bylaws	The bylaws provide a framework for the operation and management of the board to govern the standard procedures regarding the way the board conducts its affairs, including: the appointment of persons to the board, the membership qualifications, duties and responsibilities of both members and officers, terms and filling vacancies of members, selection of officers, establishment of expectations of members, maintenance of official records, stipends, termination process, required training, and how the bylaws are amended.		
Intent of the Amendments	The amendments were directed by the OBC in a regularly scheduled OBC meeting of September 12, 2018 with the direction to update qualifications to address the issue of understanding hearing authorities and responsibilities. The amendments also address changes required by the amended Boards, Committees and Commissions law established by resolution BC-09-26-18-C.		
Purpose	The Oneida Personnel Commission (OPC) was created by the General Tribal Council to protect against nepotism and enforce Oneida and Indian preference in hiring. The OPC represents the Oneida Community-at-large related to issues of Oneida and Indian Preference and nepotism in the selection of the Nation's employees and to protect those employees from inconsistent and unfair treatment by: <ol style="list-style-type: none"> <li>(1) Protecting against issues of nepotism;</li> <li>(2) Enforcing Oneida and Indian preference;</li> <li>(3) Hearing and deciding appeals of disciplinary action filed by employees of the Nation; and</li> <li>(4) Carrying out all other powers and duties authorities delegated by the laws of the Nation, including but not limited to the Oneida Personnel Policies and Procedures.</li> </ol>		
Legislation Related to Boards, Committees and Commissions	Oneida Personnel Policies and Procedures (PPP) Boards, Committees and Commissions law Code of Ethics law Travel and Expense Policy Conflict of Interest law Social Media Policy Computer Resources Ordinance Open Records Open Meetings Law Budget Management and Control law Oneida Judiciary Rules of Civil Procedure		
Enforcement/Due Process	An appointed member of an entity serves at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee. <ol style="list-style-type: none"> <li>(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.</li> </ol>		

	(b) The Oneida Business Committee’s decision to terminate an appointment is final and not subject to appeal [see O.C. 105-7-4].
Public Meeting	Public meetings are not required for bylaws.

## SECTION 2. BACKGROUND

- A. For a thorough history of the Oneida Personnel Commission (OPC) please refer to the resolution BC-09-26-18-F titled “Rescission of the Dissolution of the Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council’s August 27, 2018 Directive”.
- B. The bylaw amendments were added to the Active Files List on September 19, 2018 with David P. Jordan as the sponsor.

## SECTION 3. COMPLIANCE WITH THE BOARDS, COMMITTEES AND COMMISSIONS LAW

- A. The bylaws comply with changes to the requirements of all bylaws established by the amendments to the Boards, Committees and Commissions law adopted by resolution BC-09-26-18-C the Oneida Business Committee on September 26, 2018 [see 105.10-1].
- B. The bylaws comply with OBC Resolution BC-09-26-18-D Boards, Committees and Commission Stipends.

## SECTION 4. AMENDMENTS

This section details the changes to the bylaws from the previous bylaws adopted by the Oneida Business Committee on April 28, 2010.

### A. ARTICLE I. AUTHORITY

- a. A section was added restricting the OPC from the following activities [see Article I. 1-3(b)].:

- (1) entering into contracts
  - The OPC is no longer authorized to hire staff and therefore will no longer have a need to enter into any contracts.
- (2) creating policy or legislative rules
  - The OPC can recommend policy or legislative changes to existing employment related laws or request laws be created by the Legislative Operating Committee; however, the role of creating and adopting policy, legislative rules and laws has been delegated to the Legislative Operating Committee by the General Tribal Council through the Legislative Procedures Act.
- (3) evaluating or rating candidates on criteria qualifications unrelated to Oneida/Indian preference, nepotism, conflicts of interest, veteran status and physical capacity requirements.
  - OPC evaluation will be limited to items for which the OPC was created including Indian Preference, nepotism and conflicts of interest, as well as ensuring candidates receive a fair evaluation for veteran’s status and physical capacity. The Personal Policies and Procedures do authorize the OPC to evaluate candidates during the interview process [see PPP,

- 25 (B)Hiring Procedure, (2) Hiring Procedures, (g) Candidate Interviews];  
26 but the Policies and Procedures do not specify how that evaluation will  
27 take place. This provision of the bylaws clearly defines the interview  
28 factors that will be evaluated by the OPC.
- 29 b. The number of members was reduced from twelve to fifteen (12-15) down to five (5)  
30 members with the ability of the Oneida Business Committee Support Office to select Pro  
31 Tem members in the event of an incumbent member's recusal based on conflict of  
32 interest [see Article I. 1-5(a)].
- 33 c. A provision was added prohibiting members from being employed by the Nation [see  
34 Article I. 1-5(d)(3)].
- 35 • The previous bylaws only restricted OPC members from working for HRD,  
36 serving on any advocacy group (department) or any other recognized hearing  
37 body. Maintaining employment with the Nation and serving on the OPC may be  
38 problematic due to the fact that employment screenings, interviews and grievance  
39 hearings are all held during the work day and the OPC members must be able to  
40 attend.
- 41 d. A replacement member is now appointed to fulfill the unexpired term [see Article I. 1-  
42 5(c)(3)]. Previous appointments filling a vacancy served a full term.
- 43 e. A minimum age requirement of twenty-one (21) years of age was established by the  
44 amendments [see Article I. 1-5(d)(2)].
- 45 • This change supports the potential members time to gain the necessary  
46 supervisory experience and work experience to effectively perform the duties of  
47 the OPC.
- 48 f. A requirement was added requiring a minimum of two (2) years supervisory experience  
49 in addition to hiring experience, an Associate's Degree, or equivalent experience or  
50 education [see Article I. 1-5(d)(6)].
- 51 g. Additional duties and responsibilities new to these bylaws include:
- 52 • Uphold all laws and policies of the Nation, including but not limited to the  
53 Boards, Committees and Commissions law;
  - 54 • Conduct grievance hearings in accordance with the Oneida Personnel Policies  
55 and Procedures and the Oneida Judiciary Rules of Civil Procedure. If a conflict  
56 exists between the Oneida Personnel Policies and Procedures and the Oneida  
57 Judiciary Rules of Civil Procedure, the Oneida Personnel Policies and Procedures  
58 shall govern [see 803.4-6]. Appeals from OPC decisions to the Judiciary shall be  
59 governed by the Oneida Code of Laws, Title 8. Judicial System which includes  
60 multiple laws that govern the Judiciary.
  - 61 • Exclusively use the official e-mail address provided by the Nation upon  
62 appointment to the OPC to conduct business, electronically, on behalf of the  
63 OPC. [see Article I. 1-5(e)].
    - 64 ○ The requirement to use the official e-mail address provided by the Nation  
65 for all commission communication is contained in the Boards,  
66 Committees and Commissions law [see O.C. Chapter 105.14-3].

- Dress Code. A dress code was added to the bylaws that requires OPC members to be well groomed and dressed in business casual attire when conducting activities of the OPC *[see Article I. 1-6(e)(5)]*.

- h. Additional requirements were added related to terminated members. Members who are terminated will not be able to apply for re-appointment to the OPC for at least five (5) years following the termination. This provision will begin following the reestablishment of the board *[see Article I. 1-6(a)]*.
- i. Required trainings to be delivered by HRD and the Oneida Judicial System related to the Oneida Code of Laws, the applicant screening process, participating in interviews and the hearing / grievance process are included in the bylaws. OPC members must complete the training prior to participating in any screenings, interviews and/or grievance hearings. Additionally, after serving on the OPC for one year, all OPC members will be required to accumulate a minimum of eight (8) hours of training annually related to the required training, or review annually the lessons and material connected with the required trainings. Training records will kept on file with the OPC. The previous version of the bylaws did not list required training and referred instead to an OPC Training Plan *[see Article I. 1-7]*.

## B. ARTICLE II. OFFICERS

- a. The treasurer position was removed, and duties were assigned to the secretary position.
- b. Additional duties were assigned to the chairperson to include submittal of annual and semi-annual reports to GTC and submission of quarterly reports to the OBC *[see Article II. 2-2]*.
- c. Additional duties were assigned to the secretary to work with the chairperson to notice regular and emergency meetings, act as a custodian of the records, attend to or ensure proper attendance to all correspondence and present to the OPC all official communications received by the OPC. The Business Committee Support Office staff has agreed to assist the Secretary of the OPC with budgetary duties *[see Article II. 2-4(g)]* as established by the Budget Management and Control law *[see O.C. Chapter121]*.
- d. The budgetary and sign off authority and travel section is new to these bylaws based on requirements in the amended Boards, Committees and Commissions law. This requirement creates accountability related to board action related to travel and authority to make budgetary decisions. Attendance at budget meetings is a new requirement and such attendance is not eligible to receive a stipend *[see Article II. 2-7]*.
- e. The OPC is no longer authorized to hire personnel. The OPC will work with the Business Committee Support Office staff and Human Resources Department staff to assist with budgetary requirements, training and scheduling of employee interviews and grievance hearings *[see Article II. 2-8]*.

## C. ARTICLE III. MEETINGS

- a. The requirement to establish a schedule of meetings for the upcoming year was removed in these amendments. The bylaws do include a regular meeting schedule and detail that meetings will be determined by the OPC *[see Article III. 3-1]*.

- 110 b. Special meetings were removed, and joint meetings with the Oneida Business Committee  
111 were added to the bylaws in accordance with the Boards, Committees and Commissions  
112 law [see 105.10-3(c)].
- 113 c. The requirement of a chair or vice-chair be present to establish a quorum was added to  
114 these amendments [see Article III. 3-4]. Previously the commission was able to elect a  
115 chairperson Pro Tem to preside over the meeting in the case that the chair or vice chair  
116 were not available.
- 117 • This change ensures that the chair or vice chair are present at all meetings.
- 118 d. A roll call was added to the order of business and approval of the agenda,  
119 correspondence, and other sections were removed [see Article III. 3-5].
- 120 e. Legislative sessions were removed from the current draft bylaws.
- 121 • The Boards, Committees and Commissions law standardizes the types of  
122 meetings to include regular, emergency and joint meetings [see O.C. Chapter  
123 105.10-3(c)]. Any discussion of suggested legislative changes can be included in  
124 a regular meeting.
- 125 f. The use of e-polls that follows the procedure established by the Boards, Committees and  
126 Commissions law was added to the bylaws [see Article III. 3-6(b)]. The required  
127 procedures for conducting e-polls is included in the Boards, Committees and  
128 Commissions law [see 105.11].
- 129 g. The section related to standard operating procedures [see Article III. 3-9 of previous OPC  
130 bylaws] was removed. Guidance related to standard operating procedures appears in the  
131 Boards, Committees and Commissions law and requires that all established SOPs be  
132 submitted to the Business Committee Support Office to be kept on file [see O.C. Chapter  
133 105.12-2].

134  
135 D. ARTICLE IV. EXPECTATIONS

- 136 a. This entire section is a new requirement added to these bylaws based on the requirements  
137 established in the Boards, Committees and Commissions law. All requirements related to  
138 behavior, prohibition of violence, prohibition of drug and alcohol use while acting in an  
139 official capacity, social media requirements and conflict of interest have been met in the  
140 bylaws. The OPC will be required to disclose conflicts of interest annually and include  
141 those conflicts on the Conflict of Interest form [see Article IV. 4-5]. The OPC bylaws do  
142 not include any additional information related to mitigation of conflicts of interest which  
143 is optional under the Boards, Committees and Commissions law [see 105.10-1(d)(c)].

144  
145 E. ARTICLE V. STIPENDS AND COMPENSATION

- 146 a. The list of eligible stipends appears in this section along with detail that a full day of  
147 training is required to receive a training stipend which complies with Resolution BC-09-  
148 26-18-D [see Article V. 5-2].
- 149 b. A new provision was added that OPC members may not receive any other type of  
150 compensation while officially representing the OPC and shall not act in any other official  
151 or personal business capacity or on behalf of any other entity or individual while acting in  
152 the capacity of an OPC member or on behalf of the OPC.

153  
154 **SECTION 5. LEGISLATION RELATED TO BOARDS, COMMITTEES AND COMMISSIONS**



155 There are no conflicts between these bylaws and the Oneida Code of Laws. Below is a detailed list of  
156 laws that establish requirements related to Boards, Committees and Commissions generally and the OPC  
157 specifically.

158 A. Oneida Nation Personnel Policies and Procedures

- 159 a. Oneida Personnel Commission members are required to have, and undergo periodic re-  
160 training in, Equal Employment Opportunity, the Nation's laws, rules and regulations [*see*  
161 *PPP, (B) Hiring Procedure, (1) Statement of Policy (d)*].
- 162 b. The Oneida Personnel Commission is tasked with representing the Oneida Community-at-  
163 large in the selection of the Nation's employees. They are directed to seek out the best-  
164 matched applicants for each position and to consider only job-related factors (such as  
165 education, experience, past performance, skills and abilities, and compatibility with the  
166 position and potential co-workers) when selecting candidates [*see PPP, (B)Hiring*  
167 *Procedure, (2) Hiring Procedures, (b) Personnel Commission Role*].
- 168 c. Oneida Personal Commission is part of the Screening Committee that also includes the  
169 hiring supervisor, HRD Manager or designee, and the Area Manager at their discretion.  
170 Responsibilities include verification that applications are complete, analysis of job  
171 descriptions to establish screening criteria, screening verified applicants, and  
172 recommending a list of applicants to be interviewed [*see PPP, (B)Hiring Procedure, (2)*  
173 *Hiring Procedures, (f) Screening Applicants*].
- 174 d. Two members of the Oneida Personnel Commission will sit on the Interview Committee  
175 which is responsible to construct interview format consisting of questions related to the  
176 screening criteria qualifications and an interview rating scale designed to objectively  
177 evaluate each candidate's qualifications, interview candidates and evaluate individually  
178 [*see PPP, (B)Hiring Procedure, (2) Hiring Procedures, (g) Candidate Interviews*].
- 179 e. The Oneida Personnel Commission is designated with hearing body authority related to  
180 personnel grievances which only occur after the process detailed in the PPP are exhausted  
181 and if the decision of the Area Manager is against the weight of the evidence presented or  
182 if there were procedural irregularities that were exhibited during the appeal process that  
183 may have been harmful to one or more of the parties [*see PPP, (D) Complaints,*  
184 *Disciplinary Actions, and Grievances, (6) Grievance, (b) Appeal to Oneida Personnel*  
185 *Commission*].

186  
187 B. Boards, Committees and Commissions [*see O.C. Chapter 105*]

- 188 a. This law establishes all requirements related to elected and appointed Boards, Committees  
189 and Commissions of the Nation. The law governs the procedures regarding the  
190 appointment and election of persons to boards, committees and commissions, creation of  
191 bylaws, maintenance of official records, compensation, and other items related to boards,  
192 committees and commissions. The OPC is appointed by the Oneida Business Committee.  
193 The requirements for entity bylaws are contained in this law. These OPC bylaws comply  
194 with the Boards, Committees and Commissions law adopted by the Oneida Business  
195 Committee on September 26, 2018.

196  
197 C. Code of Ethics [*see O.C. Chapter 103*]

- 198 a. This law promotes the highest ethical conduct in all its elected and appointed government  
199 officials and expects that officials will demonstrate the highest standards of personal  
200 integrity, truthfulness, honesty, and fortitude in all public activities in order to inspire  
201 public confidence and trust in the governmental officials of the Oneida Nation.  
202 Government officials are also expected to adhere to the laws, customs, and traditions of the  
203 Nation.

204

- 205 D. Travel and Expense Policy [see O.C. Chapter 219]  
206 a. Members of the OPC are eligible to be reimbursed for travel and per diem to attend a  
207 conference or training in accordance with the Nation's travel policies.  
208
- 209 E. Conflict of Interest [see O.C. Chapter 217]  
210 a. This law applies to Boards, Committees and Commissions and establishes specific  
211 limitations to which information or materials that are confidential or may be used by a  
212 competitor of the Nation's enterprises or interests may be used in order to protect the  
213 interests of the Nation. The Boards, Committees and Commissions law establishes that  
214 amended bylaws require members to disclose potential or real conflicts and gives entities  
215 the option to determine how the conflict will be mitigated [see O.C. Chapter 105] and [see  
216 Article IV. 4-5 of the bylaws].  
217
- 218 F. Social Media Policy [see O.C. Chapter 218]  
219 a. This law applies to the OPC and regulates social media accounts including how content is  
220 managed and who has authority to post on social media on behalf of the Nation. Boards,  
221 Committees and Commissions must register social media accounts with the Nation's  
222 Secretary's Office to include specific information related to access to the account,  
223 acknowledgment and compliance with the Computer Resource Ordinance and this policy,  
224 use a Nation issued email address or ask for the Secretary to allow the entity to operate the  
225 account utilizing the current e-mail address, and ensure all content complies with all  
226 applicable laws of the Nation, state or federal laws.  
227
- 228 G. Computer Resources Ordinance [see O.C. Chapter 215]  
229 a. OPC members are considered users under this law and must comply with the established  
230 requirements to ensure appropriate use of the Nation's computer resources.  
231
- 232 H. Open Records and Open Meetings Law [see O.C. Chapter 107]  
233 a. Portions of the OPC meetings may be considered closed meeting sessions if exception in  
234 this law related to personnel matters (which includes interviews and grievance hearings) or  
235 contracts are being discussed and deemed confidential.  
236
- 237 I. Budget Management and Control [see O.C. Chapter 121]  
238 a. The OPC is considered a fund unit of the Nation under this law. Fund unit managers are  
239 required to develop, submit and maintain a triennial strategic plan for the fund unit's  
240 operations which aligns with the triennial strategic plan established by the Oneida Business  
241 Committee.  
242
- 243 J. Oneida Judiciary Rules of Civil Procedure [see O.C. Chapter 803]  
244 a. This law governs all civil actions that fall under the jurisdiction of the Oneida Nation. The  
245 OPC is required to use the Oneida Rules of Civil Procedure in all proceedings except where  
246 the Nation's Personnel Policies and Procedures are more specific, than those shall  
247 supersede [see 803.4-6].  
248  
249



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



### AGENDA REQUEST FORM

- 1) Request Date: 12-18-18
- 2) Contact Person(s): Melinda J. Danforth  
Dept: IGAC  
Phone Number: 869-4022 Email: mdanforj@oneidation.org
- 3) Agenda Title: General Welfare Exclusions Act - Income Exemptions
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
At the December 18, 2018 BC Work Meeting, the Business Committee requested that the General Welfare Exclusions Act - Income Exemptions item be sent over to the LOC for consideration to develop a law/code/ordinance that would define the income exemptions under the General Welfare Exclusions Act.

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

- 1) IGAC/Law Office Memo to BC 3) \_\_\_\_\_
- 2) Ho Chunk's GWE Law 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:  
Business Committee, Law Office
- 7) Do you consider this request urgent?  Yes  No  
If yes, please indicate why:  
impacts taxation for tribal member benefits

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

Signature of Requester: [Handwritten Signature] 12/18/18

*Please send this form and all supporting materials to:*

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



## MEMORANDUM

TO: Business Committee

FROM: Melinda J. Danforth, Intergovernmental Affairs Director  
Tana Aguirre, Intergovernmental Affairs  
James Bittorf, Deputy Chief Counsel

DATE: December 5, 2018

SUBJECT: BC Directive Re: General Welfare Exclusions – Income Exemption

The Oneida Nation Business Committee directed IGAC, Self-Governance & the Law Office to develop a plan of action to create rules for exempting income per the General Welfare Exclusion Act.

In reviewing the General Welfare Exclusion Act and the IRS guidance, the basic criteria for a qualifying general welfare exclusion are;

- Payments must be made under a government program, for the promotion of general welfare and cannot be for compensation for services
- The benefit is available to any tribal member, qualified nonmember or identified group of tribal members or qualified nonmembers (for example, veterans) who satisfy the program guidelines
- An agency/program must determine an individual or family need based upon written guidelines
- Cannot be an across the board payment (i.e. per capita) to every tribal member\
- The benefit is not lavish or extravagant
  - Benefits are defined by the IRS Revenue Procedure and include 5 main categories; housing program benefits, educational program benefits, elder/disabled benefits, other qualifying assistance (i.e. transportation costs, temporary relocation of individuals if displaced, cost of nonprescription drugs like traditional medicines), and cultural and religious programs

In consulting with NAFOA and researching a few other tribal Nations, the advice received was for Oneida to put in place a law, policy, or code that defines general welfare exclusions broadly. Attached you will find the Ho Chunk Nation's General Welfare Exclusion Ordinance.

Below are some of the areas identified that could immediately benefit from the development of this ordinance.

- Higher Education Funds received by students
- Catastrophic/Community Support funding
- Cultural Heritage (2 year immersion plan stipends/gift cards)
- Tourism (storytelling, dance troupe performance stipends, etc)
- Social Services (stipends for sweatlodges for mens/womens group)

With the amount of funding associated with the programs that would qualify under the exclusion, we are formally recommending that the Oneida Business Committee request the LOC to develop a General Welfare Exclusion Ordinance/Law.

**Recommendation: Request the LOC to develop a General Welfare Exclusion Ordinance/Law on behalf of the Oneida Nation**

A good mind. A good heart. A strong fire.





**HO-CHUNK NATION LEGISLATURE**  
*Governing Body of the Ho-Chunk Nation*

**45-Day Public Review**

**HO-CHUNK NATION LEGISLATURE  
 AUTHORIZATION TO PLACE THE  
 GENERAL WELFARE EXCLUSION ORDINANCE  
 OUT FOR FORTY-FIVE DAY PUBLIC COMMENT**

**RESOLUTION 09-18-18 H**

- WHEREAS,** on November 1, 1994, the Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation ("Constitution"), formerly known as the Wisconsin Winnebago Nation; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget; and
- WHEREAS,** Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals; and
- WHEREAS,** Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and
- WHEREAS,** the Ho-Chunk Nation Legislature passed the *Legislative Organization Act* (2 HCC § 11), which was last amended on June 23, 2015; and
- WHEREAS,** the *Legislative Organization Act* provides the procedures for enacting or amending a Ho-Chunk Nation law; and

**Executive Offices**

W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615  
 (715) 284-9343 Fax (715) 284-3172 (800) 294-9343

**WHEREAS,** Section 44, subparagraph d (1) (a) of the *Legislative Organization Act* provides that the Public Review period for consideration of proposed laws or amendments will typically be forty-five (45) days; and

**WHEREAS,** the Legislature has discussed at Legislative Sessions and Housing Committee meetings the need for the Nation to adopt a *General Welfare Exclusion Ordinance* in order to be in compliance with the Federal Tribal General Welfare Exclusion Act of 2014; and

**WHEREAS,** the Department of Justice has drafted and submitted to the Legislature a proposed *General Welfare Exclusion Ordinance* for the Nation to be placed out for public comment; and

**WHEREAS,** the Legislature previously placed the proposed *General Welfare Exclusion Ordinance* out for 45 day public comment through Resolution 10-21-16D and 11-07-17I and now wishes to place it out for 45 day public comment due to the passage of time and to seek additional public comment;

**NOW, THEREFORE, BE IT RESOLVED,** that the Legislature, pursuant to its Constitutional authority, hereby places the attached proposed *General Welfare Exclusion Ordinance* out for forty-five (45) day public comment, to run from the date the proposed ordinance is posted on the Nation's website.

#### CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **9** constituting a quorum were present at a meeting duly called and convened and held that on the **18<sup>th</sup> day of September, 2018**, adopted the foregoing resolution at said meeting by an affirmative vote of **9 members, 0 opposed, and 0 abstaining**, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.

Andrea Estebo  
Andrea Estebo, Tribal Secretary

09.18.2018  
Date





## 1. Authority.

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

d. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

## 2. Findings. The Legislature of the Ho-Chunk Nation states the following findings:

a. Overcrowding, homelessness, home affordability, homeowner's maintenance/responsibility, credit/fiscal responsibility and access to financing continue to be critical problems faced by Tribal Members.

b. It is a high priority of the Nation and its government to address the housing needs all tribal members who have acted as the principal keepers of traditions and culture, which the Nation generously recognizes and appreciates.

c. Federal housing programs have generally proven inadequate and poorly designed from the perspective of the material, cultural, and social needs of the Nation and its Tribal members. The needs of the Nation require the expenditure of resources to provide housing programs thus allowing Tribal members the opportunity to realize a safe, and affordable, and pleasant home environment.

d. The use of gaming revenues to provide adequate housing is deemed a priority.

**3. Purpose.** This Act establishes the Ho-Chunk Nation's *Housing for the General Welfare of Veterans, Elders and Non-Elders* to be administered by the Department of Housing. The Act sets forth the regulatory scope and authority of home ownership terms which the Nation provides for

the benefit of Ho-Chunk Nation members, and the necessary organizational policies which are administered under the Department of Housing.

**4. Goals.** The goals of the Housing for the General Welfare of Veterans, Elders and Non-Elders are as follows:

a. Establish a system to ensure Ho-Chunk Nation Veterans, Elders and Non-Elders who are proved to be financially responsible are served the earliest.

b. Ensure fair administrative guidelines, educational and counseling assistance to assist Ho-Chunk Nation members with achieving home ownership.

c. Establish a fair and consistent enforcement policy to cooperatively resolve issues with regard to payment delinquencies and other defaults in order to avoid legal remedies if possible, yet protect the Nation's financial interests.

**5. General.** This Ordinance shall be known as the Ho-Chunk Nation General Welfare Ordinance.

a. Purpose – The first purpose of this Ordinance is to memorialize the procedures used by the Nation to determine what services or programs are needed to promote public health, safety and other basic need services for the promotion of the general welfare of the Nation such as sewer, water, electrical service / power, infrastructure, housing, public sanitation services, public education and other such functions that support the long historical and cultural general welfare of the Nation. The second purpose of this Ordinance is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare doctrine and Internal Revenue Code Section 139E.

b. Intent - The Ho-Chunk Nation ("Nation"), a federally recognized Indian Nation, exercises its inherent rights of sovereignty to promote the general welfare of the Nation, its self-determination, culture, and tradition, by providing general welfare assistance, including Indian general welfare benefits within the meaning of Internal Revenue Code Section 139E. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis. This Ordinance is intended to affirm the Nation's inherent sovereign rights to promote the general welfare of the Nation and provide qualifying assistance and program benefits on a tax free basis. In this regard, the Constitution of the Nation confirms the sovereign duty and responsibility of the Ho-Chunk Nation to maintain the culture and independence of its members, to encourage the economic well-being of its members, and to promote the rights of its members and their common welfare. The Assistance authorized by this Ordinance is intended to qualify for tax free treatment to the fullest extent permitted at law. Without limitation, the following benefits shall be treated as non-taxable hereunder:

(1) Benefits that satisfy the requirements for exemption under Code Section 139E;

(2) Benefits that are provided under an IRS Safe Harbor Program;

(3) Benefits that qualify for exclusion under the IRS General Test; or

(4) Benefits that meet another express exemption under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for, example, resource or land-based exemptions under 25 U.S.C. Sections 117a-b, 1407 and 1408.

**6. Definitions.** In construing the provisions of this Ordinance, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or the context provides otherwise.

a. "Assistance" Any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.

b. "Beneficiary" Any person or persons entitled to receive Assistance in accordance with specific Program guidelines. Programs designed to qualify for exemption under Code Section 139E may benefit Members, spouses of a Member, and/or Dependents of a Member. Programs designed to meet the Safe Harbor may benefit any Member or Qualified Nonmember.

c. "Code" means the Internal Revenue Code of 1986, as amended.

d. "Compensation" for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Nation from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion. For example, Programs similar to the Workforce Investment Act may include tax free Assistance.

e. "Constitution" means the Constitution of the Ho-Chunk Nation.

f. "General Welfare Exclusion" Assistance shall be treated as non-taxable so long as it satisfies the requirements for exclusion under Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.

g. "General Test" – Assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are: (1) paid by or on behalf of an Indian Nation (2) under a social benefit program, (3) based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature), and (4) are not Compensation for services or per capita payments.

h. "Lavish" or "Extravagant" Except as otherwise required for compliance with final guidance issued under Code Section 139E following consultation, lavish and extravagant shall be determined by the Tribal Legislature in its sole discretion based on all facts and circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular Assistance at hand.

i. "Ordinance" means the General Welfare Ordinance.

j. "Pay" or "paid" or "payment" means pay or reimburse in whole or in part.

k. "Program" or "Approved Program" means any program established by or under authority of the Tribal Legislature, including any program authorized through the annual budget process, to provide Assistance hereunder. A program shall not fail to be treated as an Indian tribal government Program solely by reason of the Program being established by tribal custom or government practice.

l. "Promotion of the general welfare" or "Social benefit" should reflect a goal or goals established by and in the sole discretion of the Tribal Legislature for the promotion of the general welfare of the Nation, for example, in furtherance of tribal self-determination, culture and tradition.

m. "Qualified Nonmember" means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or Dependent of a member of the Nation. Individual Tribal Programs may, but are not required to, cover Qualified nonmembers.

n. "Reservation" means the reservation of the Ho-Chunk Nation or, if the context so permits, any other Indian reservation as defined in Internal Revenue Code Section 162(j).

o. "Safe Harbor Program" shall refer to a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.

p. "Service area" has the same meaning as in 25 C.F.R. Section 20.100.

q. "Service unit area" means an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. Section 136.21(l).

r. "Self-determination" should be construed broadly to reflect traditional health, education and welfare programs as well as unique cultural and traditional based programs and economic development. See, e.g., P.L.R. 199924026 (tax free business grants in part to promote on reservation employment).

s. "Spouse" shall be determined in accordance with Tribal laws, customs and traditions.

t. "Tribal Legislature" or "Legislature" means the Ho-Chunk Nation Tribal Legislature.

**7. Ratification of Prior Acts; Intent of Legislation.** This Ordinance does not establish a new program or programs. This Ordinance is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist. Assistance provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare doctrine

compliance. Programs and services referred to herein must be authorized by independent action of the Legislature or its designees.

**8. General Welfare Doctrine; Rules of Construction.** The Internal Revenue Service has historically recognized that payments by a Tribal government to Tribal Members under a legislatively provided social benefit program for the promotion of the general welfare of the Nation are excludable from the gross income of those Tribal Members who receive said payments. On December 5, 2011, the United States Treasury Department and IRS published Notice 2011-94 as part of an initiative to conduct consultation on ways to improve guidance on tribal general welfare matters. Notice 2011-94 invited comments from tribal governments concerning the application of the general welfare exclusion to Indian tribal government programs. The Nation participated in that process through comments and supported similar efforts by the National Congress of American Indians, the United South and Eastern Nations, Inc., the California Association of Tribal Governments and the Affiliated Nations of the Northwest Indians, all seeking clarity with regard to the sovereign right of Nations to provide tax free assistance based on non-financial need criteria including the preservation of culture and tradition. On December 5, 2012, the IRS and Treasury Department issued Notice 2012-75 proposing new guidance and providing interim relief under the general welfare exclusion for Programs that meet designated safe harbor rules. The Nation asserted all protections provided under the proposed rule and made certain operational changes to Programs where possible to secure additional Member protections under the interim relief. On June 3, 2014, the Treasury Department issued final guidance in the form of Revenue Procedure 2014-35 confirming that IRS will not tax Member Assistance that meets designated IRS safe harbor requirements. In September of 2014, Nations and tribal organizations worked with the United States Congress to clarify that Bills then pending in the House (H.R. 3043) and in the Senate (S.B. 1507) were in fact intended to expand tribal general welfare exclusion rights and build upon the safe harbor and general test relief previously recognized by the IRS. On September 17, 2014, Senators Moran and Heitkamp, co-sponsors of S.B. 1507, engaged in a colloquy with the Chairman of the Senate Finance Committee, Senator Wyden, on the Congressional Record of the Senate confirming their understanding and intent that:

a. IRS would apply S.B. 1507 “no less favorable than the safe harbor approach provided for in Revenue Procedure 2014-35, and that in no event will IRS require an individualized determination of financial need where a tribal Program meets all other requirements of new section 139E as added by the bill.”

b. The bill requires that “any ambiguities in new Code section 139E shall resolved by the IRS in favor of Indian Tribal governments and deference shall be given to Indian Tribal governments for programs administered and authorized by the Nation to benefit the general welfare of the Tribal community.”

c. It “would be contrary to the intent of Congress” if IRS were to “take the occasion of passage of H.R. 3043 or S. 1507 to retrench, narrow or possibly withdraw the administrative guidance provided in Rev. Proc. 2014-35 after enactment of the bill.”

d. The Congressional intent “is to expand rather than restrict the safe harbor provisions in Rev. Proc. 2014-35.”

e. “The purpose of this legislation is to further empower Tribal self-determination.”

f. “Tribal governments have a long history of providing critical benefits to Tribal Members, and these programs are fundamental to the sovereignty and cultural integrity of Nations. Nations, and not the IRS, are in the best position to determine the needs of their members and provide for the general welfare of their tribal citizens and communities.”

On September 18, 2014, the Tribal General Welfare Exclusion Act of 2014 passed both houses of Congress, and was signed into law on September 29, 2014. The Tribal Legislature now expressly embraces the forgoing principles as an integral part of this Ordinance and as guiding principles in construing the Nation’s compliance with Code Section 139E, the Safe Harbor Rules, and the General Test. The assistance payments and services authorized by this Ordinance are intended to qualify for favorable tax treatment under the general welfare doctrine to the fullest extent permitted by law and shall be construed accordingly.

**9. Non-Resource Designation.** General welfare services and payments hereunder are paid from assets of Tribal government; all payments are based on budget availability of the Tribal government, and the Tribal government does not guarantee any payments hereunder. Benefits paid hereunder on the basis of need shall not be treated as a resource of the Member for any purpose. The Legislature reserves the right to cancel, adjust, modify or revoke any benefits that are treated as a resource of the Tribal Member.

**10. Federal Trust Obligations; Executive Orders.** The Nation reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal Members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation’s adoption of Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation’s right to seek funding shortfalls or to enforce the trust rights of the Nation and its members. The Nation shall be entitled to government-to-government consultation and coordination rights in regard to this Ordinance.

**11. Indian General Welfare Benefits (Code Section 139E).** Programs that meet the following criteria for exemption under Code Section 139E shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need.

a. General Criteria for Qualification under Code Section 139E: Each payment made or service provided to or on behalf of a Member (or any Spouse or Dependent of the Member) pursuant to a Program under this Ordinance shall be treated as non-taxable Assistance under the General Welfare Exclusion so long as the following criteria are met:

(1) The Program is administered under specified guidelines and does not discriminate in favor of the members of the governing body of the Nation;



(2) Program benefits are available to any Tribal Member who meets such guidelines;

(3) Program benefits are for the "promotion of the general welfare";

(4) Program benefits are not Lavish or Extravagant; and

(5) Program benefits are not Compensation for services.

b. **Ceremonial Activities:** Any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as Compensation for services.

c. **Special Effective Dates:** Code Section 139E is effective for Assistance in taxable years for which the period of limitations on a refund or credit under Code Section 6511 has not expired. If the period of limitation on a refund or credit resulting from the application of Code Section 139E (a) would otherwise expire before the one-year period beginning on the date of the enactment of Code Section 139E, a refund or credit (to the extent attributed thereto) may be made or allowed if a claim is filed before the close of such one-year period.

**12. Safe Harbor Programs.** Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:

a. **General Criteria for Safe Harbor Treatment:** Each Safe Harbor Program shall satisfy the following general criteria:

(1) The benefit is provided under a specific Approved Program of the Nation;

(2) The Program has written guidelines specifying how individuals may qualify for the benefit;

(3) The benefit is available to any tribal member, Qualified Nonmember, or identified group of Tribal Members or Qualified Nonmembers who satisfy the Program guidelines, subject to budgetary restraints;

(4) The distribution of benefits from the Program does not discriminate in favor of the governing body of the Nation;

(5) The benefit is not Compensation for services; and

(6) The benefit is not Lavish or Extravagant under the facts and circumstances.

b. **Qualifying Safe Harbor Benefits:** The following benefits may be provided under a Safe Harbor Program. The benefits listed in the parenthetical language herein are illustrative only,

rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of Article VI and Revenue Procedure 2014-35 (as may be amended):

(1) Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:

(a) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences.

(b) Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including but not limited to mold remediation), or heating or cooling issues.

(c) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement).

(d) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

(e) Pay property taxes or make payments in lieu of taxes (PILOTs).

(2) Educational programs. Programs that:

(a) Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities.

(b) Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and Dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education.

(c) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education.

(d) Provide job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job

interview or training (including but not limited to an interview suit or a uniform required during a period of training).

(3) Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes or laws) that provide:

(a) Meals through home-delivered meal programs or at a community center or similar facility.

(b) Home care such as assistance with preparing meals or doing chores, or day care outside the home.

(c) Local transportation assistance.

(d) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(4) Cultural and religious programs. Programs that:

(a) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian Nation's cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances.

(b) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Nation, including but not limited to other Indian reservations.

(c) Pay the costs of receiving instruction about an Indian Nation's culture, history, and traditions (including but not limited to traditional language, music, and dances).

(d) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events.

(e) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Nation or another Nation.

(5) Other qualifying assistance programs. Programs that:

(a) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores).

(b) Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member or Qualified Nonmember while the individual is receiving medical care away from home.

(c) Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses.

(d) Pay costs for temporary relocation and shelter for individuals displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster).

(e) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals.

(f) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

c. **Compensation Safe Harbor:** For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Nation will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances or nominal cash honoraria provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

d. **Safe Harbor Effective Dates:** Safe harbor treatment shall be afforded to any Program or benefit that otherwise satisfies the safe harbor rule as of, or after, December 6, 2012, or for any earlier taxable period for which the period of limitation on refund or credit under Internal Revenue Code Section 6511 has not expired.

e. **Non-Safe Harbor Programs:** Nothing in this Ordinance or the IRS safe harbor guidance shall limit the Nation's right to provide Assistance outside of the safe harbor rules.

**13. Programs Meeting the General Test.** Programs that do not qualify for non-taxable treatment under Code Section 139E or under an IRS Safe Harbor, will nonetheless be treated as non-taxable if Program benefits meet the General Test for treatment under the General Welfare Exclusion. For purposes of the General Test only, needs must be shown in one of the following manners:

a. Individual Needs. Certain Programs may be based on individual need, rather than an overall need of the Nation. For those Programs, the Tribal Legislature may establish income guidelines unique to the Nation or may use readily available income guidelines used by state or federal programs to demonstrate individual or family need. When individual or family need must be shown, the Program may take into account individual circumstances or extraordinary need to overcome presumptions based on income alone.

b. Community Needs. Certain Programs may be based on community needs, which are so important to the self-determination, culture and traditions of the Nation that Assistance may be deemed necessary regardless of individual income or wealth. For example, states provide public education to all citizens regardless of individual income or wealth. Some Programs may address both individual and community-based needs. The Legislature reserves the right to require any applicant applying for consideration based on non-financial or community-based needs to demonstrate how the Program benefits will benefit the tribal community as a whole, including preservation of culture, tradition and self-determination. Approval based on non-financial need criteria is made on a facts and circumstances basis and will be guided by traditional values and culture. A Program will be deemed to be based on community or non-financial needs if so designated by the Legislature.

**14. Purpose.** All Assistance disbursed pursuant to this Ordinance shall be designed to promote the general welfare, self-determination, culture and tradition of the Nation. The Tribal Legislature shall establish objectives for the furtherance of the general welfare, self-determination, culture and tradition of the Nation and assess progress on said objectives in connection with its budgeting and/or strategic planning process. Approved Programs shall be renewed, established, modified, or terminated based upon the needs of the Nation as compared to the objectives set by the Legislature from time to time hereunder. All Programs hereunder shall provide a social benefit for the promotion of the general welfare of the Nation and be limited to purposes consistent with treatment under this Ordinance. Such purposes may include, for example, and not by way of limitation, assistance for medical care, food, shelter, health, education, subsistence, housing, elder and disabled care, assistance to meet cultural, traditional and religious needs of the Nation and its membership, and assistance to promote self-sufficiency, self-determination, Tribal image, entrepreneurship, and the employment of Tribal Members. Designation by the Tribal Legislature of a Program as falling under this Ordinance shall be conclusive evidence that the Tribal Legislature, following a good faith review of Tribal needs and goals, has determined that said Program is established to achieve a social benefit and to promote the general welfare of the Nation.

**15. Eligibility and Application Procedures.** Each approved Program shall set forth the specific eligibility rules and limitations applied to that Program. Each designated department shall present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, for approval by the Tribal Legislature or its designee. Only those descriptions, application forms and procedures which are approved by the Tribal Legislature or its designee shall be in force and effect. Program guidelines may limit benefits to an identified group of Members or Qualified Nonmembers, as applicable. All Programs may be limited by budget availability. In the absence of specific Program guidelines to the contrary, all

Programs shall be deemed to incorporate eligibility criteria necessary for compliance with Code Section 139E.

**16. Limited Use of Assistance; Substantiation.** All Assistance disbursed or provided pursuant to this Ordinance must be used for the purpose stated in the approved Program description, and any application for the applicable Assistance. The Nation or its designee shall keep books or records deemed appropriate to demonstrate compliance with the Ordinance. Recipients of benefits hereunder are responsible for maintaining books or records as may be required for substantiation to the IRS for individual income tax purposes. In the event that Assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable approved Program or the Member's application, the Tribal Legislature or designee may require the repayment of the welfare assistance payment. The Tribal Legislature or designee is authorized to offset any other payments owed to a Tribal member if such an offset is necessary to secure repayment of a welfare assistance payment in accordance with this Section.

**17. Limitation on Payments; Annual Budgeting.**

a. **Limitations on Welfare Assistance Payments.** The Tribal Legislature, within its annual budgets, by resolution or by motion, may adopt guidelines establishing the maximum Assistance payments to be made to Tribal Members for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments charged with administering particular programs may be delegated authority to adopt program guidelines to the extent not contrary to the overall guidelines and limitations established by the Tribal Legislature hereunder. In no event shall Assistance be lavish or extravagant.

b. **Annual Budgeting: Unfunded Program.** The Tribal Legislature, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of Assistance benefits. Notwithstanding anything to the contrary, the Assistance payments authorized hereunder shall be "unfunded" for tax purposes and no Beneficiary shall have an interest in or right to any funds budgeted for or set aside for Assistance payments until actually paid. Assistance benefits shall remain assets of the Nation until distributed, and the Approved Programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and/or economic benefit.

**18. Forfeiture of General Welfare Assistance.**

a. **Forfeiture.** Notwithstanding anything herein to the contrary, Assistance benefits may be revoked or forfeited for any Beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process. Assistance may also be forfeited should said benefits be treated as a resource to the detriment of the Nation or a Beneficiary. The Nation shall have a right of recovery with regard to any excess or improper payments hereunder.

b. **Due Process.** Each program shall offer procedures that afford a Beneficiary an opportunity to address forfeiture issues or concerns with the program director or designee.

c. **Anti Alienation.** A Tribal member's rights to apply for General Welfare assistance payments and/or services under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors.

**19. Programs not Limited to Means Testing.** Programs that qualify under Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare Exclusion. The Nation also reserves the right to provide community-based Programs and Programs based on non-financial need under the General Test that are not individually means tested. The Nation recognizes that means testing can distort certain tribal cultural and community values. The Nation has participated in consultation with the United States Treasury Department and IRS and will evaluate Programs periodically as guidance is further developed through consultation with the Nation.

**20. Privacy; Information Sharing.** The Nation will maintain records regarding sensitive tribal and tribal Member matters, including tribal customs, religion and traditions, confidential from third party disclosures to the fullest extent permitted at law. If information is requested by IRS or other government agencies or third parties during a compliance review or examination, disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis. Confidential Tribal information shall not be shared in a manner that would open up additional disclosure, for example, under information sharing agreements the recipient may be subject to or under the Freedom of Information Act.

**21. Government-to-Government Relationship; Executive Order 13175.** Coordination with IRS and the United States Treasury Department on General Welfare matters shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the Tribal government. The federal government, as a result of its treaty obligations and trust responsibility, has committed to providing education, housing, clean water, and many other basic needs for Indian people. Through a conscientious shift in policy in recent decades, the federal government has encouraged the Nation itself to provide for such needs in partnership with the federal government and, increasingly in recent years, instead of the federal government. Essential to the government-to-government relationship is mutual respect and deference to Tribal governance decisions. Future consultations on General Welfare matters should reflect these concerns and the fact that the Tribal government, through its own policy setting process, is best situated to determine the needs of the Nation and its Members and the appropriate policy solutions. All references to Executive Order 13175 shall include any future amendments thereto.

**22. Other Tax Exemptions.** Notwithstanding anything herein to the contrary, the Nation reserves the right to waive income limits or needs basis criteria, to the extent otherwise applicable, for expenditures that otherwise qualify for tax exemptions including tax exemptions under Titles 25 or 26 of the United States Code so long as the conditions for exemption are met.

Without limitation, this includes Member medical benefits exempt under Section 9021 of the Patient Protection and Affordable Care Act of 2010 (Code Section 139D) and per capita expenses exempt under 25 U.S.C. Sections 1407 and 1408.

**23. Governing Law.** All rights and liabilities associated with the enactment of this Ordinance, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Ho-Chunk Nation.

**24. Severability.** If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.

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**Legislative History:**

45 Day Comment  
Adopted by Resolution





**HO-CHUNK NATION LEGISLATURE**  
*Governing Body of the Ho-Chunk Nation*

**45-Day Public Review**

**HO-CHUNK NATION LEGISLATURE  
 AUTHORIZATION TO PLACE THE  
 GENERAL WELFARE EXCLUSION ORDINANCE  
 OUT FOR FORTY-FIVE DAY PUBLIC COMMENT**

**RESOLUTION 09-18-18 H**

- WHEREAS,** on November 1, 1994, the Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation (“Constitution”), formerly known as the Wisconsin Winnebago Nation; and
- WHEREAS,** the Ho-Chunk Nation (“Nation”) is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Ho-Chunk Nation Legislature (“Legislature”) the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget; and
- WHEREAS,** Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals; and
- WHEREAS,** Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and
- WHEREAS,** the Ho-Chunk Nation Legislature passed the *Legislative Organization Act* (2 HCC § 11), which was last amended on June 23, 2015; and
- WHEREAS,** the *Legislative Organization Act* provides the procedures for enacting or amending a Ho-Chunk Nation law; and

**Executive Offices**

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**WHEREAS,** Section 44, subparagraph d (1) (a) of the *Legislative Organization Act* provides that the Public Review period for consideration of proposed laws or amendments will typically be forty-five (45) days; and

**WHEREAS,** the Legislature has discussed at Legislative Sessions and Housing Committee meetings the need for the Nation to adopt a *General Welfare Exclusion Ordinance* in order to be in compliance with the Federal Tribal General Welfare Exclusion Act of 2014; and

**WHEREAS,** the Department of Justice has drafted and submitted to the Legislature a proposed *General Welfare Exclusion Ordinance* for the Nation to be placed out for public comment; and

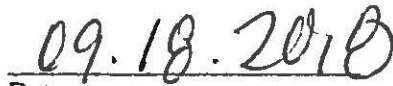
**WHEREAS,** the Legislature previously placed the proposed *General Welfare Exclusion Ordinance* out for 45 day public comment through Resolution 10-21-16D and 11-07-17I and now wishes to place it out for 45 day public comment due to the passage of time and to seek additional public comment;

**NOW, THEREFORE, BE IT RESOLVED,** that the Legislature, pursuant to its Constitutional authority, hereby places the attached proposed *General Welfare Exclusion Ordinance* out for forty-five (45) day public comment, to run from the date the proposed ordinance is posted on the Nation's website.

#### CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **9** constituting a quorum were present at a meeting duly called and convened and held that on the **18<sup>th</sup> day of September, 2018**, adopted the foregoing resolution at said meeting by an affirmative vote of **9 members, 0 opposed, and 0 abstaining**, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.

  
 Andrea Estebo, Tribal Secretary

  
 Date



## 1. Authority.

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

d. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

## 2. Findings. The Legislature of the Ho-Chunk Nation states the following findings:

a. Overcrowding, homelessness, home affordability, homeowner’s maintenance/responsibility, credit/fiscal responsibility and access to financing continue to be critical problems faced by Tribal Members.

b. It is a high priority of the Nation and its government to address the housing needs all tribal members who have acted as the principal keepers of traditions and culture, which the Nation generously recognizes and appreciates.

c. Federal housing programs have generally proven inadequate and poorly designed from the perspective of the material, cultural, and social needs of the Nation and its Tribal members. The needs of the Nation require the expenditure of resources to provide housing programs thus allowing Tribal members the opportunity to realize a safe, and affordable, and pleasant home environment.

d. The use of gaming revenues to provide adequate housing is deemed a priority.

**3. Purpose.** This Act establishes the Ho-Chunk Nation's *Housing for the General Welfare of Veterans, Elders and Non-Elders* to be administered by the Department of Housing. The Act sets forth the regulatory scope and authority of home ownership terms which the Nation provides for

the benefit of Ho-Chunk Nation members, and the necessary organizational policies which are administered under the Department of Housing.

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**4. Goals.** The goals of the Housing for the General Welfare of Veterans, Elders and Non-Elders are as follows:

a. Establish a system to ensure Ho-Chunk Nation Veterans, Elders and Non-Elders who are proved to be financially responsible are served the earliest.

b. Ensure fair administrative guidelines, educational and counseling assistance to assist Ho-Chunk Nation members with achieving home ownership.

c. Establish a fair and consistent enforcement policy to cooperatively resolve issues with regard to payment delinquencies and other defaults in order to avoid legal remedies if possible, yet protect the Nation's financial interests.

**5. General.** This Ordinance shall be known as the Ho-Chunk Nation General Welfare Ordinance.

a. Purpose – The first purpose of this Ordinance is to memorialize the procedures used by the Nation to determine what services or programs are needed to promote public health, safety and other basic need services for the promotion of the general welfare of the Nation such as sewer, water, electrical service / power, infrastructure, housing, public sanitation services, public education and other such functions that support the long historical and cultural general welfare of the Nation. The second purpose of this Ordinance is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare doctrine and Internal Revenue Code Section 139E.

b. Intent - The Ho-Chunk Nation ("Nation"), a federally recognized Indian Nation, exercises its inherent rights of sovereignty to promote the general welfare of the Nation, its self-determination, culture, and tradition, by providing general welfare assistance, including Indian general welfare benefits within the meaning of Internal Revenue Code Section 139E. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis. This Ordinance is intended to affirm the Nation's inherent sovereign rights to promote the general welfare of the Nation and provide qualifying assistance and program benefits on a tax free basis. In this regard, the Constitution of the Nation confirms the sovereign duty and responsibility of the Ho-Chunk Nation to maintain the culture and independence of its members, to encourage the economic well-being of its members, and to promote the rights of its members and their common welfare. The Assistance authorized by this Ordinance is intended to qualify for tax free treatment to the fullest extent permitted at law. Without limitation, the following benefits shall be treated as non-taxable hereunder:

(1) Benefits that satisfy the requirements for exemption under Code Section 139E;

(2) Benefits that are provided under an IRS Safe Harbor Program;

(3) Benefits that qualify for exclusion under the IRS General Test; or

(4) Benefits that meet another express exemption under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for, example, resource or land-based exemptions under 25 U.S.C. Sections 117a-b, 1407 and 1408.

**6. Definitions.** In construing the provisions of this Ordinance, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or the context provides otherwise.

a. "Assistance" Any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.

b. "Beneficiary" Any person or persons entitled to receive Assistance in accordance with specific Program guidelines. Programs designed to qualify for exemption under Code Section 139E may benefit Members, spouses of a Member, and/or Dependents of a Member. Programs designed to meet the Safe Harbor may benefit any Member or Qualified Nonmember.

c. "Code" means the Internal Revenue Code of 1986, as amended.

d. "Compensation" for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Nation from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion. For example, Programs similar to the Workforce Investment Act may include tax free Assistance.

e. "Constitution" means the Constitution of the Ho-Chunk Nation.

f. "General Welfare Exclusion" Assistance shall be treated as non-taxable so long as it satisfies the requirements for exclusion under Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.

g. "General Test" – Assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are: (1) paid by or on behalf of an Indian Nation (2) under a social benefit program, (3) based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature), and (4) are not Compensation for services or per capita payments.

h. "Lavish" or "Extravagant" Except as otherwise required for compliance with final guidance issued under Code Section 139E following consultation, lavish and extravagant shall be determined by the Tribal Legislature in its sole discretion based on all facts and circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular Assistance at hand.

i. "Ordinance" means the General Welfare Ordinance.



- j. "Pay" or "paid" or "payment" means pay or reimburse in whole or in part.
- k. "Program" or "Approved Program" means any program established by or under authority of the Tribal Legislature, including any program authorized through the annual budget process, to provide Assistance hereunder. A program shall not fail to be treated as an Indian tribal government Program solely by reason of the Program being established by tribal custom or government practice.
- l. "Promotion of the general welfare" or "Social benefit" should reflect a goal or goals established by and in the sole discretion of the Tribal Legislature for the promotion of the general welfare of the Nation, for example, in furtherance of tribal self-determination, culture and tradition.
- m. "Qualified Nonmember" means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or Dependent of a member of the Nation. Individual Tribal Programs may, but are not required to, cover Qualified nonmembers.
- n. "Reservation" means the reservation of the Ho-Chunk Nation or, if the context so permits, any other Indian reservation as defined in Internal Revenue Code Section 162(j).
- o. "Safe Harbor Program" shall refer to a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.
- p. "Service area" has the same meaning as in 25 C.F.R. Section 20.100.
- q. "Service unit area" means an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. Section 136.21(l).
- r. "Self-determination" should be construed broadly to reflect traditional health, education and welfare programs as well as unique cultural and traditional based programs and economic development. See, e.g., P.L.R. 199924026 (tax free business grants in part to promote on reservation employment).
- s. "Spouse" shall be determined in accordance with Tribal laws, customs and traditions.
- t. "Tribal Legislature" or "Legislature" means the Ho-Chunk Nation Tribal Legislature.

**7. Ratification of Prior Acts; Intent of Legislation.** This Ordinance does not establish a new program or programs. This Ordinance is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist. Assistance provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare doctrine



compliance. Programs and services referred to herein must be authorized by independent action of the Legislature or its designees.

**8. General Welfare Doctrine; Rules of Construction.** The Internal Revenue Service has historically recognized that payments by a Tribal government to Tribal Members under a legislatively provided social benefit program for the promotion of the general welfare of the Nation are excludable from the gross income of those Tribal Members who receive said payments. On December 5, 2011, the United States Treasury Department and IRS published Notice 2011-94 as part of an initiative to conduct consultation on ways to improve guidance on tribal general welfare matters. Notice 2011-94 invited comments from tribal governments concerning the application of the general welfare exclusion to Indian tribal government programs. The Nation participated in that process through comments and supported similar efforts by the National Congress of American Indians, the United South and Eastern Nations, Inc., the California Association of Tribal Governments and the Affiliated Nations of the Northwest Indians, all seeking clarity with regard to the sovereign right of Nations to provide tax free assistance based on non-financial need criteria including the preservation of culture and tradition. On December 5, 2012, the IRS and Treasury Department issued Notice 2012-75 proposing new guidance and providing interim relief under the general welfare exclusion for Programs that meet designated safe harbor rules. The Nation asserted all protections provided under the proposed rule and made certain operational changes to Programs where possible to secure additional Member protections under the interim relief. On June 3, 2014, the Treasury Department issued final guidance in the form of Revenue Procedure 2014-35 confirming that IRS will not tax Member Assistance that meets designated IRS safe harbor requirements. In September of 2014, Nations and tribal organizations worked with the United States Congress to clarify that Bills then pending in the House (H.R. 3043) and in the Senate (S.B. 1507) were in fact intended to expand tribal general welfare exclusion rights and build upon the safe harbor and general test relief previously recognized by the IRS. On September 17, 2014, Senators Moran and Heitkamp, co-sponsors of S.B. 1507, engaged in a colloquy with the Chairman of the Senate Finance Committee, Senator Wyden, on the Congressional Record of the Senate confirming their understanding and intent that:

a. IRS would apply S.B. 1507 “no less favorable than the safe harbor approach provided for in Revenue Procedure 2014-35, and that in no event will IRS require an individualized determination of financial need where a tribal Program meets all other requirements of new section 139E as added by the bill.”

b. The bill requires that “any ambiguities in new Code section 139E shall resolved by the IRS in favor of Indian Tribal governments and deference shall be given to Indian Tribal governments for programs administered and authorized by the Nation to benefit the general welfare of the Tribal community.”

c. It “would be contrary to the intent of Congress” if IRS were to “take the occasion of passage of H.R. 3043 or S. 1507 to retrench, narrow or possibly withdraw the administrative guidance provided in Rev. Prc. 2014-35 after enactment of the bill.”

d. The Congressional intent “is to expand rather than restrict the safe harbor provisions in Rev. Proc. 2014-35.”

e. “The purpose of this legislation is to further empower Tribal self-determination.”

f. “Tribal governments have a long history of providing critical benefits to Tribal Members, and these programs are fundamental to the sovereignty and cultural integrity of Nations. Nations, and not the IRS, are in the best position to determine the needs of their members and provide for the general welfare of their tribal citizens and communities.”

On September 18, 2014, the Tribal General Welfare Exclusion Act of 2014 passed both houses of Congress, and was signed into law on September 29, 2014. The Tribal Legislature now expressly embraces the forgoing principles as an integral part of this Ordinance and as guiding principles in construing the Nation’s compliance with Code Section 139E, the Safe Harbor Rules, and the General Test. The assistance payments and services authorized by this Ordinance are intended to qualify for favorable tax treatment under the general welfare doctrine to the fullest extent permitted by law and shall be construed accordingly.

**9. Non-Resource Designation.** General welfare services and payments hereunder are paid from assets of Tribal government; all payments are based on budget availability of the Tribal government, and the Tribal government does not guarantee any payments hereunder. Benefits paid hereunder on the basis of need shall not be treated as a resource of the Member for any purpose. The Legislature reserves the right to cancel, adjust, modify or revoke any benefits that are treated as a resource of the Tribal Member.

**10. Federal Trust Obligations; Executive Orders.** The Nation reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal Members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation’s adoption of Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation’s right to seek funding shortfalls or to enforce the trust rights of the Nation and its members. The Nation shall be entitled to government-to-government consultation and coordination rights in regard to this Ordinance.

**11. Indian General Welfare Benefits (Code Section 139E).** Programs that meet the following criteria for exemption under Code Section 139E shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need.

a. General Criteria for Qualification under Code Section 139E: Each payment made or service provided to or on behalf of a Member (or any Spouse or Dependent of the Member) pursuant to a Program under this Ordinance shall be treated as non-taxable Assistance under the General Welfare Exclusion so long as the following criteria are met:

(1) The Program is administered under specified guidelines and does not discriminate in favor of the members of the governing body of the Nation;

(2) Program benefits are available to any Tribal Member who meets such guidelines;

(3) Program benefits are for the “promotion of the general welfare”;

(4) Program benefits are not Lavish or Extravagant; and

(5) Program benefits are not Compensation for services.

b. **Ceremonial Activities:** Any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as Compensation for services.

c. **Special Effective Dates:** Code Section 139E is effective for Assistance in taxable years for which the period of limitations on a refund or credit under Code Section 6511 has not expired. If the period of limitation on a refund or credit resulting from the application of Code Section 139E (a) would otherwise expire before the one-year period beginning on the date of the enactment of Code Section 139E, a refund or credit (to the extent attributed thereto) may be made or allowed if a claim is filed before the close of such one-year period.

**12. Safe Harbor Programs.** Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:

a. **General Criteria for Safe Harbor Treatment:** Each Safe Harbor Program shall satisfy the following general criteria:

(1) The benefit is provided under a specific Approved Program of the Nation;

(2) The Program has written guidelines specifying how individuals may qualify for the benefit;

(3) The benefit is available to any tribal member, Qualified Nonmember, or identified group of Tribal Members or Qualified Nonmembers who satisfy the Program guidelines, subject to budgetary restraints;

(4) The distribution of benefits from the Program does not discriminate in favor of the governing body of the Nation;

(5) The benefit is not Compensation for services; and

(6) The benefit is not Lavish or Extravagant under the facts and circumstances.

b. **Qualifying Safe Harbor Benefits:** The following benefits may be provided under a Safe Harbor Program. The benefits listed in the parenthetical language herein are illustrative only,

rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of Article VI and Revenue Procedure 2014-35 (as may be amended):

(1) Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:

(a) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences.

(b) Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including but not limited to mold remediation), or heating or cooling issues.

(c) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement).

(d) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

(e) Pay property taxes or make payments in lieu of taxes (PILOTs).

(2) Educational programs. Programs that:

(a) Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities.

(b) Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and Dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education.

(c) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education.

(d) Provide job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job

interview or training (including but not limited to an interview suit or a uniform required during a period of training).

(3) Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes or laws) that provide:

(a) Meals through home-delivered meal programs or at a community center or similar facility.

(b) Home care such as assistance with preparing meals or doing chores, or day care outside the home.

(c) Local transportation assistance.

(d) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(4) Cultural and religious programs. Programs that:

(a) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian Nation's cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances.

(b) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Nation, including but not limited to other Indian reservations.

(c) Pay the costs of receiving instruction about an Indian Nation's culture, history, and traditions (including but not limited to traditional language, music, and dances).

(d) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events.

(e) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Nation or another Nation.

(5) Other qualifying assistance programs. Programs that:

(a) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores).



(b) Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member or Qualified Nonmember while the individual is receiving medical care away from home.

(c) Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses.

(d) Pay costs for temporary relocation and shelter for individuals displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster).

(e) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals.

(f) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

c. **Compensation Safe Harbor:** For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Nation will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances or nominal cash honoraria provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

d. **Safe Harbor Effective Dates:** Safe harbor treatment shall be afforded to any Program or benefit that otherwise satisfies the safe harbor rule as of, or after, December 6, 2012, or for any earlier taxable period for which the period of limitation on refund or credit under Internal Revenue Code Section 6511 has not expired.

e. **Non-Safe Harbor Programs:** Nothing in this Ordinance or the IRS safe harbor guidance shall limit the Nation's right to provide Assistance outside of the safe harbor rules.

**13. Programs Meeting the General Test.** Programs that do not qualify for non-taxable treatment under Code Section 139E or under an IRS Safe Harbor, will nonetheless be treated as non-taxable if Program benefits meet the General Test for treatment under the General Welfare Exclusion. For purposes of the General Test only, needs must be shown in one of the following manners:

a. **Individual Needs.** Certain Programs may be based on individual need, rather than an overall need of the Nation. For those Programs, the Tribal Legislature may establish income guidelines unique to the Nation or may use readily available income guidelines used by state or federal programs to demonstrate individual or family need. When individual or family need must be shown, the Program may take into account individual circumstances or extraordinary need to overcome presumptions based on income alone.

b. **Community Needs.** Certain Programs may be based on community needs, which are so important to the self-determination, culture and traditions of the Nation that Assistance may be deemed necessary regardless of individual income or wealth. For example, states provide public education to all citizens regardless of individual income or wealth. Some Programs may address both individual and community-based needs. The Legislature reserves the right to require any applicant applying for consideration based on non-financial or community-based needs to demonstrate how the Program benefits will benefit the tribal community as a whole, including preservation of culture, tradition and self-determination. Approval based on non-financial need criteria is made on a facts and circumstances basis and will be guided by traditional values and culture. A Program will be deemed to be based on community or non-financial needs if so designated by the Legislature.

**14. Purpose.** All Assistance disbursed pursuant to this Ordinance shall be designed to promote the general welfare, self-determination, culture and tradition of the Nation. The Tribal Legislature shall establish objectives for the furtherance of the general welfare, self-determination, culture and tradition of the Nation and assess progress on said objectives in connection with its budgeting and/or strategic planning process. Approved Programs shall be renewed, established, modified, or terminated based upon the needs of the Nation as compared to the objectives set by the Legislature from time to time hereunder. All Programs hereunder shall provide a social benefit for the promotion of the general welfare of the Nation and be limited to purposes consistent with treatment under this Ordinance. Such purposes may include, for example, and not by way of limitation, assistance for medical care, food, shelter, health, education, subsistence, housing, elder and disabled care, assistance to meet cultural, traditional and religious needs of the Nation and its membership, and assistance to promote self-sufficiency, self-determination, Tribal image, entrepreneurship, and the employment of Tribal Members. Designation by the Tribal Legislature of a Program as falling under this Ordinance shall be conclusive evidence that the Tribal Legislature, following a good faith review of Tribal needs and goals, has determined that said Program is established to achieve a social benefit and to promote the general welfare of the Nation.

**15. Eligibility and Application Procedures.** Each approved Program shall set forth the specific eligibility rules and limitations applied to that Program. Each designated department shall present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, for approval by the Tribal Legislature or its designee. Only those descriptions, application forms and procedures which are approved by the Tribal Legislature or its designee shall be in force and effect. Program guidelines may limit benefits to an identified group of Members or Qualified Nonmembers, as applicable. All Programs may be limited by budget availability. In the absence of specific Program guidelines to the contrary, all

Programs shall be deemed to incorporate eligibility criteria necessary for compliance with Code Section 139E.

**16. Limited Use of Assistance; Substantiation.** All Assistance disbursed or provided pursuant to this Ordinance must be used for the purpose stated in the approved Program description, and any application for the applicable Assistance. The Nation or its designee shall keep books or records deemed appropriate to demonstrate compliance with the Ordinance. Recipients of benefits hereunder are responsible for maintaining books or records as may be required for substantiation to the IRS for individual income tax purposes. In the event that Assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable approved Program or the Member's application, the Tribal Legislature or designee may require the repayment of the welfare assistance payment. The Tribal Legislature or designee is authorized to offset any other payments owed to a Tribal member if such an offset is necessary to secure repayment of a welfare assistance payment in accordance with this Section.

**17. Limitation on Payments; Annual Budgeting.**

a. **Limitations on Welfare Assistance Payments.** The Tribal Legislature, within its annual budgets, by resolution or by motion, may adopt guidelines establishing the maximum Assistance payments to be made to Tribal Members for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments charged with administering particular programs may be delegated authority to adopt program guidelines to the extent not contrary to the overall guidelines and limitations established by the Tribal Legislature hereunder. In no event shall Assistance be lavish or extravagant.

b. **Annual Budgeting: Unfunded Program.** The Tribal Legislature, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of Assistance benefits. Notwithstanding anything to the contrary, the Assistance payments authorized hereunder shall be "unfunded" for tax purposes and no Beneficiary shall have an interest in or right to any funds budgeted for or set aside for Assistance payments until actually paid. Assistance benefits shall remain assets of the Nation until distributed, and the Approved Programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and/or economic benefit.

**18. Forfeiture of General Welfare Assistance.**

a. **Forfeiture.** Notwithstanding anything herein to the contrary, Assistance benefits may be revoked or forfeited for any Beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process. Assistance may also be forfeited should said benefits be treated as a resource to the detriment of the Nation or a Beneficiary. The Nation shall have a right of recovery with regard to any excess or improper payments hereunder.



b. **Due Process.** Each program shall offer procedures that afford a Beneficiary an opportunity to address forfeiture issues or concerns with the program director or designee.

c. **Anti Alienation.** A Tribal member's rights to apply for General Welfare assistance payments and/or services under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors.

**19. Programs not Limited to Means Testing.** Programs that qualify under Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare Exclusion. The Nation also reserves the right to provide community-based Programs and Programs based on non-financial need under the General Test that are not individually means tested. The Nation recognizes that means testing can distort certain tribal cultural and community values. The Nation has participated in consultation with the United States Treasury Department and IRS and will evaluate Programs periodically as guidance is further developed through consultation with the Nation.

**20. Privacy; Information Sharing.** The Nation will maintain records regarding sensitive tribal and tribal Member matters, including tribal customs, religion and traditions, confidential from third party disclosures to the fullest extent permitted at law. If information is requested by IRS or other government agencies or third parties during a compliance review or examination, disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis. Confidential Tribal information shall not be shared in a manner that would open up additional disclosure, for example, under information sharing agreements the recipient may be subject to or under the Freedom of Information Act.

**21. Government-to-Government Relationship; Executive Order 13175.** Coordination with IRS and the United States Treasury Department on General Welfare matters shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the Tribal government. The federal government, as a result of its treaty obligations and trust responsibility, has committed to providing education, housing, clean water, and many other basic needs for Indian people. Through a conscientious shift in policy in recent decades, the federal government has encouraged the Nation itself to provide for such needs in partnership with the federal government and, increasingly in recent years, instead of the federal government. Essential to the government-to-government relationship is mutual respect and deference to Tribal governance decisions. Future consultations on General Welfare matters should reflect these concerns and the fact that the Tribal government, through its own policy setting process, is best situated to determine the needs of the Nation and its Members and the appropriate policy solutions. All references to Executive Order 13175 shall include any future amendments thereto.

**22. Other Tax Exemptions.** Notwithstanding anything herein to the contrary, the Nation reserves the right to waive income limits or needs basis criteria, to the extent otherwise applicable, for expenditures that otherwise qualify for tax exemptions including tax exemptions under Titles 25 or 26 of the United States Code so long as the conditions for exemption are met.

Without limitation, this includes Member medical benefits exempt under Section 9021 of the Patient Protection and Affordable Care Act of 2010 (Code Section 139D) and per capita expenses exempt under 25 U.S.C. Sections 1407 and 1408.

**23. Governing Law.** All rights and liabilities associated with the enactment of this Ordinance, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Ho-Chunk Nation.

**24. Severability.** If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.

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**Legislative History:**

45 Day Comment  
Adopted by Resolution

# January 2019

January 2019

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February 2019

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 30	31	Jan 1, 19	2 9:00am LOC (BC_Conf_Room) - Jennifer A. Falck	3	4	5
6	7	8	9	10	11 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	12
13	14	15	16 9:00am LOC (BC_Conf_Room) - Jennifer A. Falck	17	18	19
20	21 6:00pm GTC (Radisson)	22	23	24 1:30pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	25	26
27 10:00am GTC (Radisson)	28	29	30 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	31	Feb 1	2

# February 2019

February 2019

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March 2019

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 27	28	29	30	31	Feb 1	2
3	4	5	6 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) 9:00am LOC Meeting	7	8	9
10	11	12	13	14	15	16
17	18	19	20 9:30am LOC Meeting (BCCR) - LOC	21	22	23
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