



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
March 20, 2019
9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. March 4, 2019 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Oneida Personnel Commissions Bylaws Amendments (pg. 4)
2. Domestic Animals Law Amendments (pg. 29)

IV. New Submissions

1. Environmental Review Law (pg. 81)
2. Boards, Committees and Commissions Law Amendments (pg. 144)
3. Tribal Institutional Review Board Law (pg. 145)
4. Children's Code Amendments (pg. 170)

V. Additions

VI. Administrative Updates

1. Oneida Personnel Commission Bi-Monthly Update Memo (pg. 171)
2. Boards, Committees and Commissions Bylaws Amendments Update Memo (pg. 173)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
March 4, 2019—Rescheduled from March 6, 2019
2:30 p.m.

Present: Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Daniel Guzman King

Excused: David P. Jordan

Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Kristen Hooker, Carol Silva, Rae Skenandore, Leyne Orosco, Lee Cornelius

I. Call to Order and Approval of the Agenda

Kirby Metoxen called the March 04, 2019 Legislative Operating Committee meeting to order at 2:31 p.m.

Motion by Jennifer Webster to approve the agenda with the addition of the Oneida Personnel Commission Bylaws Amendments; seconded by Daniel Guzman King. Motion carried unanimously.

II. Minutes to be Approved

1. February 20, 2019 LOC Meeting Minutes

Motion by Ernest Stevens III to approve the February 20, 2019 LOC meeting minutes and forward to the Oneida Business Committee for their consideration; seconded by Daniel Guzman King. Motion carried unanimously.

III. Current Business

1. Oneida Election Board Bylaws Amendments (1:28-7:09)

Motion by Jennifer Webster to accept the Oneida Election Board Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

2. Oneida Police Commission Bylaws Amendments (7:13-14:53)

Motion by Daniel Guzman King to accept the Oneida Police Commission Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens. Motion carried unanimously.

IV. New Submissions

1. Taxation (14:57-17:47)

Motion by Ernest Stevens III to add Taxation to the active files list as a low priority with Ernest Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

V. Additions

1. Oneida Personnel Commission Bylaws Amendments (18:02-19:12)



Motion by Jennifer Webster to add the Oneida Personal Commission Bylaws Amendments to the active files list; seconded by Daniel Guzman King. Motion carried unanimously.

VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Ernest Stevens III to adjourn the March 4, 2019 Legislative Operating Committee meeting at 2:51 p.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee
March 20, 2019

Oneida Personnel Commission Bylaws Amendments

Submission Date: 3/4/19	Public Meeting: N/A
LOC Sponsor: N/A	Emergency Enacted: N/A Expires: N/A

Summary: *During a Legislative Operating Committee work session held on March 1, 2019, the Nation’s Secretary, Lisa Summers, informed the Legislative Operating Committee that as she and the Business Committee Support Office have been preparing the training for incoming Oneida Personnel Commission members there were inconsistencies or gaps discovered between the adopted Oneida Personnel Commission bylaws and Oneida Business Committee resolution BC-09-26-18-F titled, “Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council’s August 27, 2018 Directive.” These inconsistencies were particularly related to the process of how the Oneida Personnel Commission handles grievance hearings. It was recommended that amendments be made to the Oneida Personnel Commission bylaws to address any inconsistencies so that accurate and effective training and information can be developed to assist newly appointed Oneida Personnel Commission members.*

3/4/19 LOC: Motion by Jennifer Webster to add the Oneida Personal Commission Bylaws Amendments to the active files list; seconded by Daniel Guzman King. Motion carried unanimously.

3/5/19: Work Meeting. Present: Jennifer Falck, Clorissa N. Santiago, Geraldine Danforth, Matthew Denny. The purpose of this work meeting was to discuss the potential of the Nation’s Human Resources Department assisting the Oneida Personnel Commission with administrative duties in regard to the grievance hearings.

3/7/19: E-Poll Conducted.

Next Steps:

- Enter the results of the March 7, 2019, e-poll titled, “E-Poll Request: Oneida Personnel Commission Bylaws Amendments” into the record.

March 7, 2019 Legislative Operating Committee E-Poll Approval of the Oneida Personnel Commission Bylaws Amendments



Thu 3/7/2019 2:35 PM

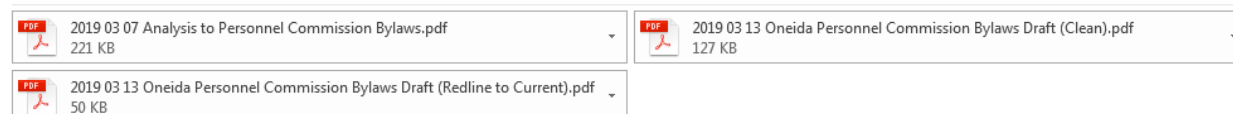
LOC

E-POLL REQUEST: Oneida Personnel Commission Bylaws Amendments

To Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Cc Cathy L. Bachhuber; Fawn J. Billie; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Brandon M. Wisneski; Jennifer A. Falck; Clorissa N. Santiago

Vote by clicking Vote in the Respond group above.
This message was sent with High importance.



Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for approval of the amendments to the Oneida Personnel Commission bylaws.

EXECUTIVE SUMMARY

During a Legislative Operating Committee work session held on March 1, 2019, the Nation's Secretary, Lisa Summers, informed the Legislative Operating Committee that as she and the Business Committee Support Office have been preparing the training for incoming Oneida Personnel Commission members there were inconsistencies or gaps discovered between the adopted Oneida Personnel Commission bylaws and Oneida Business Committee resolution BC-09-26-18-F titled, *"Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council's August 27, 2018 Directive."* These inconsistencies were particularly related to the process of how the Oneida Personnel Commission handles grievance hearings. It was recommended that amendments be made to the Oneida Personnel Commission bylaws to address any inconsistencies so that accurate and effective training and information can be developed to assist newly appointed Oneida Personnel Commission members.

As three (3) individuals are expected to be appointed to the Oneida Personnel Commission by the Oneida Business Committee on March 27, 2019, it was requested that the amended Oneida Personnel Commission bylaws be brought before the Oneida Business Committee for consideration at the March 13, 2019, Oneida Business Committee meeting.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for March 20, 2019, which is past the March 13, 2019, Oneida Business Committee meeting date.

REQUESTED ACTION

Approve the amendments to the Oneida Personnel Commission Bylaws and forward to the Oneida Business Committee for consideration.

DEADLINE FOR RESPONSE

March 8, 2019 at 8:00 a.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS:

The e-poll was approved by Jennifer Webster, Ernest Stevens III, David P. Jordan, Daniel Guzman King, and Kirby Metoxen.



Thu 3/7/2019 4:04 PM

Jennifer A. Webster

Re: E-POLL REQUEST: Oneida Personnel Commission Bylaws Amendments

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Cathy L. Bachhuber; Fawn J. Billie; Jessica L. Wallenfang; Leyne C. Oroscio; Rosa J. Laster; Brandon M. Wisneski; Jennifer A. Falck; Clorissa N. Santiago

Support,
Jenny

Sent from my Samsung Galaxy smartphone.



Thu 3/7/2019 4:07 PM

Ernest L. Stevens

Re: E-POLL REQUEST: Oneida Personnel Commission Bylaws Amendments

To Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen; LOC

Cc Cathy L. Bachhuber; Fawn J. Billie; Jessica L. Wallenfang; Leyne C. Oroscio; Rosa J. Laster; Brandon M. Wisneski; Jennifer A. Falck; Clorissa N. Santiago

Support

Get [Outlook for Android](#)



Thu 3/7/2019 4:18 PM

David P. Jordan

Re: E-POLL REQUEST: Oneida Personnel Commission Bylaws Amendments

To Ernest L. Stevens

Cc Daniel P. Guzman; Jennifer A. Webster; Kirby W. Metoxen; LOC; Cathy L. Bachhuber; Fawn J. Billie; Jessica L. Wallenfang; Leyne C. Oroscio; Rosa J. Laster; Brandon M. Wisneski; Jennifer A. Falck; Clorissa N. Santiago

Approve

Sent from my iPhone

On Mar 7, 2019, at 2:07 PM, Ernest L. Stevens <esteven4@oneidanation.org> wrote:

Support

Get [Outlook for Android](#)



Thu 3/7/2019 4:29 PM

Daniel P. Guzman

Re: E-POLL REQUEST: Oneida Personnel Commission Bylaws Amendments

To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Cc Cathy L. Bachhuber; Fawn J. Billie; Jessica L. Wallenfang; Leyne C. Oroscio; Rosa J. Laster; Brandon M. Wisneski; Jennifer A. Falck; Clorissa N. Santiago

Approve



Thu 3/7/2019 4:46 PM

Kirby W. Metoxen

Re: E-POLL REQUEST: Oneida Personnel Commission Bylaws Amendments

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster

Cc Cathy L. Bachhuber; Fawn J. Billie; Jessica L. Wallenfang; Leyne C. Oroscio; Rosa J. Laster; Brandon M. Wisneski; Jennifer A. Falck; Clorissa N. Santiago

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ONEIDA PERSONNEL COMMISSION BY-LAWS

Article I. Authority

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

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

1-3. *Authority.*

- (a) The OPC was created by the General Tribal Council to represent the Oneida community-at-large in the selection of the Nation’s employees and to shield those employees from inconsistent and unfair treatment by:
 - (1) Protecting against issues of nepotism;
 - (2) Enforcing Oneida and Indian preference;
 - (3) Hearing and deciding appeals of disciplinary action filed by employees of the Nation; and
 - (4) Carrying out all other powers and duties delegated by the laws of the Nation, including but not limited to, the Oneida Personnel Policies and Procedures.
- (b) The OPC does not have authority to:
 - (1) Enter into contracts;
 - (2) Create policy or legislative rules; or
 - (3) Evaluate or rate a candidate on criteria qualifications unrelated to the following subject matter during candidate interviews:
 - (A) Oneida/Indian preference;
 - (B) Nepotism;
 - (C) Conflicts of interest;
 - (D) Veteran status; and
 - (E) Physical capacity requirements.

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

1-5. *Membership.*

- (a) *Number of Members.* The OPC shall be made up of five (5) members and 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

138 minimum of five (5) years following his or her termination.

139

140 1-7. *Trainings.*

141 (a) OPC members must complete the following training prior to participating
142 in any screenings, interviews and/or grievance hearings on behalf of the
143 OPC:

144 (1) Four (4) hours of e-Learning on interview certification and four (4)
145 hours of orientation through the Oneida Human Resources
146 Department, which shall include:

147 (A) EEO training;

148 (B) Training on Tribal laws, rules and regulations; and

149 (C) Training on the Oneida Personnel Policies and Procedures.

150 (2) Training on the grievance process, which shall include:

151 (A) A presentation developed by the Oneida Judicial System on
152 the Oneida Judiciary Rules of Civil Procedure, an estimated
153 three (3) hours in length;

154 (B) Up to three (3) hours of training in formal opinion writing
155 and the basics of evidence; and

156 (C) Two (2) hours of training in professional ethics, including
157 issues of confidentiality.

158 (3) Any other training deemed necessary by the Oneida Business
159 Committee.

160 (b) After serving on the OPC for one (1) year, all OPC members shall either
161 accumulate a minimum of eight (8) hours of training annually in the above
162 subject matter or shall review annually the lessons and materials connected
163 with the above subjects.

164 (c) Completion of all training, including training under Section 1-7(b), shall be
165 confirmed by receipt of a certificate or some other written documentation
166 and kept on file with the OPC.

167

168 **Article II. Officers**

169 2-1. *Officers.* There shall be a Chairperson, a Vice-Chairperson and a Secretary.

170

171 2-2. *Responsibilities of the Chairperson.* The duties, responsibilities and limitations of the
172 Chairperson are as follows:

173 (a) Shall preside over all meetings of the OPC;

174 (b) Shall be a member of all subcommittees of the OPC, may call emergency
175 meetings, and shall keep the OPC informed as to the business of the OPC;

176 (c) Shall, with the assistance of the Secretary, submit annual and semi-annual
177 reports to the General Tribal Council as required by the Boards, Committees
178 and Commissions law;

179 (d) Shall, with the assistance of the Secretary, submit quarterly reports to the
180 Oneida Business Committee as required by the Boards, Committees and
181 Commissions law; and

182 (e) Shall, with the assistance of the Secretary, forward notice of meeting
183 location, agenda and materials in the manner prescribed herein.

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

230 (d) The OPC must review its budget on a monthly basis and have one or more
 231 members in attendance at all budget meetings.
 232

233 2-8. *No Authorized Personnel.* The OPC shall not be authorized to hire personnel. The Oneida
 234 Business Committee Support Office and the Oneida Human Resources
 235 Department shall assist the OPC with administrative duties.

236 (a) The Oneida Human Resources Department shall provide administrative
 237 assistance to the OPC in regard to the hiring and selection of employees,
 238 which shall include, but is not limited to, scheduling pre-screens and
 239 interviews, and coordinating OPC members to conduct hiring and selection
 240 activities.

241 (b) The Oneida Human Resources Department shall provide administrative
 242 support to the OPC in regard to employee grievance hearings, including, but
 243 not limited to, accepting filings on behalf of the OPC, scheduling hearings,
 244 coordinating OPC members to serve as the hearing body, and providing a
 245 hearing room.
 246

247 **Article III. Meetings**

248 3-1. *Regular Meetings.* Regular meetings shall occur on a monthly-basis. The regular meeting
 249 time, place and agenda shall be determined by the OPC at a regular meeting.
 250 If no alternative designation is made by the OPC, the regular meeting shall
 251 be the last Tuesday of every month. Notice of meeting location, agenda and
 252 materials shall be forwarded by the Chairperson with the assistance of the
 253 Secretary. Meetings shall run in accordance with Robert's Rules of Order
 254 or another method approved by the Oneida Business Committee. Meetings
 255 shall comply with the Nation's Open Records and Open Meetings law.
 256

257 3-2. *Emergency Meetings.* Emergency meetings shall only be called when time sensitive issues
 258 require immediate action. Emergency meetings of the OPC may be called
 259 by the Chairperson or upon written request of any two (2) members. Notice
 260 of the meeting location, agenda and materials shall be forwarded by the
 261 Chairperson with the assistance of the Secretary.

262 (a) Within seventy-two (72) hours after an emergency meeting, the OPC shall
 263 provide the Nation's Secretary with notice of the meeting, the reason for the
 264 emergency meeting, and an explanation of why the matter could not wait
 265 for a regular meeting.
 266

267 3-3. *Joint Meetings.* Joint meetings with the Oneida Business Committee shall be held in March
 268 and September of each year. Notice of the meeting location, agenda and
 269 materials shall be forwarded by the Chairperson with the assistance of the
 270 Secretary.
 271

272 3-4. *Quorum.* A majority of the OPC members shall constitute a quorum for the
 273 transaction of business, which shall include the Chairperson or Vice-
 274 Chairperson.
 275

- 276 3-5. *Order of Business.* The regular meetings of the OPC shall follow the order of business as
 277 set out herein:
 278 (a) Call to Order
 279 (b) Roll Call
 280 (c) Approving of Previous Meeting Minutes
 281 (d) Reports
 282 (e) Old Business
 283 (f) New Business
 284 (g) Adjournment
 285
- 286 3-6. *Voting.* Voting shall be in accordance with the simple majority vote of the OPC
 287 members present at a duly called meeting.
 288 (a) The Chairperson shall vote only in case of a tie.
 289 (b) The OPC is permitted to e-poll; provided, it does so in accordance with the
 290 procedures set forth in the Boards, Committees and Commissions law.
 291

292 **Article IV. Expectations**

- 293 4-1. *Behavior of Members.* Members are expected to treat each other in accordance with the
 294 Nation's core values of The Good Mind as expressed by Onlayote'a'ka,
 295 which includes:
 296 (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.
 297 (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
 298 (c) Ka'nikuhli'yó. The openness of the good spirit and mind.
 299 (d) Ka'tshatstásla. The strength of belief and vision as a People.
 300 (e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our
 301 future.
 302 (f) TwahwahtsílawayΛ. All of us are family.
 303 (g) YukwatsístayΛ. Our fire, our spirit within each one of us.
 304
- 305 Failure to treat each other with respect shall be cause for a recommendation
 306 for termination from the OPC. Appointed members of the OPC serve at the
 307 discretion of the Oneida Business Committee. Upon the recommendation of
 308 a member of the Oneida Business Committee or the OPC, a member of the
 309 OPC may have his or her appointment terminated by the Oneida Business
 310 Committee.
 311
- 312 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a member of the OPC that
 313 inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm
 314 on another person, or damage to property during a meeting or when acting
 315 in an official capacity are strictly prohibited and grounds for an immediate
 316 recommendation for termination of appointment from the OPC and/or the
 317 imposition of sanctions and/or penalties according to laws and policies of
 318 the Nation.
 319
- 320 4-3. *Drug and Alcohol Use.* Use of alcohol and prohibited drugs by a member of the OPC when
 321 acting in his or her official capacity is strictly prohibited. Prohibited drugs

322 are defined as marijuana, cocaine, opiates, amphetamines, phencyclidine
 323 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other
 324 substance included in Schedules I through V, as defined by Section 812 of
 325 Title 21 of the United States Code. This also includes prescription
 326 medication or over-the-counter medicine used in an unauthorized or
 327 unlawful manner.

328
 329 4-4. *Social Media.* OPC members shall abide by the Nation's Social Media Policy. OPC
 330 members shall further refrain from posting, attaching or writing anything
 331 relating to OPC business or activities on any social media outlet except for
 332 notices of meetings and notices of meeting cancellations.

333
 334 4-5. *Conflict of Interest.* OPC members shall abide by all laws of the Nation governing conflicts
 335 of interest. Members must submit a Conflict of Interest Disclosure form
 336 upon Oath of Office and annually.

337
 338 **Article V. Stipends and Compensation**

339 5-1. *Stipends.* OPC members are eligible for the following stipends as set forth in the
 340 Boards, Committees and Commissions law and resolution BC-09-26-18-D,
 341 titled Boards, Committees and Commissions Law Stipends:

- 342 (a) One (1) monthly meeting stipend.
 343 (b) One (1) stipend per day for participating in interviews and/or job description
 344 pre-screens conducted by the Human Resources Department.
 345 (c) Stipends for holding grievance hearings.
 346 (d) Stipends for Judiciary hearings.
 347 (1) A member of the OPC may receive a stipend for attending an Oneida
 348 Judiciary hearing if that member is specifically subpoenaed.
 349 (e) Stipend for each full day of training that is required by law, bylaw or
 350 resolution.
 351 (f) A member shall receive a stipend for his or her attendance at a duly called
 352 joint meeting as defined under the Boards, Committees and Commissions
 353 law.

354
 355 5-2. *Compensation.* OPC members are not eligible for any other type of compensation for duties
 356 /activities they perform as members of the OPC.
 357 (a) OPC members shall not act in any other official or personal business
 358 capacity or on behalf of any other entity or individual while acting in the
 359 capacity of an OPC member or on behalf of the OPC.

360
 361 **Article VI. Records and Reporting**

362 6-1. *Agenda Items.* Agendas shall be maintained in a consistent format as identified in Article
 363 III, Section 3-5 of these bylaws.

364
 365 6-2. *Minutes.* All minutes shall be typed in a consistent format and shall be submitted to
 366 the Oneida Business Committee Support Office within thirty (30) days after
 367 approval by the OPC.

368
369 6-3. *Attachments.* Handouts, attachments, memoranda, etc. shall be attached to the
370 corresponding minutes and the agenda, minutes and attachments shall be
371 kept electronically by the Oneida Business Committee Support Office.
372

373 6-4. *Oneida Business Committee Liaison.* The OPC shall regularly communicate with the
374 Oneida Business Committee member who is their designated liaison. The
375 frequency and method of communication shall be agreed upon by the OPC
376 and the Liaison.
377

378 6-5. *Audio Recordings.* The OPC shall audio record meetings and submit the recordings to the
379 Oneida Business Committee Support Office within two (2) business days
380 for purposes of maintaining the audio records.
381 (a) Audio recordings of executive session portions of a meeting are not
382 required.
383

384 **Article VII. Amendments**

385 7-1. *Amendments to Bylaws.* Any amendments to these bylaws shall conform to the
386 requirements of the Boards, Committees and Commissions law and any
387 other policy of the Nation. Amendments to these bylaws shall be approved
388 by the Oneida Business Committee prior to implementation.

389 (a) The OPC shall review these bylaws from time to time as needed, but no less
390 than each time a vacancy on the OPC is filled by a new member.
391

392
393 These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee
394 at a duly called meeting held on _____, 2019, signed by the Tribal Secretary of the Oneida
395 Business Committee.
396

397
398 _____
399 Oneida Tribal Secretary
400 Oneida Business Committee

1

1

ONEIDA PERSONNEL COMMISSION BY-LAWS

2

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 (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

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of the OPC must come from a member of the OPC through OPC directive. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP to provide procedural guidance, consistent herewith, on determining when, how, and by which OPC member(s) communications are made;

(2) Uphold all laws and policies of the Nation, including but not limited to, the Boards, Committees and Commissions law;

(3) Participate in the hiring selection process, including, job description pre-screens and interviews, in accordance with the Oneida Personnel Policies and Procedures;

~~(3)~~(4) Conduct grievance hearings in accordance with the Oneida Personnel Policies and Procedures ~~and~~, the Oneida Judiciary Rules of Civil Procedure ~~;~~, and Oneida Business Committee resolution BC- - - - ;

(A) If a conflict exists between the Oneida Personnel Policies and Procedures and the Oneida Judiciary Rules of Civil Procedure, the Oneida Personnel Policies and Procedures shall govern.

(B) Appeals from OPC decisions to the Judiciary as authorized by the Nation's Judiciary law shall be governed by the ~~Oneida Code Rules of Laws, Title 8. Judicial System~~ Appellate Procedure.

~~(4)~~(5) Exclusively use the official Oneida e-mail address provided by the Nation upon appointment to the OPC to electronically conduct business on behalf of the OPC; and

~~(5)~~(6) *Dress Code.* OPC members are expected to be clean, well-groomed and dressed in business casual attire when conducting activities on behalf of the OPC, including but not limited to, employee interviews and grievance hearings.

(A) By way of example, business casual attire does not include:

- (i) Tattered jeans or shorts;
- (ii) Shirts with language or graphics that are vulgar; sexually explicit, or may otherwise be offensive;
- (iii) Attire that is revealing or provocative;
- (iv) Flip-flops or any type of loose footwear;
- (v) Sweat suits;
- (vi) See-through blouses or shirts;
- (vii) Sports bras, halter tops, or similar attire;
- (viii) Tank tops;
- (ix) Clothing that allows bare midriffs; or
- (x) Clothing that is ripped or stained.

1-6. *Termination.* An OPC member's appointment may be terminated in accordance with the Boards, Committees and Commissions law.

(a) Any member whose appointment is terminated by the Oneida Business Committee after the adoption of these bylaws, as may be amended from

138 time to time, shall not be eligible for re-appointment to the OPC for a
 139 minimum of five (5) years following his or her termination.

140
 141 1-7. *Trainings.*

142 (a) OPC members must complete the following training prior to participating
 143 in any screenings, interviews and/or grievance hearings on behalf of the
 144 OPC:

145 (1) Four (4) hours of e-Learning on interview certification and four (4)
 146 hours of orientation through the Oneida Human Resources
 147 Department, which shall include:

- 148 (A) EEO training;
- 149 (B) Training on Tribal laws, rules and regulations; and
- 150 (C) Training on the Oneida Personnel Policies and Procedures.

151 (2) Training on the grievance process, which shall include:

- 152 (A) A presentation developed by the Oneida Judicial System on
 153 the Oneida Judiciary Rules of Civil Procedure, an estimated
 154 three (3) hours in length;
- 155 (B) Up to three (3) hours of training in formal opinion writing
 156 and the basics of evidence; and
- 157 (C) Two (2) hours of training in professional ethics, including
 158 issues of confidentiality.

159 (3) Any other training deemed necessary by the Oneida Business
 160 Committee.

161 (b) After serving on the OPC for one (1) year, all OPC members shall either
 162 accumulate a minimum of eight (8) hours of training annually in the above
 163 subject matter or shall review annually the lessons and materials connected
 164 with the above subjects.

165 (c) Completion of all training, including training under Section 1-7(b), shall be
 166 confirmed by receipt of a certificate or some other written documentation
 167 and kept on file with the OPC.

168
 169 **Article II. Officers**

170 2-1. *Officers.* There shall be a Chairperson, a Vice-Chairperson and a Secretary.

171
 172 2-2. *Responsibilities of the Chairperson.* The duties, responsibilities and limitations of the
 173 Chairperson are as follows:

- 174 (a) Shall preside over all meetings of the OPC;
- 175 (b) Shall be a member of all subcommittees of the OPC, may call emergency
 176 meetings, and shall keep the OPC informed as to the business of the OPC;
- 177 (c) Shall, with the assistance of the Secretary, submit annual and semi-annual
 178 reports to the General Tribal Council as required by the Boards, Committees
 179 and Commissions law;
- 180 (d) Shall, with the assistance of the Secretary, submit quarterly reports to the
 181 Oneida Business Committee as required by the Boards, Committees and
 182 Commissions law; and
- 183 (e) Shall, with the assistance of the Secretary, forward notice of meeting

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

by a majority vote at a regular or emergency OPC meeting.

- (d) The OPC must review its budget on a monthly basis and have one or more members in attendance at all budget meetings.

2-8. ~~_____~~ No Authorized Personnel. The OPC shall not be authorized to hire personnel. The Oneida Business Committee Support Office and the Oneida _____ Human Resources Department shall assist the OPC with administrative _____ duties ~~relating to the employee selection and grievance process.~~

- (a) ~~_____~~ (a) The Oneida Human Resources Department shall ~~be responsible for~~ provide administrative assistance to the _____ OPC in regard to the hiring and selection of employees, which shall include, but is not limited to, scheduling of employee pre-screens and interviews. _____, and coordinating OPC members to conduct hiring and selection activities.

- (b) The Oneida Human Resources Department shall provide administrative support to the OPC in regard to employee grievance hearings, including, but not limited to, accepting filings on behalf of the OPC, scheduling hearings, coordinating OPC members to serve as the hearing body, and providing a hearing room.

Article III. Meetings

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

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

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

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

- 276 3-4. *Quorum.* A majority of the OPC members shall constitute a quorum for the
277 transaction of business, which shall include the Chairperson or Vice-
278 Chairperson.
279
- 280 3-5. *Order of Business.* The regular meetings of the OPC shall follow the order of business as
281 set out herein:
282 (a) Call to Order
283 (b) Roll Call
284 (c) Approving of Previous Meeting Minutes
285 (d) Reports
286 (e) Old Business
287 (f) New Business
288 (g) Adjournment
289
- 290 3-6. *Voting.* Voting shall be in accordance with the simple majority vote of the OPC
291 members present at a duly called meeting.
292 (a) The Chairperson shall vote only in case of a tie.
293 (b) The OPC is permitted to e-poll; provided, it does so in accordance with the
294 procedures set forth in the Boards, Committees and Commissions law.
295

296 **Article IV. Expectations**

- 297 4-1. *Behavior of Members.* Members are expected to treat each other in accordance with the
298 Nation's core values of The Good Mind as expressed by OnΛyote'a'ka,
299 which includes:
300 (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.
301 (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
302 (c) Ka'nikuhli·yó. The openness of the good spirit and mind.
303 (d) Ka'tshatstásla. The strength of belief and vision as a People.
304 (e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our
305 future.
306 (f) TwahwahtsílawayΛ. All of us are family.
307 (g) YukwatsístayΛ. Our fire, our spirit within each one of us.
308
- 309 Failure to treat each other with respect shall be cause for a recommendation
310 for termination from the OPC. Appointed members of the OPC serve at the
311 discretion of the Oneida Business Committee. Upon the recommendation of
312 a member of the Oneida Business Committee or the OPC, a member of the
313 OPC may have his or her appointment terminated by the Oneida Business
314 Committee.
315
- 316 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a member of the OPC that
317 inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm
318 on another person, or damage to property during a meeting or when acting
319 in an official capacity are strictly prohibited and grounds for an immediate
320 recommendation for termination of appointment from the OPC and/or the
321 imposition of sanctions and/or penalties according to laws and policies of

322 the Nation.

323

324 4-3. *Drug and Alcohol Use.* Use of alcohol and prohibited drugs by a member of the OPC when
325 acting in his or her official capacity is strictly prohibited. Prohibited drugs
326 are defined as marijuana, cocaine, opiates, amphetamines, phencyclidine
327 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other
328 substance included in Schedules I through V, as defined by Section 812 of
329 Title 21 of the United States Code. This also includes prescription
330 medication or over-the-counter medicine used in an unauthorized or
331 unlawful manner.

332

333 4-4. *Social Media.* OPC members shall abide by the Nation's Social Media Policy. OPC
334 members shall further refrain from posting, attaching or writing anything
335 relating to OPC business or activities on any social media outlet except for
336 notices of meetings and notices of meeting cancellations.

337

338 4-5. *Conflict of Interest.* OPC members shall abide by all laws of the Nation governing conflicts
339 of interest. Members must submit a Conflict of Interest Disclosure form
340 upon Oath of Office and annually.

341

342 **Article V. Stipends and Compensation**

343 5-1. *Stipends.* OPC members are eligible for the following stipends as set forth in the
344 Boards, Committees and Commissions law and resolution BC-09-26-18-D,
345 titled Boards, Committees and Commissions Law Stipends:

- 346 (a) One (1) monthly meeting stipend.
- 347 (b) One (1) stipend per day for participating in interviews and/or job description
348 pre-screens conducted by the Human Resources Department.
- 349 (c) Stipends for holding grievance hearings.
- 350 (d) Stipends for Judiciary hearings.
 - 351 (1) A member of the OPC may receive a stipend for attending an Oneida
352 Judiciary hearing if that member is specifically subpoenaed.
- 353 (e) Stipend for each full day of training that is required by law, bylaw or
354 resolution.
- 355 (f) A member shall receive a stipend for his or her attendance at a duly called
356 joint meeting as defined under the Boards, Committees and Commissions
357 law.

358

359 5-2. *Compensation.* OPC members are not eligible for any other type of compensation for duties
360 /activities they perform as members of the OPC.

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

364

365 **Article VI. Records and Reporting**

366 6-1. *Agenda Items.* Agendas shall be maintained in a consistent format as identified in Article
367 III, Section 3-5 of these bylaws.

368
369 6-2. *Minutes.* All minutes shall be typed in a consistent format and shall be submitted to
370 the Oneida Business Committee Support Office within thirty (30) days after
371 approval by the OPC.
372

373 6-3. *Attachments.* Handouts, attachments, memoranda, etc. shall be attached to the
374 corresponding minutes and the agenda, minutes and attachments shall be
375 kept electronically by the Oneida Business Committee Support Office.
376

377 6-4. *Oneida Business Committee Liaison.* The OPC shall regularly communicate with the
378 Oneida Business Committee member who is their designated liaison. The
379 frequency and method of communication shall be agreed upon by the OPC
380 and the Liaison.
381

382 6-5. *Audio Recordings.* The OPC shall audio record meetings and submit the recordings to the
383 Oneida Business Committee Support Office within two (2) business days
384 for purposes of maintaining the audio records.
385 (a) Audio recordings of executive session portions of a meeting are not
386 required.
387

388 **Article VII. Amendments**

389 7-1. *Amendments to Bylaws.* Any amendments to these bylaws shall conform to the
390 requirements of the Boards, Committees and Commissions law and any
391 other policy of the Nation. Amendments to these bylaws shall be approved
392 by the Oneida Business Committee prior to implementation.
393

394 (a) The OPC shall review these bylaws from time to time as needed, but no less
395 than each time a vacancy on the OPC is filled by a new member.
396

397
398 These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee
399 at a duly called meeting held on January 9, _____, 2019, signed by the Tribal Secretary of the
400 Oneida
401 Business Committee.
402
403

404
405 Oneida Tribal Secretary
406 Oneida Business Committee



Oneida Personnel Commission Bylaws Amendments Legislative Analysis

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Operating Committee	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> ▪ To clarify that the Human Resources Department (HRD) is responsible for providing administrative support to the Oneida Personnel Commission (OPC) and to outline the specific duties HRD will perform; ▪ To add a reference to Resolution BC-09-26-18-F, which provides a process for how employee grievance cases will be transferred to and accepted by the OPC once commissioners are appointed and trained; ▪ To add updated references to the Nation’s Judiciary laws for clarity regarding appeals; ▪ To add a requirement that the Oneida Personnel Commission review their bylaws on a regular basis. 	
Purpose	<p>The purpose of the Oneida Personnel Commission (OPC) is to represent the community-at-large in the selection of the Nation’s employees and to shield those employees from inconsistent and unfair treatment by:</p> <ul style="list-style-type: none"> ▪ Protecting against issues of nepotism; ▪ Enforcing Oneida and Indian preference; ▪ Hearing and deciding appeals of disciplinary action filed by employees of the Nation; ▪ Carrying out all other powers and duties delegated by laws of the Nation <i>[see OPC Bylaws 1-3]</i>. 	
Related Legislation	Personnel Policies and Procedures (Blue Book); Oneida Judiciary Rules of Civil Procedure; Boards, Committees and Commissions law; Judiciary law.	
Enforcement/Due Process	An OPC member’s appointment may be terminated in accordance with the Boards, Committees and Commissions law <i>[see 1 O.C. 105.7-4]</i> .	

SECTION 2. BACKGROUND

- 1
- 2 A. Bylaws provide a framework for the operation and management of a board, committee or
- 3 commission of the Nation, the government of its members and the regulation of its affairs *[see*
- 4 *1 O.C. 105.3-1(d)]*.
- 5 B. The Oneida Personnel Commission’s bylaws were most recently amended by the Oneida
- 6 Business Committee on January 9, 2019. Since that time, the Oneida Business Committee
- 7 determined that additional changes were needed to clarify who is responsible for providing
- 8 administrative support to the Personnel Commission.

9 C. The Oneida Personnel Commission bylaws were added to the Active Files List on March 4,
10 2019 for further amendments.

11

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

13 A. These bylaws comply with the requirements of the Boards, Committees and Commissions Law
14 *[see 1 O.C. 105.10]*.

15

16 **SECTION 4. AMENDMENTS**

17 *The following provides a summary of the proposed changes to the bylaws:*

18 **A. Oneida Personnel Commission Duties – Hiring & Selection.** The Oneida Personnel
19 Commission is responsible for participating in the Nation’s hiring and selection process, as
20 required by the Personnel Policies and Procedures. A reference to these duties was added for
21 clarity *[see OPC Bylaws 1-5(e)(3)]*.

22 **B. Oneida Personnel Commission Duties – Grievance Hearings.** One of the Oneida Personnel
23 Commission’s duties is to conduct employee grievance hearings in accordance with the
24 Personnel Policies and Procedures and Oneida Judiciary Rules of Civil Procedure. This section
25 has been amended to add a reference Resolution BC-09-26-18-F titled, “Rescission of the
26 Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in
27 Accordance with General Tribal Council’s August 27, 2018 Directive” *[see OPC Bylaws 1-*
28 *5(e)(4)]*. This resolution includes the following relevant information:

- 29 ▪ A process for how interviews and grievance hearings will be conducted until Personnel
30 Commissioners are appointed, trained and prepared to assume their duties;
- 31 ▪ A process for how any existing cases will be transferred to the Oneida Personnel
32 Commission once the Personnel Commission is prepared to accept cases;
- 33 ▪ Directives to the Nation’s departments, including Oneida Human Resources Department
34 (HRD) and the Business Committee Support Office, to provide administrative support to
35 the Personnel Commission.

36 **C. Administrative Support Provided by HRD.** Under the current bylaws, the Oneida Personnel
37 Commission is not authorized to hire personnel. Administrative duties are provided by the
38 Oneida Human Resources Department (HRD) and the Business Committee Support Office.
39 These amendments provide additional clarification regarding the specific duties that HRD will
40 provide to the Oneida Personnel Commission:

- 41 ▪ *Hiring and Selection of Employees.* HRD will provide administrative assistance including,
42 but not limited to: scheduling of pre-screens and interviews and coordinating OPC
43 members to conduct hiring and selection activities *[see OPC Bylaws 2-8(a)]*.
- 44 ▪ *Grievance Hearings.* HRD will accept grievance filings on behalf of the Oneida Personnel
45 Commission; schedule grievance hearings; coordinate Oneida Personnel Commission
46 members to serve as a hearing body; and provide a hearing room for the Oneida Personnel
47 Commission to conduct grievance hearings *[see OPC Bylaws 2-8(b)]*.

48 **D. Future Amendments.** A new provision has been added requiring members of the Oneida
 49 Personnel Commission to review their bylaws from time to time, including each time a vacancy
 50 is filled. The Oneida Business Committee has requested that this standard language be added
 51 to the bylaws of every board, committee and commission as they come up for amendment [*see*
 52 *OPC Bylaws 7-1(a)*].

53 **E. Updated References to Judiciary Laws.** In the section regarding appeals of Oneida Personnel
 54 Commission decisions to the Judiciary, specific references to the Judiciary Law and Rules of
 55 Appellate Procedure were added for clarity [*see OPC Bylaws 1-5(e)(4)*].

- 56 ■ Although the Personnel Policies and Procedures state that the decision of the Oneida
 57 Personnel Commission shall be final [*see Personnel Policies and Procedures - Section*
 58 *V(D)(6)(b)(7)*], the Judiciary law provides that case law precedent set by the Oneida
 59 Appeals Commission/Oneida Tribal Judicial System, including the acceptance of appeals
 60 from Personnel Commission decisions, shall remain precedent [*see 8 O.C. 801.2-6*].

61

62 **SECTION 5. RELATED LEGISLATION & RESOLUTIONS**

63 *There is a conflict between the proposed bylaw amendments and a resolution previously adopted*
 64 *by the Oneida Business Committee:*

65 **A. Resolution BC-09-26-18-F Rescission of the Dissolution of the OPC.** This resolution
 66 rescinded the dissolution of the Oneida Personnel Commission and directed the Judiciary Trial
 67 Court to provide administrative support to the Oneida Personnel Commission for grievance
 68 hearings. That resolution conflicts with these bylaws, which state that HRD will provide
 69 administrative support.

70 *Chart 1. Comparison of Administrative Support to OPC*

	Personnel Commission Bylaws (draft)	Resolution BC-09-26-18-F
<i>Who is responsible for providing administrative support to the Oneida Personnel Commission for the employee grievance process?</i>	Oneida Human Resources Department (HRD)	Judiciary Trial Court

71

72 *Conclusion:* At the time this analysis was drafted, it is the LOC’s intent to amend the resolution
 73 to clarify that HRD, not the Judiciary, will provide administrative support to the Personnel
 74 Commission [*see BC Resolution 09-26-18-F*].

75

76 *There are no other conflicts between the proposed bylaw amendments and any of the Nation’s*
 77 *laws. Below is a summary of relevant laws that apply to or reference the Personnel Commission:*

78 **B. Personnel Policies and Procedures.** The Personnel Policies and Procedures, also known as
 79 “the blue book,” describes the Oneida Personnel Commission’s responsibilities with regard to
 80 the hiring and selection of employees and employee grievance hearings:

- 81 ▪ *Hiring and Selection of Employees.* The Personnel Policies and Procedures provides the
82 following with regard to the hiring and selection of employees:
- 83 ○ *Hiring Procedures:* The Oneida Personnel Commission represents the Oneida
84 Community-at large in the selection of employees. The OPC is directed to seek
85 out the best-matched applicants for each available position and consider only job-
86 related factors when selecting applicants [*See Personnel Policies and Procedures*
87 *- Section III(B)*].
- 88 ○ *Screening of Applicants:* One (1) member of the Oneida Personnel Commission
89 participates in the screening committee to conduct screening of applicants. [*See*
90 *Personnel Policies and Procedures - Section III(B)*].
- 91 ○ *Candidate Interviews:* Two (2) members of the Oneida Personnel Commission
92 participate in the interview committee to interview candidates. [*See Personnel*
93 *Policies and Procedures - Section III(B)*].
- 94 ▪ *Employee Grievance Process:* Decisions of the Area Manager regarding employee
95 grievances may be appealed to the Oneida Personnel Commission. The Personnel Policies
96 and Procedures outline the hearing process for conducting employee grievance hearings.
97 [*See Personnel Policies and Procedures - Section V(D)(6)*].
- 98 ○ The OPC bylaws require the Oneida Personnel Commission to conduct grievance
99 hearings in accordance with the Oneida Personnel Policies and Procedures, in
100 addition to the Oneida Judiciary Rules of Civil Procedures and resolution BC-09-
101 26-18-F.
- 102 C. **Rules of Civil Procedure.** The Rules of Civil Procedure state that the Rules of Civil Procedure
103 shall apply to proceedings conducted by the Oneida Personnel Commission, except where the
104 Personnel Policies and Procedures are more specific [*see 803.4-6*].
- 105 ▪ This means that the Personnel Commission must first and foremost follow the process
106 outlined in the Personnel Policies and Procedures. However, if the Personnel Policies and
107 Procedures do not include details regarding a certain process, the Personnel Commission
108 will next look to the Rules of Civil Procedure. For example, the Personnel Policies and
109 Procedures do not describe the order of presentation during a hearing, so the Personnel
110 Commission would utilize the order of presentation in the Rules of Civil Procedure.
111



Legislative Operating Committee
March 20, 2019

Domestic Animals Law Amendments

Submission Date: 9/19/18	Public Meeting: 3/11/19
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This is a request to make necessary changes and updates to the law in regard to issues with violations, enforcement and appeals, procedure at hearings, restitution, citations, and viscous and dangerous dogs.*

9/19/18 LOC: Motion by Jennifer Webster to add the Domestic Animals Ordinance to the active files list and assign Jennifer Webster as the Sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

10/5/18: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Kelly McAndrews, Eric Boulanger, Michelle Myers, Jeff Mears, Vanessa Miller, Steve Linskens, Laura Manthe. The purpose of this work meeting was to begin identifying potential amendments that can be made to the law, and discussing areas that could benefit from further discussion.

10/23/18: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Kelly McAndrews, Jeff Mears, Vanessa Miller, Steve Linskens, Laura Manthe, Brenda Haen, Eric Krawczyk. The purpose of this work meeting was to finish reviewing the law and discussing potential amendments that could be made.

11/9/18: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jeff Mears, Vanessa Miller, Steve Linskens, Jennifer Falck, Eric Boulanger, Michelle Myers. The purpose of this work meeting was to review research that was completed, and discuss parking lot issues. The LRO will update the draft and schedule another work group meeting before the draft is presented to the LOC.

12/13/18: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Eric Boulanger, Chad Wilson, Laura Manthe, Steve Linskens, Shad Webster, Patrick Pelky. The purpose of this work meeting was to review and discuss the proposed draft of the amendments before the draft is presented to the LOC for consideration.

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 the proposed draft created by the work group, and determine the next steps for moving forward. Attorney will update the draft, and a legislative analysis will be completed.

1/16/19 LOC: Motion by Jennifer Webster to accept the draft and the legislative analysis of the amendments to the Domestic Animals law and defer these items to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.


- 1/16/19:** *Work Meeting.* Present: Jennifer Webster, Kirby Metoxen, Daniel Guzman, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review the policy considerations contained in the legislative analysis.
- 1/25/19:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck, Shad Webster, Eric Boulanger, Steve Linskens, Michelle Meyers, Vanessa Miller, Jeff Mears. The purpose of this work meeting was to review and discuss the fine, penalty, and licensing fee schedule resolution, discuss complaints received from the community, and discuss fiscal impacts.
- 2/6/19 LOC:** Motion by Jennifer Webster to approve the public meeting packet and direct that a public meeting for the amendments to the Domestic Animals law be held on Monday, March 11, 2019; seconded by Kirby Metoxen. Motion carried unanimously.
- 2/26/19:** *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Eric Boulanger, Joel Maxam, Shad Webster, Jeff Mears, Steve Linskens. The purpose of this work meeting was to discuss: 1) the timeframe to adoption of the proposed amendments and the various deadlines required for that; 2) what is required in the fiscal impact statements that each department will be completing for the LOC; and 3) implementation and any tasks that will need to be completed for the law to be successfully implemented.
- 3/8/19:** *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Joel Maxam, Steve Linskens, Vanessa Miller, Jacy Rasmussen. The purpose of this work meeting was to discuss the various standard operating procedures that will have to be created based on the proposed amendments and what department will be responsible for the development of each one. During this work meeting potential fiscal impacts and the development of fiscal impact statements were also discussed.
- 3/11/19:** Public Meeting Held.

Next Steps:

- Approve the fiscal impact statement memorandum and forward to the Environmental Health, Safety, and Land Division, Environmental Resource Board, Oneida Police Department, Oneida Nation Judiciary, and Oneida Land Commission directing that a fiscal impact statement of the proposed amendments to the Domestic Animals law be prepared and submitted to the Legislative Operating Committee by April 19, 2019.



TO: Jeff Mears, Environmental Health, Safety, and Land Division, Environmental Area Manager
Eric Boulanger, Oneida Police Department, Chief of Police
James Wilson, Environmental Resource Board, Chairman
Raeann Skenandore, Oneida Nation Judiciary, Court Administrator
Rae M. Skenandore, Oneida Land Commission, Chairwoman

FROM: David P. Jordan, Legislative Operating Committee Chairman 

DATE: March 20, 2019

RE: Domestic Animals Law Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Domestic Animals law. Every proposed law or amendments to a law are required to have a fiscal impact statement. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed amendments, and can include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed amendments being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed amendments will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct any agency to submit a fiscal impact statement, particularly those agencies who may administer a program if the legislation is enacted and may have financial information concerning the subject matter of the legislation. [1 O.C. 109.6-1].

For the amendments to the Domestic Animals law, the LOC is directing all departments involved in the execution of the Domestic Animals law to provide fiscal impact statements identifying and isolating any additional costs that may be incurred as a direct result of the adoption of the proposed amendments to the Domestic Animals law

A clean and redline copy of the proposed amendments to the Domestic Animals law, as well as the legislative analysis, have been attached to this email for your convenience.

Requested Action

Provide a fiscal impact statement of the amendments to the Domestic Animals law to the Legislative Operating Committee by April 19, 2019.

Title 3. Health and Public Safety - Chapter 304
DOMESTIC ANIMALS
Kátse?na Olihwá'ke
matters concerning the pet animals

304.1. Purpose and Policy	304.6. Requirements for Dogs and Cats <u>Treatment of Animals</u>
304.2. Adoption, Amendment, Conflicts	304.7. Treatment of Animals <u>Dogs and Cats</u>
304.3. Definitions	304.8. Prohibited Animals <u>Livestock</u>
304.4. Jurisdiction	304.9. Regulation of Livestock <u>Hens</u>
304.5. Licensing Authority <u>Investigation, Responsibilities and Enforcement Powers</u>	304.10. Dangerous Animals and Vicious <u>Prohibited Animals</u>
	304.11. Violations, Enforcement and Appeals <u>Dangerous Animals</u>

304.12. Owner Liability

304.13. Enforcement of Violations

304.1. — Purpose and Policy

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals which may be kept as domestic animals.

304.2. — Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G ~~and~~ BC-06-28-17-B, and BC- - - -.

304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

304.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~does~~ shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

304.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

304.3. — Definitions

304.3-1. This section ~~governs~~ shall govern the definitions of words and phrases used within this law. All words not defined herein ~~are to~~ shall be used in their ordinary and everyday sense.

- (a) “District Quarantine” means a rabid or otherwise diseased ~~Domestic Animal~~ domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

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~~(b) “Domestic animals” means dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids, and all other animals commonly owned as household pets, provided that domestic animals specifically excludes exotic animals as identified in section 304.8-2.~~

~~(b) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law.~~

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

(c) “Hen” means a female chicken (*Gallus gallus domesticus*).

(d) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig, ~~or domestic fowl, including game fowl raised in captivity.~~

(e) “Nation” means the Oneida Nation.

(f) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(g) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the ~~Judiciary~~ Trial Court and restitution.

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

(i) “Residential household” means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.

(j) “Tethering” means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.

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

(l) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

~~(j) “Tribal member” means an enrolled member of the Nation.~~

304.4. — Jurisdiction

304.4-1. *Personal Jurisdiction.* This law applies to:

(a) All ~~Tribal~~ members of the Nation; the Nation’s entities and corporations; and members of other federally-recognized tribes.

(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual ~~Tribal~~ members of the Nation; and/or lands held in trust on

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80 behalf of the Nation or individual ~~Tribal~~ members of the Nation.

81 (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise
82 consistent with federal law. ~~For the purposes of this subsection, an~~ An individual shall be
83 considered to have consented to the jurisdiction of the Nation:

84 (1) By entering into a consensual relationship with the Nation, or with the Nation's
85 entities, corporations, or ~~Tribal~~ members of the Nation, including but not limited to
86 contracts or other agreements; or

87 (2) By other facts which manifest an intent to consent to the authority of the Nation,
88 including failure to raise an objection to the exercise of personal jurisdiction in a
89 timely manner.

90 304.4-2. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by
91 the Nation and individual ~~Tribal member~~ trust and/or fee land of a member of the Nation.

92 **304.5. —Authority**

94 304.5-1. *General.* This law governs the keeping of all domestic animals which are commonly
95 owned as household pets. Domestic animals include, but are not limited to dogs, cats, ferrets,
96 rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and
97 arachnids.

98 (a) Domestic animals do not include prohibited exotic animals as identified in section
99 304.10-2.

100 ~~304.5-2. Authority of the Oneida Police Department- and Conservation Department.~~ Oneida
101 Police Officers and Conservation Wardens shall have the authority to:

102 (a) investigate complaints involving domestic animals;

103 (b) enforce the provisions of this law through appropriate means, including but not limited
104 to:

105 (1) seizing any animal:

106 ~~(A)-~~ that is taken, employed, used, or possessed in violation of this law;
107 and/or

108 ~~(B)-~~ mistreated, rabid or otherwise in danger or dangerous;

109 (2) issuing citations consistent with the fine and penalty schedule developed
110 according to section 304.5-2. in accordance with this law; and

111 (3) using force, up to and including lethal force, to stop an immediate threat to
112 public safety caused by an animal.

113 (A) Where lethal force is used, such execution shall be conducted in as
114 humane manner as possible and, to the extent feasible, avoids damage to the
115 animal's head for the purpose of rabies testing.

116 ~~304.5-2. General Rulemaking Authority.~~ 304.5-3. Fine, Penalty, and Licensing Fee Schedule.

117 The Environmental, Health and Safety, and Land Division and the Environmental Resource Board
118 are hereby delegated joint ~~rulemaking~~ authority to ~~establish and maintain:~~

119 ~~(develop a)~~ A fine and, penalty, and licensing fee schedule;

120 ~~(b)~~ A. The fine, penalty, and licensing fee schedule; and shall be adopted by the Oneida
121 Business Committee by resolution.

122 ~~(c) Other rules as necessary to enforce and implement this law.~~

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~~304.5-4. 304.5-3.~~ *Disease Investigation and Quarantine—Rulemaking Authority.* The Environmental, Health ~~and~~, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint ~~rulemaking~~ authority to establish ~~rules~~ standard operating procedures related to disease investigations and quarantines.

~~304.5-5. 304.5-4.~~ *Issuance of Licenses.* The Environmental, Health ~~and~~, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

304.6. Treatment of Animals

304.6-1. Food and Water. An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.6-2. Shelter. An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

(a) Minimum indoor standards of shelter. Minimum standards for indoor shelter include the following:

(1) Temperature. The ambient temperature of the indoor shelter shall be compatible with the health of the animal.

(2) Ventilation. Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

(b) Minimum outdoor standards of shelter. Minimum standards for outdoor shelter include the following:

(1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.

(2) Climatic Conditions. Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

(3) Adverse Weather. If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

(c) Space Standards. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) Dog Kennels. Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

(A) Dog Size Between One and Thirty-Five Pounds. A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

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166 (B) Dog Size Between Thirty-Six and Seventy-Five Pounds. A dog that
167 weighs between thirty-six (36) and seventy-five (75) pounds shall have a
168 required base kennel space of eighty (80) square feet. Required additional
169 kennel space per additional dog of this size is eighteen (18) square feet.

170 (C) Dog Size Seventy-Six Pounds or Greater. A dog that weighs seventy-
171 six (76) pounds or more shall have a required base kennel space of one
172 hundred (100) square feet. Required additional kennel space per additional
173 dog of this size is twenty-four (24) square feet.

174 (d) Sanitation Standards. An owner shall meet the minimum standards of sanitation for
175 both indoor and outdoor shelter. Minimum sanitation standards require waste matter from
176 the animal to be removed within twenty-four (24) hours of its deposit.

177 (e) Shelter Exception for Livestock. In the case of livestock kept on farms on land zoned
178 agricultural, nothing in this section shall be construed as imposing shelter requirements or
179 standards more stringent than normally accepted husbandry practices.

180 304.6-3. Tethering. If a kennel or enclosed yard is not available, an owner may tether an
181 unsupervised animal as long as the owner meets the following conditions:

182 (a) the tether is connected to the animal with a buckle type collar or body harness made of
183 nylon or leather not less than one inch (1") in width and at least two inches (2") greater in
184 diameter than the animal's neck or torso;

185 (1) The use of a choke collar, prong collar head harness, or other similar type of
186 head harness or collar shall be prohibited for the use of tethering.

187 (b) the tether is at least twelve feet (12') long and allows the animal to move in all
188 directions unimpeded;

189 (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body
190 weight;

191 (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows
192 the animal access to water and shelter;

193 (e) the tethered animal is not sick, injured, or nursing;

194 (f) the animal is not tethered on any vacant property or land or with an unoccupied
195 dwelling; and

196 (g) the animal is not tethered in a manner that allows the animal to cross onto public space
197 or property of others.

198 304.6-4. Mistreatment of Animals. No person may treat any animal in a manner which causes
199 harm, injury or death. This section does not apply to:

200 (a) normal and accepted veterinary and/or care practices; or

201 (b) teaching, research or experimentation conducted at a facility regulated under federal or
202 applicable state law.

203 304.6-5. Mandatory Reporting. An employee of the Nation shall report any animal mistreatment
204 witnessed during the regular course of his or her employment with the Nation to the Oneida Police
205 Department and any other appropriate entity.

206
207 304.7.

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~~304.6.~~ Requirements for Dogs and Cats

~~304.7-1.~~ ~~304.6 1.~~ License Required. ~~An annual~~ An owner shall be required to obtain a license is required to keep for any dog or cat ~~over~~ five (5) months of age ~~or older on an annual basis.~~

(a) License Period. The license year ~~commences~~ shall commence on January 1st and ~~ends~~ end on December 31st ~~of every year.~~

(b) License Eligibility. To be eligible for a license, the owner shall provide:

(1) the licensing fee; and

(2) proof of current rabies vaccination.

~~(b)-(c)~~ Placement of License Tag. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times, ~~provided that this requirement does not apply to dogs or cats.~~

~~(4)~~ (1) Exception. A dog or cat shall not be required to wear the collar if the dog or cat is:

(A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;

(2) ~~B~~ B within the owner's residence and/or securely confined in a fenced area; and/or

(3) ~~C~~ C being shown during a competition.

~~304.67-2.~~ Rabies Vaccinations Required. ~~Rabies~~ An owner shall be required to obtain a rabies vaccination is required for any dog or cat five (5) months of age or older.

~~304.7-3.~~ Limit on the Number of Dogs and Cats. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.

(a) Exception. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:

(1) is eligible for any grandfather provisions included in this law's adopting resolution;

(2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;

(3) resides on property zoned agricultural; and/or

(4) obtains a permit for the additional dog or cat.

(b) Permit for Additional Dogs or Cats. A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the landowner of the residential household if the landowner is not the applicant.

(1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.

(2) If two (2) or more nuisance complaints are received against the residential

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251 household due to the number of dogs or cats housed on the premises, the owner
252 shall reduce the number of animals within thirty (30) days.

253 304.7-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any
254 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash
255 under the control of a person physically able to control the animal.

256 (a) A stray dog or cat running at large may be referred to the Oneida Police Department or
257 Oneida Conservation Department.

258 (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat
259 running at large, the officer and/or warden shall, if possible, pick up and impound such
260 animal.

261 (c) Whenever any impounded animal bears an identification mark, such as a collar with
262 identification tags or license tag, the owner shall be notified as soon as reasonably possible.

263 304.7-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and
264 impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a
265 nuisance if the actions of the dog or cat:

266 (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other
267 noise by the animal, or the animal running at large; and/or

268 (b) resulted in one (1) or more verified disturbance due to threatening behavior by the
269 animal running at large.

270 304.7-6. *Investigations for Suspected Animal Bites.* The owner shall notify the Oneida Police
271 Department in the event the owner's cat or dog bites a human or another domestic animal.

272 (a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

273 (1) Ascertain whether the domestic animal is properly licensed and has current
274 vaccinations.

275 (2) Ensure all information provided is correct.

276 (3) Contact the Environmental, Health, Safety and Land Division to provide
277 notification of the domestic animal bite.

278 (4) If the cat or dog has current rabies vaccinations, order the owner to:

279 (A) Quarantine the animal for ten (10) days; and

280 (B) Present the animal for examination by a veterinarian within twenty-
281 four (24) hours of the bite, on the last day of quarantine and on one (1) day
282 in between the first twenty-four (24) hours and the tenth (10th) day.

283 (5) If the cat or dog does not have current rabies vaccination, order the owner to:

284 (A) Quarantine the animal for ten (10) days or deliver the animal to an
285 isolation facility at the owner's expense. If a home quarantine is ordered,
286 the owner shall present the domestic animal for examination by a
287 veterinarian within twenty-four (24) hours of the bite, on the last day of
288 quarantine and on one (1) day in between the first twenty-four (24) hours
289 and the tenth (10th) day; or

290 (B) Euthanize the animal and send the specimen for analysis at the owner's
291 expense, if the animal has exhibited any signs of rabies.

292 (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine
293 period. Upon expiration of all quarantine periods, if the veterinarian certifies that the

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294 animal has not exhibited any signs of rabies, the animal may be released from quarantine.

295 (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the
296 following shall occur:

297 (1) If the animal has current rabies vaccinations, the Oneida Police Officer or
298 Oneida Conservation Warden may order the animal to be euthanized and send the
299 specimen for analysis, to be paid for by the Nation.

300 6-3(2) If the animal does not have current rabies vaccinations, the Oneida Police
301 Officer or Oneida Conservation Warden may order the animal to be euthanized and
302 send the specimen for analysis at the owner's expense.

303 304.7-7. District Quarantine. A district quarantine may be initiated ~~in accordance with the~~
304 ~~quarantine rules and may be initiated by~~ by staff designated by the Environmental, Health and
305 Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a
306 Public Health Officer.

307 (a) If an area is subject to a ~~District Quarantine~~ district quarantine for rabies, all dogs and
308 cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog
309 or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded.
310 All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the
311 enforcement of the ~~Quarantine~~ quarantine.

312 (b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies
313 vaccination or other evidence is exempt from the district quarantine provisions of this
314 section.

315 ~~304.6-4. Dogs~~

316 304.8. Livestock

317 304.8-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in
318 order to keep livestock on land zoned residential.

319 304.8-2. Limitations on Livestock. Livestock kept on land zoned residential are subject to the
320 following limitations:

321 (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not
322 limited to, horses, cows, and pigs.

323 (b) One (1) small animal per one-half (½) acre. Examples of small animals include, but
324 are not limited to, goats, and sheep.

325 (c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback
326 requirements can be met.

327 304.8-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock
328 escapes from its normal confined area and becomes at large is responsible for any and all damage
329 to persons and property caused by such livestock while it is away from its normal confined area.

330 ~~and Cats Running at Large. It is unlawful for any dog or cat owner to permit the animal to be at~~
331 ~~any place except upon the premises of the owner, unless it is crated, penned, or on a leash under~~
332 ~~the control of a person physically able to control the animal. In addition, a nuisance dog or cat~~
333 ~~may be picked up by Oneida Police Officers or Oneida Conservation Wardens. For the purposes~~
334 ~~of this law, a nuisance dog or cat is one whose actions result in two (2) or more verified~~
335 ~~disturbances due to excessive barking and/or running loose or one (1) or more verified disturbance~~
336 ~~due to threatening behavior by a loose dog or cat.~~

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337 ~~(a) Stray dogs and cats shall be referred to the Oneida Police Department or Oneida~~
338 ~~Conservation Department.~~

339 ~~(b) Whenever any Oneida Police Officer, Oneida Conservation Warden, or other person~~
340 ~~designated by the Chief of Police finds any dog or cat running at large, the officer/warden~~
341 ~~shall, if possible, pick up, and impound such animal.~~

342 ~~(c) Whenever any impounded animal bears an identification mark, such as a collar with~~
343 ~~identification tags or license tag, the owner shall be notified as soon as reasonably possible.~~

344 ~~304.~~

345 **304.9. Hens**

346 304.9-1. Hen Permit. An owner shall obtain a conditional use permit from the Oneida Land
347 Commission Division in order to keep hens on land zoned residential.

348 304.9-2. Prohibition of Roosters. An owner shall not keep a rooster on land zoned residential.

349 304.9-3.6-5. Limit on Number of Dogs and Cats. Except as provided in (a), no more than three
350 (3) dogs or three (3) cats; and a total of no more than five (5) dogs and cats combined; may be kept
351 or possessed by a single residential household. For the purposes of this law, each residential lot,
352 excluding residential lots designed as multi-family lots, constitutes a separate residential
353 household. In cases of multi-family lots, each family unit within the lot constitutes a separate
354 household.

355 ~~(a) Exception. Limit on the Number of Hens Allowed. The limit on the number of dogs and~~
356 ~~cats a person may keep or possess does not apply to those persons who:~~

357 ~~(1) are eligible for any grandfather provisions included this law's adopting~~
358 ~~resolution(s);~~

359 ~~(2) keep or possess a litter of pups or kittens or a portion of a litter for a period not~~
360 ~~exceeding five (5) months from birth; and/or~~

361 ~~(3) reside hens an owner may keep is dependent on a farm.~~

363 ~~304.7. Treatment of Animals~~

364 ~~304.7 1. Food and Water.~~ No owner may refuse or neglect to provide an animal with a daily
365 supply of food and water sufficient to maintain the animal in good health.

366 ~~304.7 2. Shelter:~~

367 ~~(a) Minimum indoor standards of shelter:~~

368 ~~(1) The ambient temperature shall be compatible with the health of the animal.~~

369 ~~(2) Indoor housing facilities shall be adequately ventilated by natural or mechanical~~
370 ~~means to provide for the health of the animals at all times.~~

371 ~~(b) Minimum outdoor standards of shelter:~~

372 ~~(1) Shelter from Sunlight. When sunlight is likely to cause heat exhaustion of an~~
373 ~~animal tied or caged outside, sufficient shade by natural or artificial means shall be~~
374 ~~provided to protect the animal from direct sunlight. "Caged" does not include farm~~
375 ~~fencing used to confine farm animals.~~

376 ~~(2) Natural or artificial shelter appropriate to the local climatic conditions for the~~
377 ~~species concerned shall be provided as necessary for the health of the animal.~~

378 ~~(3) If a dog is tied or confined unattended outdoors under weather conditions which~~
379 ~~adversely affect the health of the dog, a weather appropriate shelter of suitable the size to~~

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accommodate the dog shall be provided of the residential lot.

~~(e) Space~~ (a) An owner may keep up to four (4) hens on a residential lot that is two (2) acres in size or smaller.

(b) An owner may keep up to eight (8) hens on a residential lot two (2) acres in size or larger.

~~304.9-4. Standards. Minimum space requirements for both indoor and outdoor enclosures:~~

~~(1) The housing facilities~~ Keeping Hens. An owner shall be structurally sound and maintained keep hens in good repair to protect the animals from injury and to contain the animals.

~~(2) Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns. Specifically, dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel manner:~~

DOG SIZE (LBS)	REQUIRED BASE KENNEL SPACE	REQUIRED ADDITIONAL KENNEL SPACE PER ADDITIONAL DOG
1-35 lbs	80 Sq. Ft.	12 Sq. Ft.
36-75 lbs	100 Sq. Ft.	18 Sq. Ft.
76 lbs or more	120 Sq. Ft.	24 Sq. Ft.

~~(d) Sanitation Standards. Minimum standards of sanitation for both indoor and outdoor enclosures require excreta to be removed within twenty four (24) hours of its deposit. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.~~

~~304.7-3. Mistreatment of Animals. No person may treat any animal in a manner which causes harm, injury or death. This section does not apply to:~~

~~(a) normal and accepted veterinary and/or care practices; or~~

~~(b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.~~

~~304.7-4. Criminal Reporting. In addition to taking civil action under this law, any employee of the Nation shall report animal mistreatment to the Oneida Police Department.~~

304.8.(a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

(b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.

(c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.

(d) No accessory structure used to keep hens shall be located in a front or side yard.

(e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.

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417 304.9-5. Prohibition of Nuisance Hens. No owner may keep hens that cause any other nuisance
418 associated with unhealthy conditions, create a public health threat, or otherwise interfere with the
419 normal use of property or enjoyment of life by humans or animals.
420

421 **304.10. Prohibited Animals**

422 ~~304.8-1. Prohibited Animals.~~ 304.10-1. No person ~~may~~shall bring into, keep, harbor,
423 maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the
424 wild on the Reservation ~~an exotic~~a prohibited animal.

425 ~~304.8-10-2. Exotic~~Prohibited Animals. ~~The~~Prohibited animals include the following orders and
426 families, whether bred in the wild or in captivity, and any or all hybrids ~~are defined as “Exotic~~
427 Animals”. The animals listed ~~in parentheses~~ are intended to act as examples and are not to be
428 construed as an exhaustive list or limit the generality of each group of animals, unless otherwise
429 specified:

430 (a) Class Mammalia.

431 (1) Order Chiroptera ~~(Any. This includes all bat species).~~

432 (2) Order Artiodactyla ~~(Hippopotamuses. This includes hippopotamuses, giraffes,~~
433 ~~camels, and deer)~~ Excluding, but does not include domestic cattle, swine, sheep,
434 goats, alpaca, and llama as exotic animals.

435 (3) Order Carnivora.

436 (A) Family Felidae. ~~(Lions. This includes lions, tigers, cougars, leopards,~~
437 ~~ocelots, and servals)~~ Excluding, but does not include domestic cats as
438 exotic animals.

439 (B) Family Canidae ~~(Wolves. This includes wolves, wolf hybrids, coyotes,~~
440 ~~coyote hybrids, foxes, and jackals)~~ Excluding, but does not include
441 domestic dogs as exotic animals.

442 (C) Family Ursidae. ~~(All. This includes all bears).~~

443 (D) Family Mustelidae. ~~(Weasels. This includes weasels, skunks, martins,~~
444 ~~and minks)~~ Excluding, but does not include ferrets as exotic animals.

445 (E) Family Procyonidae. ~~(Raccoons. This includes raccoons, and coatis).~~

446 (F) Family Hyaenidae. ~~(Hyenas. This includes hyenas.~~

447 (G) Family Viverridae ~~(Civets. This includes civets, genets, and~~
448 ~~mongooses).~~

449 (4) Order Edentata. ~~(Anteaters. This includes anteaters, armadillos, and sloths).~~

450 (5) Order Marsupialia. ~~(Opossums. This includes opossums, kangaroos, wallabies,~~
451 ~~and sugar gliders).~~

452 (6) Order Perissodactyla. ~~(Rhinoceroses. This includes rhinoceroses, and tapirs)~~
453 Excluding, but does not include horses, goats, and mules as exotic animals.

454 (7) Order Primates. ~~(Lemurs. This includes lemurs, monkeys, chimpanzees, and~~
455 ~~gorillas).~~

456 (8) Order Proboscidae. ~~(Elephants. This includes elephants.~~

457 (9) Order Rodentia. ~~(Squirrels. This includes squirrels, beavers, porcupines,~~
458 ~~and prairie dogs)~~ Excluding, but does not include guinea pigs, rats, mice, gerbils,
459 and hamsters as exotic animals.

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460 (b) Class Reptilia.

461 (1) Order Squamata.

462 (A) Family Helodermatidae. ~~(This includes Gila Monsters monsters~~ and
463 ~~Mexican beaded lizards).~~

464 (B) Family Varaidae. ~~(Any~~ This includes any monitor lizard which will
465 normally grow over two feet in length).

466 (C) Family Iguanidae. ~~(Only~~ This includes green iguanas and rock
467 iguanas, ~~all others allowed)~~ but does not include all other types of iguanas
468 which are not green or rock iguanas.

469 (D) Family Boidae. ~~(All~~ This includes all species whose adult length may
470 exceed eight (8) feet).

471 (E) Family Colubridae. ~~(Boomsnangs~~ This includes boomsnangs and
472 African twig snakes).

473 (F) Family Elapidae. ~~(Coral~~ This includes coral snakes, cobras, and
474 mambas).

475 (G) Family Nactricidae. ~~(Only~~ This includes keelback snakes, ~~all others~~
476 ~~allowed)~~ but does not include all other snakes not keelback.

477 (H) Family Viperidae. ~~(Copperheads~~ This includes copperheads,
478 cottonmouths, and rattlesnakes).

479 (2) Order Crocodilia. ~~(Crocodiles~~ This includes crocodiles, alligators, caimans,
480 and gavials).

481 (c) Class Aves.

482 (1) Order Falconiformes. ~~(Eagles~~ This includes eagles, hawks, and vultures).

483 (2) Order Rheiformes. ~~(Rheas)~~ This includes rheas.

484 (3) Order Struthioniformes. ~~(Ostriches)~~ This includes ostriches.

485 (4) Order Casuariiformes. ~~(Cassowaries)~~ This includes cassowaries and emus).

486 (5) Order Strigiformes. ~~(Owls)~~ This includes owls.

487 (d) Class Arachnida.

488 (1) Order Scorpiones,

489 (A) Family Buthidae. This includes scorpions.

490 ~~(A) Arabian fat tailed scorpion — Androctonus crassicauda~~

491 ~~(B) Arizona centruroides scorpion — Centruroides exilicauda~~

492 ~~(C) Death stalker — Leiurus quinquestriatus~~

493 ~~(D) Egyptian yellow scorpion — Androctonus Amoreuxi~~

494 ~~(E) Israeli black scorpion — Hottentotta judaicus~~

495 ~~(F) S.A. giant fat tailed scorpion — Parabuthus transvaalicus~~

496 ~~(G) Sinai desert scorpion — Androctonus bicolor~~

497 ~~(H) Yellow desert scorpion — Androctonus Australia~~

498 (2) Order Araneae,

499 (A) Family Therididae.

500 ~~(A) This includes the~~ Argentina red widow spider — ~~Latrodectus coralinus~~

501 ~~(B) Brown, brown~~ widow spider — ~~Latrodectus geometicus~~

502 ~~(C) Red, red-~~black widow — ~~Latrodectus hasselti~~

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~~(D) Red widow spider—Lactrodectus bishop~~

~~(E) Southern, red widow spider, southern~~ black widow spider—
~~Lactrodectus mactans~~

~~(F) —, and Western widow —Lactrodectus Hesperus spider.~~

~~(3) — Order Araneae, (B) Family Laxoscelidae, Brown~~This includes the brown recluse spider—~~Loxoseeles reclusa.~~

(e) ~~_~~ Class Chilopoda.

(1) ~~_~~ Order Scolopendromorpha,

~~(A) Family Scolopendridae.~~ This includes centipedes.

~~(A) Amazon giant banded centipede—Scolopendra giganea~~

~~(B) Arizona tiger centipede—Scolopendra viridis~~

~~(C) Florida keys centipede—Solopendra alternans~~

(f) Any Federal or State endangered or threatened species.

304.8 ~~10-3.~~ This section does Prohibited Animals Exception. The prohibition of certain animals shall not apply to:

(a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution ~~(s).~~

~~(b) Zoological parks~~ A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment ~~organizations~~ organization who ~~receive~~ receives a permit from the ~~Oneida Conservation Department~~ Environmental, Health, Safety, and Land Division to own, harbor or possess the ~~animals.~~ prohibited animal.

~~(1) —~~ 304.10-4. Prohibited Animal Permit. The Environmental, Health ~~and~~, Safety, ~~and~~ Land Division may issue a prohibited animal permit ~~under this section~~ if:

~~(A) —~~ a the ~~animals~~ animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

~~(B) —~~ b the ~~animals are~~ animal is maintained in quarters so constructed as to prevent ~~their~~ its escape.

~~(2) If approved by the Oneida Conservation Department, wildlife~~

~~refuges/sanctuaries may release~~ 304.10-5. Release of Prohibited Animals. The

Environmental, Health, Safety, and Land Division, may approve a wildlife refuge

and/or sanctuary to release prohibited animals within the Reservation without

applying for and receiving a ~~permit as otherwise required under this Section.~~

~~304.8 4. —~~ Seized Animals. Any animal seized as a prohibited animal permit.

304.10-6. Seizure of Prohibited Animals. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.

(a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until ~~that animal is identified to ascertain whether it can be determined if~~ the animal is an “endangered or threatened species” ~~pursuant applicable laws.~~

(b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from a hearing body the Trial Court as to the care, custody and control of the animal. ~~The Oneida Conservation Department may also~~

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546 request the defendant to post a bond in an amount sufficient to satisfy the costs of holding,
547 housing and/or caring for the animal.

548 (c) If the ~~hearing body~~ Trial Court finds the animal has been taken, employed, used or
549 possessed in violation of this section, the owner shall be responsible for reimbursing the
550 Oneida Police Department and/or the Oneida Conservation Department for the cost of
551 holding the animal and any costs incurred in identifying the ~~animals shall be assessed~~
552 ~~against the defendant~~ animal.

553 ~~304.8-5~~ 10-7. Notice of Release or Escape. ~~If an animal identified as~~ The owner of a prohibited
554 ~~under this section is~~ animal that has been released or escapes, ~~the owner of the animal~~ shall
555 immediately notify the Oneida Police Department and/or the Oneida Conservation Department
556 ~~and/or the Oneida Police Department and~~ shall be liable for any cost of recapture of the animal.

557 ~~304.10-8-6.~~ Forfeiture of the Prohibited Animal. ~~Anyone~~ An owner found in violation of this
558 section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida
559 Conservation Department, or designee. Upon such forfeiture or surrender, the ~~Judiciary~~ Trial Court
560 may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific
561 institution or qualified private propagator for safekeeping, with costs assessed against the
562 ~~defendant~~ owner.

563 **304.9.—Regulation of Livestock**

564 ~~304.9-1. Livestock may only be kept on land zoned residential if a conditional use permit is~~
565 ~~received from the Oneida Land Commission, however, not in excess of the following limitations:~~

566 (a) ~~One (1) large animal per one (1) acre. Examples of large animals include, but are not~~
567 ~~limited to horses, cows and pigs.~~

568 (b) ~~One (1) small animal per one half (½) acre. Examples of small animals include, but~~
569 ~~are not limited to goats and sheep.~~

570 (c) ~~One (1) goat or sheep per recorded lot under one half (½) acre when setback~~
571 ~~requirements can be met.~~

572 ~~304.9-2. Liability for Damage Caused by Livestock.~~ ~~Any person whose livestock escapes from~~
573 ~~its normal confined area and becomes at large is responsible for any and all damage to persons and~~
574 ~~property caused by such livestock while it is away from its normal confined area.~~

575 ~~11304.9-3. Hens.~~ ~~A permit from the Oneida Conservation Department, based on the rules it~~
576 ~~shall develop, is required in order to keep an excess of four (4) hens. Roosters may not be kept.~~

577 (a) ~~Persons keeping hens shall keep them in the following manner:~~

578 (1) ~~No person may keep a hen over eight (8) weeks of age in a principal structure.~~

579 (2) ~~Hens shall be kept within a structure such as a coop or fenced area used~~
580 ~~exclusively to keep hens and shall provide at least four (4) square feet per chicken.~~

581 (3) ~~No accessory structure used to keep hens may be located within twenty five~~
582 ~~feet (25') of any principal structure which is not owned by the person licensed to~~
583 ~~possess the hens.~~

584 (4) ~~No accessory structure used to keep hens may be located in a front or side yard.~~

585 (b) ~~In addition to compliance with the requirements of this section, no person may keep~~
586 ~~hens that cause any other nuisance associated with unhealthy condition, create a public~~
587 ~~health threat or otherwise interfere with the normal use of property or enjoyment of life by~~
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589 ~~humans or animals.~~

590
591 **304.10. Dangerous Animals**

592 ~~304.10-1. *Classifying Dangerous Animals.* Owners of animals meeting the definition of No~~
593 ~~person shall own, keep, possess, return to or harbor~~ a dangerous animal ~~shall comply with the~~
594 ~~requirements contained in section 304.10-2 for harboring dangerous animals.~~

595 ~~(a) — For the purposes of this law, an~~ An animal is shall be presumed to be dangerous if ~~it~~the
596 animal:

597 ~~(a)~~ (1a) approaches or chases a human being or domestic animal in a menacing fashion or
598 apparent attitude of attack, ~~without provocation; or;~~

599 ~~(2b)~~ bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or
600 domestic animal ~~without provocation;~~

601 ~~(b) An animal may not be deemed a dangerous animal if it bites, attacked or menaces any~~
602 ~~person or animal to:~~

603 (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

604 (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other
605 jurisdiction.

606 304.11-2. *Dangerous Animal Determination.* An Oneida Police Officer or Oneida Conservation
607 Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds
608 that the animal meets the definition of dangerous animal provided in section 304.11-1.

609 (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer
610 or Oneida Conservation Warden shall issue a written order with an accompanying citation
611 declaring the animal to be dangerous.

612 (b) The citation and order shall be personally delivered to the apparent owner or custodian
613 of the dangerous animal.

614 (c) Upon receipt of the written order and accompanying citation the owner shall remove
615 the dangerous animal from the Reservation within three (3) business days.

616 304.11-3. *Contesting a Dangerous Animal Determination.* If the owner wishes to contest the
617 dangerous animal determination, he or she shall file with the Trial Court a written objection to the
618 order within three (3) business days of receipt of the order.

619 (a) The written objection shall include specific reasons for objecting to or contesting the
620 order. An owner may argue an animal should not be deemed dangerous due to the animal
621 biting, attacking or menacing any person and/or domestic animal because the animal was
622 acting to:

623 (1) defend its owner or another person from an attack by a person or animal;

624 (2) protect its young or another animal;

625 (3) defend itself against any person or animal which has tormented, assaulted or
626 abused it; and/or

627 (4) defend its owner's property against trespassers.

628 ~~(e) An Oneida Police Officer or Oneida Conservation Warden may, in his or her discretion,~~
629 ~~declare an animal dangerous, provided that, a citation for a violation of this section may be~~
630 ~~issued without having previously received such a declaration.~~

631 ~~(d) An owner of an animal declared to be dangerous may appeal such declaration in~~

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632 ~~accordance with section 304.12-2. All requirements for harboring dangerous animals in~~
633 ~~section 304.10-2 except subsections (d)-(f) apply to the animal pending~~b) Pending the
634 ~~outcome of the hearing unless specifically stayed by,~~ the animal shall be securely confined
635 in a humane manner either on the Judiciary.

636 ~~304.10-2. Harboring Dangerous Animals. No person may harbor or keep a dangerous~~
637 ~~animal within premises of the Reservation unless all provisions of this section are complied~~
638 ~~with. Any animal that is determined to be a vicious animal in accordance with section~~
639 ~~304.10-3 may not, under any circumstances, be kept or harbored within~~owner or caretaker,
640 or with a licensed veterinarian. If confined on the Reservation, premises of the owner or
641 caretaker, the following requirements shall apply:

642 ~~(a)-1) Leash and Muzzle. No person keeping or possessing~~ owner shall permit a dangerous
643 ~~animal may permit such~~ animal to go outside its kennel or pen unless the animal is securely
644 ~~leashed~~restrained with a leash no longer than four feet (4') in length-

645 ~~(1) No person may permit a dangerous animal to be kept on a chain, rope or other~~
646 ~~type of leash outside its kennel or pen unless~~ by a person who is at least sixteen
647 (16) years of age ~~or older~~who is in physical control of the leash, competent to
648 govern the animal and capable of physically controlling and restraining the animal
649 ~~is in physical control of the.~~ The owner shall not leash-

650 ~~(2) The an~~ animal ~~may not be leashed to~~ inanimate objects such as ~~trees, posts and~~
651 ~~buildings.~~

652 ~~(3) A dangerous~~ a tree, post, or building. When the animal is on a leash outside the
653 animal's kennel ~~must be muzzled,~~ the owner shall muzzle the animal in a humane
654 way by a commercially available muzzling device sufficient to prevent the animal
655 from biting ~~persons or other animals.~~ ~~The Environmental Health and Safety~~
656 ~~Division, with approval of the Environmental Resource Board, may provide a~~
657 ~~written exception excusing an otherwise dangerous animal from being muzzled. If~~
658 ~~such a written exception is issued, it shall be carried by the animal's owner at all~~
659 ~~times.~~ a person or other animal.

660 ~~(b)-2) Confinement. Except when leashed and muzzled as provided in subsection (a)~~
661 ~~above,~~ all the owner shall ensure the dangerous ~~animals shall be~~ animal is securely confined
662 indoors or in a securely enclosed and locked pen or kennel that is located on the premises
663 of the owner and constructed in a manner that does not allow the animal to exit the pen or
664 kennel on its own volition.

665 ~~(1) Confinement Outdoors. When constructed in an open yard, the pen or kennel~~
666 ~~The owner shall, at a minimum, be constructed to conform to the requirements of~~
667 ~~this subsection.~~

668 ~~(A) The pen or kennel shall be child proof from the outside and~~ not permit
669 an animal proof from the inside.

670 ~~(B) A strong metal double fence with adequate space between fences (at~~
671 ~~least two feet (2')) shall be provided so that a child cannot reach into the~~
672 ~~animal enclosure.~~

673 ~~(C) The pen, kennel or structure shall have secure sides and a secure top~~
674 ~~attached to all sides.~~

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675 ~~(D) A structure used to confine a dangerous animal shall be locked with a~~
676 ~~key or combination lock when the animal is within the structure.~~

677 ~~(E) The structure shall either have a secure bottom or floor attached to the~~
678 ~~sides of the pen or the sides of the pen shall be embedded in the ground no~~
679 ~~less than two feet (2')~~

680 ~~(F) All structures erected to house dangerous animals shall comply with the~~
681 ~~requirements of all applicable laws and rules of the Nation.~~

682 ~~(G) All structures shall be adequately lighted and ventilated and kept in a~~
683 ~~clean and sanitary condition.~~

684 ~~(2) Confinement Indoors. No dangerous animal may to~~ be kept on a porch, patio,
685 or in any part of a house or structure on the premises of the owner that would allow
686 the animal to exit the building on its own volition. ~~No dangerous~~ The owner shall
687 not permit the animal ~~may to~~ be kept in a house or structure when the windows are
688 open or when screen windows or screen doors are the only obstacle preventing the
689 animal from exiting the structure.

690 ~~(e) 3) Signs.~~ The owner of a dangerous animal shall display, in prominent places
691 on his or her premises near all entrances to the premises, signs in letters of not less
692 than two inches (2") high warning that there is a dangerous animal on the property.
693 A similar sign ~~is required to~~ shall be posted on the kennel or pen of the animal. In
694 addition, the owner shall conspicuously display a sign with a symbol warning
695 children of the presence of a dangerous animal.

696 ~~(d) Spay and Neuter Requirement. If declared~~ 4) Notification. The owner of a
697 dangerous animal shall notify the Oneida Police Department and/or the Oneida
698 Conservation Department immediately if the animal is at large, is unconfined, has
699 attacked another animal, or has attacked a person.

700 (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous
701 animal pending a hearing, the animal may be impounded by an the Oneida Police Officer
702 or Oneida Conservation Officer, Warden issuing the owner dangerous animal
703 determination.

704 304.11-4. Dangerous Animal Determination Hearing. A hearing on the dangerous animal
705 determination shall be held within thirty (30) fourteen (14) days after the declaration shall provide
706 the Environmental Resource Board with of submission of the written proof from a licensed
707 veterinarian objection with the Trial Court. At the hearing, the Trial Court shall determine whether
708 the determination that the animal has been spayed or neutered is dangerous should be
709 substantiated.

710 ~~(e) Liability Insurance. If declared dangerous by an Oneida Police Officer or Oneida~~
711 ~~Conservation Officer, the owner of the dangerous animal shall present proof to the~~
712 ~~Environmental Resource Board~~ (a) If the Trial Court concludes that the determination that
713 the animal is dangerous is substantiated, then the Trial Court shall issue an order that
714 mandates the animal be removed from the Reservation within forty-eight (48) hours of the
715 determination.

716 (1) The order shall contain the requirement that the owner has procured liability insurance
717 in an amount not less than \$1,000,000 for any personal injuries inflicted by the dangerous

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718 animal. Whenever such a policy is cancelled or not renewed, the insurer shall so notify the
719 Environmental Resource Board.

720 ~~(f) *Microchipping.*— If declared dangerous by an Oneida Police Officer or Oneida~~
721 ~~Conservation Officer, the owner of the dangerous animal shall provide proof to the~~
722 ~~Environmental Resource Board that the dangerous animal has had a microchip inserted for~~
723 ~~identification purposes within ten (10) calendars from the date the animal is declared~~
724 ~~dangerous.~~

725 ~~(g) *Ongoing Notification Requirements.* After an animal has been declared dangerous, the~~
726 ~~owner shall have an ongoing duty to notify the Oneida Police Department:~~

727 ~~(1) immediately if the dangerous animal is at large, is unconfined, has attacked~~
728 ~~another animal or has attacked a human being; and~~

729 ~~(2) within twenty-four (24) hours if athe dangerous animal has died, been sold or~~
730 ~~been given away. If the dangerous animal has been sold or given away, the owner~~
731 ~~shall also provide the name, address and telephone number of the new owner of the~~
732 ~~dangerous animal. If the dangerous animal is sold or given away to a person~~
733 ~~residing outside the Reservation or to a person or entity that falls outside of the~~
734 ~~jurisdiction of this law, the owner shall present evidence to the Oneida Police~~
735 ~~Department showing that he or she has notified the police department or other law~~
736 ~~enforcement agency of the animal's new residence, including the name, address and~~
737 ~~telephone number of the new owner. The Oneida Police Department shall forward~~
738 ~~all such notifications to the Environmental Resource Board, Health, Safety and~~
739 ~~Land Division within a reasonable amount of time.~~

740 ~~(h) *Waiver by the Environmental Resource Board.* Upon request of an owner, the~~
741 ~~Environmental Resource Board may waive any requirement specified in subsections (a)–~~
742 ~~(f) that the Environmental Resource Board deems to be unnecessary for a particular~~
743 ~~dangerous animal. The Environmental Resource Board may waive the provisions of~~
744 ~~subsections (a)–(f) for a law enforcement or military animal upon presentation by the~~
745 ~~animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.~~

746 ~~(i) *Euthanasia.* If the owner of an animal that has been designated a dangerous animal is~~
747 ~~unwilling or unable to comply with the regulations for keeping the animal in accordance~~
748 ~~with this section, he or she may have the animal humanely euthanized by an animal shelter,~~
749 ~~the humane society or a licensed veterinarian.~~

750 ~~304.10-3. *Vicious Animals.* No person may bring or keep within the Reservation any animal that~~
751 ~~is a vicious animal under this section.~~

752 ~~(a) *Declaration of Vicious Animal.*— An Oneida Police Officer, Oneida Conservation~~
753 ~~Warden and/or the Judiciary Trial Court may declare an animal to be a vicious animal if~~
754 ~~the animal:~~

755 ~~(1) Is a dangerous animal in noncompliance with the requirements under Section~~
756 ~~304.10-2;~~

757 ~~(2) Has killed a domestic animal or pet without provocation on public or private~~
758 ~~property;~~

759 ~~(3) Without provocation, has inflicted substantial bodily harm on a person on~~
760 ~~public or private property where substantial bodily harm means bodily injury that~~

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causes a laceration that requires stitches, any fracture of a bone, a concussion, a loss or fracture of a tooth or any temporary loss of consciousness, sight or hearing;

(4) Is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

(5) Has been declared to be a vicious animal and/or ordered to be destroyed in any other jurisdiction.

~~(b) Mandatory Hearing.~~ The owner of an animal declared to be a vicious animal shall attend a mandatory pre-hearing with the Judiciary Trial Court, the date for which shall be included on the declaration of vicious animal. At the pre-hearing it may be determined that mandatory attendance at Judiciary Trial Court hearing is also required if restitution is appropriate. The pre-hearing and any hearings are subject to the requirements contained in section 304.12-2.

~~(1) All requirements for harboring dangerous animals in section 304.10-2 except subsections (d) (f) apply to the said animal pending the outcome of the Judiciary Trial Court's pre-hearing and/or hearing.~~

~~(2) At the pre-hearing, the Judiciary Trial Court may require the animal to be impounded pending the result of the hearing.~~

~~(3) The Judiciary Trial Court may order a vicious animal to be destroyed if it finds it was so declared based on section 304.10-3(a)(3). If such an order is issued, the Judiciary~~
(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

~~(4) If the declaration of vicious animal is upheld upon appeal, the Judiciary Trial Court shall order the animal to be removed from the Reservation. Such order shall include the notification requirements contained in section 304.10-2(g) and provide the owner with a reasonable timeframe for removing the animal from the Reservation, provided that the timeframe may not exceed thirty (30) days after the date of the Judiciary Trial Court's decision.~~

~~(5) If the owner further appeals the~~ (c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.11-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination of the Judiciary Trial Court may be appealed to the Judiciary Nation's Court of Appeals, he or she shall submit the

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Judiciary Trial Court's decisions, ~~which is a shorter timeframe than required for all other appeals under this law.~~ Trial Court's decision.

(b) Upon an appeal to the Judiciary Court of Appeals, the requirement to order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

~~(c) Enforcement. An Oneida Police Officer or Oneida Conservation Warden~~ 604.11-6. Dangerous Animal Exception. The Trial Court may make any inquiries deemed necessary

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to ensure compliance with this section and may seize provide an exception to the dangerous animal based on the owner's failure to comply.

~~(d) — Waiver. The Judiciary may waive the provisions of this section~~ law for a law enforcement or military animal upon presentation by the ~~animal's~~ animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

~~304.10 4. Investigations for Suspected Domestic Animal Bites. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.~~

~~(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:~~

~~(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.~~

~~(2) Ensure all information provided is correct.~~

~~(3) Contact the Environmental, Health and Safety Division to notify them of the domestic animal bite.~~

~~(4) If the cat or dog has current rabies vaccinations, order the owner to:~~

~~(A) Quarantine the animal for ten (10) days; and~~

~~(B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day.~~

~~(5) If the cat or dog does not have current rabies vaccination, order the owner to:~~

~~(A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day; or~~

~~(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.~~

~~(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.~~

~~(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:~~

~~(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.~~

~~(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.~~

304.1112. Owner Liability for Domestic Animals

~~304.1112-1. Owners are~~ An owner shall be liable for damages caused by ~~their~~ this or her domestic animal(s).

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847 (a) *First Offense.* The owner is liable for the full amount of damages caused by the
848 domestic animal.

849 (b) *Subsequent Offenses.* The owner shall be liable for two (2) times the full amount of
850 damages caused by the domestic animal if the owner knew or should have known that the
851 domestic animal previously caused damages.

852
853 **304.12.—Violations, 13. Enforcement and Appeals of Violations**

854 ~~304.12~~13-1.— Citations. Citations for the violation of this law and/or orders issued pursuant to
855 this law may include fines, penalties and conditional ~~and other~~ orders in accordance with the fine,
856 penalty, and licensing fee schedule ~~developed under section 304.5-2. A separate offense shall be~~
857 ~~deemed committed on each day during or on which a violation occurs or continues.~~

858 (a) ~~Any order issued pursuant to this law that is not complied with may be physically~~
859 ~~enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's~~
860 ~~expense.~~

861 (b) ~~The Oneida Police Department, by means of Oneida Police Officers and Oneida~~
862 ~~Conservation Wardens, is authorized to take any appropriate action to prevent or remove a~~
863 ~~violation of this Law.~~

864 ~~304.12~~13-2.— Citation Pre-Hearing and Appeals of Contested Actions. All citations, ~~orders and~~
865 ~~declarations issued pursuant to this law~~ shall include a pre-hearing date with the Judiciary Trial
866 Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30)
867 days after the citation was issued, excluding dangerous animal citations which shall follow the
868 process contained in section 304.11.

869 (a) Persons wishing to contest a citation shall appear at the prehearing, at which time the
870 Judiciary Trial Court shall accept pleas which either contest or admit committing the act
871 for which the citation was issued. The Judiciary

872 (b) In addition to scheduling requested hearings, the Trial Court may also make conditional
873 orders at the prehearing which are effective until the matter is resolved.

874 304.13-3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible,
875 provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all
876 persons entering a plea contesting the fact that they committed the act for which a citation was
877 issued. ~~In addition to scheduling requested hearings, the Judiciary may also make conditional~~
878 ~~orders at the prehearing which are effective until the matter is resolved.~~

879 (a) ~~Community Service.~~ ~~Community service may be substituted for monetary fines at the~~
880 ~~Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one~~
881 ~~(1) hour per ten dollars (\$10) of the fine.~~

882 (b) ~~Allocation of Citation Revenue.~~ ~~All citations shall be paid to the Environmental~~
883 ~~Resource Board or its designee, the proceeds of which shall be contributed to General~~
884 ~~Fund.~~

885 (e) ~~Appealing the Decision of the Judiciary~~ 304.13-4. Appeals of the Trial Court. Court's
886 Determinations. Any person wishing to contest the ~~determination of the Judiciary Trial Court~~
887 may appeal to the Judiciary Nation's Court of Appeals in accordance with the Rules of Appellate
888 Procedure.

889 (d) ~~Pursuing Payment of a Citation.~~ ~~The Environmental Resource Board may pursue~~

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890 304.13-5. Fines. All fines shall be paid to the Trial Court. Cash shall not be accepted for payment
891 of fines. Money received from ~~parties who have failed~~ fines shall be contributed to the General
892 Fund.

893 (a) Fines shall be paid within ninety (90) days after the order is issued or upheld on final
894 appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek
895 to ~~make~~collect the ~~required payments~~money owed through the Nation's garnishment
896 process contained in the Garnishment law and/or by attaching the judgment to Tribal
897 member's per capita attachment process.

898 (1) The ninety (90) day deadline for payment pursuant to the Per Capita law of
899 fines may be extended if an alternative payment plan is approved by the Trial Court.

900 (b) Community service may be substituted for part or all of any fine at the minimum wage
901 rate of the Nation for each hour of community service.

902
903 *End.*

904
905 Adopted - BC-~~303~~-13-96-B
906 Amended – BC-06-22-11-G
907 Amended – BC-06-28-17-B
908 Amended – BC- - - -
909

1 **Title 3. Health and Public Safety - Chapter 304**
2 **DOMESTIC ANIMALS**
3 **Kátse?na Olihwá'ke**
4 *matters concerning the pet animals*
5

304.1. Purpose and Policy	304.8. Livestock
304.2. Adoption, Amendment, Conflicts	304.9. Hens
304.3. Definitions	304.10. Prohibited Animals
304.4. Jurisdiction	304.11. Dangerous Animals
304.5. Authority	304.12. Owner Liability
304.6. Treatment of Animals	304.13. Enforcement of Violations
304.7. Dogs and Cats	

1
2 **304.1. Purpose and Policy**

3 304.1-1. *Purpose.* The purpose of this law is to:

- 4 (a) protect the health, safety, and welfare of the community by requiring certain basic
- 5 measures to prevent the spread of disease carried by domestic animals;
- 6 (b) set minimum standards for the treatment of animals;
- 7 (c) prohibit certain species of animals from being brought onto the Reservation;
- 8 (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- 9 (e) establish consequences for damages caused by domestic animals.

10 304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the
11 community by:

- 12 (a) requiring certain basic measures to prevent the spread of disease carried by domestic
- 13 animals;
- 14 (b) establishing requirements for licensing domestic animals, and
- 15 (c) regulating the types of animals which may be kept as domestic animals.

16
17 **304.2. Adoption, Amendment, Repeal**

18 304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B
19 and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, and BC-__-__-__-__.

20 304.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
21 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

22 304.2-3. Should a provision of this law or the application thereof to any person or
23 circumstances be held as invalid, such invalidity shall not affect other provisions of this law
24 which are considered to have legal force without the invalid portions.

25 304.2-4. In the event of a conflict between a provision of this law and a provision of another
26 law, the provisions of this law shall control.

27 304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.
28

29 **304.3. Definitions**

30 304.3-1. This section shall govern the definitions of words and phrases used within this law. All
31 words not defined herein shall be used in their ordinary and everyday sense.

32 (a) "District Quarantine" means a rabid or otherwise diseased domestic animal is
33 suspected or known to be within a discernible area and all such animals reasonably
34 suspected of being infected are subject to enforced isolation for a period of time to limit
35 or prevent the spread of disease or infection and during which time said animals are
36 tested for diseases, including rabies.

37 (b) "Fine" means a monetary punishment issued to a person violating this law.

38 (c) "Hen" means a female chicken (*Gallus gallus domesticus*).

39 (d) "Livestock" means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer,

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40 heifer, etc.), sheep, goat, pig.

41 (e) "Nation" means the Oneida Nation.

42 (f) "Owner" means any person who owns, harbors, keeps, controls or acts as a caretaker
43 for an animal. Absent evidence of alternative adult ownership, this law presumes that
44 domestic animals are owned by the adult homeowner or renter.

45 (g) "Penalty" means a punishment, other than a fine, imposed on a person violating this
46 law and/or the rules created pursuant to this law and may include, but is not limited to,
47 the confiscation of wildlife with return of the same at the discretion of the Trial Court and
48 restitution.

49 (h) "Reservation" means all the property within the exterior boundaries of the
50 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida
51 7 Stat. 566, and any lands added thereto pursuant to federal law.

52 (i) "Residential household" means a residential lot, except for those residential lots
53 designed as multi-family lots, in which each family unit within the lot constitutes a
54 separate household.

55 (j) "Tethering" means the act of fastening an animal to a stationary object while
56 unattended so that the animal can only range within a set radius. Tethering does not
57 include the use of a leash to walk an animal.

58 (k) "Trial Court" means the Trial Court of the Oneida Nation Judiciary, which is the
59 judicial system that was established by Oneida General Tribal Council resolution GTC-
60 01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

61 (l) "Quarantine" means the act of keeping an animal in enforced isolation for a period of
62 time to limit or prevent the spread of disease or infection and during which time said
63 animal is tested for diseases, including rabies.

64

65 **304.4. Jurisdiction**

66 304.4-1. *Personal Jurisdiction.* This law applies to:

67 (a) All members of the Nation; the Nation's entities and corporations; and members of
68 other federally-recognized tribes.

69 (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by
70 the Nation or by individual members of the Nation; and/or lands held in trust on behalf of
71 the Nation or individual members of the Nation.

72 (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise
73 consistent with federal law. An individual shall be considered to have consented to the
74 jurisdiction of the Nation:

75 (1) By entering into a consensual relationship with the Nation, or with the
76 Nation's entities, corporations, or members of the Nation, including but not
77 limited to contracts or other agreements; or

78 (2) By other facts which manifest an intent to consent to the authority of the
79 Nation, including failure to raise an objection to the exercise of personal
80 jurisdiction in a timely manner.

81 304.4-2. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by
82 the Nation and individual trust and/or fee land of a member of the Nation.

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83

304.5. Authority

85 304.5-1. *General.* This law governs the keeping of all domestic animals which are commonly
86 owned as household pets. Domestic animals include, but are not limited to dogs, cats, ferrets,
87 rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and
88 arachnids.

89 (a) Domestic animals do not include prohibited exotic animals as identified in section
90 304.10-2.

91 304.5-2. *Authority of the Oneida Police Department and Conservation Department.* Oneida
92 Police Officers and Conservation Wardens shall have the authority to:

93 (a) investigate complaints involving domestic animals;

94 (b) enforce the provisions of this law through appropriate means, including but not
95 limited to:

96 (1) seizing any animal that is taken, employed, used, or possessed in violation of
97 this law and/or mistreated, rabid or otherwise in danger or dangerous;

98 (2) issuing citations consistent with the fine and penalty schedule developed in
99 accordance with this law; and

100 (3) using force, up to and including lethal force, to stop an immediate threat to
101 public safety caused by an animal.

102 (A) Where lethal force is used, such execution shall be conducted in as
103 humane manner as possible and, to the extent feasible, avoids damage to
104 the animal's head for the purpose of rabies testing.

105 304.5-3. *Fine, Penalty, and Licensing Fee Schedule.* The Environmental, Health, Safety, and
106 Land Division and the Environmental Resource Board are hereby delegated joint authority to
107 develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule
108 shall be adopted by the Oneida Business Committee by resolution.

109 304.5-4. *Disease Investigation and Quarantine.* The Environmental, Health, Safety, and Land
110 Division, the Emergency Management Coordinator, and the Comprehensive Health Division are
111 hereby delegated joint authority to establish standard operating procedures related to disease
112 investigations and quarantines.

113 304.5-5. *Issuance of Licenses.* The Environmental, Health, Safety, and Land Division shall
114 make all decisions related to the issuance of a license and/or permit in accordance with this law,
115 unless otherwise noted.

116

304.6. Treatment of Animals

118 304.6-1. *Food and Water.* An owner shall provide an animal with a daily supply of food and
119 water sufficient to maintain the animal in good health.

120 304.6-2. *Shelter.* An owner shall meet the minimum standards for indoor and outdoor shelter
121 for an animal. All shelter shall be structurally sound and maintained in good repair to protect the
122 animal from injury and to contain the animal.

123 (a) *Minimum indoor standards of shelter.* Minimum standards for indoor shelter include
124 the following:

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125 (1) *Temperature.* The ambient temperature of the indoor shelter shall be
126 compatible with the health of the animal.

127 (2) *Ventilation.* Indoor shelter facilities shall be adequately ventilated by natural
128 or mechanical means to provide for the health of the animal at all times.

129 (b) *Minimum outdoor standards of shelter.* Minimum standards for outdoor shelter
130 include the following:

131 (1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an
132 animal tied or caged outside, sufficient shade by natural or artificial means shall
133 be provided to protect the animal from direct sunlight. Caged does not include
134 farm fencing used to confine livestock.

135 (2) *Climatic Conditions.* Natural or artificial shelter appropriate to the local
136 climatic conditions for the animal concerned shall be provided as necessary for
137 the health of the animal.

138 (3) *Adverse Weather.* If an animal is tied or confined unattended outdoors under
139 weather conditions which adversely affect the health of the animal, a weather
140 appropriate shelter of suitable size to accommodate the animal shall be provided.

141 (c) *Space Standards.* Enclosures shall be constructed and maintained so as to provide
142 sufficient space to allow each animal adequate freedom of movement. Inadequate space
143 may be indicated by evidence of debility, stress, or abnormal behavior patterns.

144 (1) *Dog Kennels.* Dog kennels shall meet the following space requirements
145 where, if there are multiple dogs in the same kennel, the base kennel space
146 requirement is based on the size of the largest dog and the additional kennel space
147 requirements are based on the size of each additional dog kept in the kennel:

148 (A) *Dog Size Between One and Thirty-Five Pounds.* A dog that weighs
149 between one (1) and thirty-five (35) pounds shall have a required base
150 kennel space of sixty (60) square feet. Required additional kennel space
151 per additional dog of this size is twelve (12) square feet.

152 (B) *Dog Size Between Thirty-Six and Seventy-Five Pounds.* A dog that
153 weighs between thirty-six (36) and seventy-five (75) pounds shall have a
154 required base kennel space of eighty (80) square feet. Required additional
155 kennel space per additional dog of this size is eighteen (18) square feet.

156 (C) *Dog Size Seventy-Six Pounds or Greater.* A dog that weighs seventy-
157 six (76) pounds or more shall have a required base kennel space of one
158 hundred (100) square feet. Required additional kennel space per additional
159 dog of this size is twenty-four (24) square feet.

160 (d) *Sanitation Standards.* An owner shall meet the minimum standards of sanitation for
161 both indoor and outdoor shelter. Minimum sanitation standards require waste matter from
162 the animal to be removed within twenty-four (24) hours of its deposit.

163 (e) *Shelter Exception for Livestock.* In the case of livestock kept on farms on land zoned
164 agricultural, nothing in this section shall be construed as imposing shelter requirements or
165 standards more stringent than normally accepted husbandry practices.

166 304.6-3. *Tethering.* If a kennel or enclosed yard is not available, an owner may tether an
167 unsupervised animal as long as the owner meets the following conditions:

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- 168 (a) the tether is connected to the animal with a buckle type collar or body harness made
169 of nylon or leather not less than one inch (1") in width and at least two inches (2") greater
170 in diameter than the animal's neck or torso;
171 (1) The use of a choke collar, prong collar head harness, or other similar type of
172 head harness or collar shall be prohibited for the use of tethering.
173 (b) the tether is at least twelve feet (12') long and allows the animal to move in all
174 directions unimpeded;
175 (c) the total weight of the tether does not exceed ten percent (10%) of the animal's body
176 weight;
177 (d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and
178 allows the animal access to water and shelter;
179 (e) the tethered animal is not sick, injured, or nursing;
180 (f) the animal is not tethered on any vacant property or land or with an unoccupied
181 dwelling; and
182 (g) the animal is not tethered in a manner that allows the animal to cross onto public
183 space or property of others.

184 304.6-4. *Mistreatment of Animals.* No person may treat any animal in a manner which causes
185 harm, injury or death. This section does not apply to:

- 186 (a) normal and accepted veterinary and/or care practices; or
187 (b) teaching, research or experimentation conducted at a facility regulated under federal
188 or applicable state law.

189 304.6-5. *Mandatory Reporting.* An employee of the Nation shall report any animal
190 mistreatment witnessed during the regular course of his or her employment with the Nation to
191 the Oneida Police Department and any other appropriate entity.

192

193 **304.7. Dogs and Cats**

194 304.7-1. *License Required.* An owner shall be required to obtain a license for any dog or cat
195 five (5) months of age or older on an annual basis.

196 (a) *License Period.* The license year shall commence on January 1st and end on
197 December 31st of every year.

198 (b) *License Eligibility.* To be eligible for a license, the owner shall provide:

- 199 (1) the licensing fee; and
200 (2) proof of current rabies vaccination.

201 (c) *Placement of License Tag.* Upon the receipt of a license the owner shall be provided
202 a license tag for the dog or cat. The owner shall securely attach the license tag to the
203 animal's collar and shall require the animal wear the collar at all times.

204 (1) *Exception.* A dog or cat shall not be required to wear the collar if the dog or
205 cat is:

- 206 (A) hunting or actively involved in herding or controlling livestock if the
207 animal is under control of its owner;
208 (B) within the owner's residence and/or securely confined in a fenced
209 area; and/or
210 (C) being shown during a competition.

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211 304.7-2. *Rabies Vaccinations Required.* An owner shall be required to obtain a rabies
212 vaccination for any dog or cat five (5) months of age or older.

213 304.7-3. *Limit on the Number of Dogs and Cats.* An individual may keep no more than two (2)
214 dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single
215 residential household.

216 (a) *Exception.* The limit on the number of dogs and cats a person may keep or possess
217 does not apply to a person who:

218 (1) is eligible for any grandfather provisions included in this law's adopting
219 resolution;

220 (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a
221 period not exceeding five (5) months from birth;

222 (3) resides on property zoned agricultural; and/or

223 (4) obtains a permit for the additional dog or cat.

224 (b) *Permit for Additional Dogs or Cats.* A person may keep more than two (2) dogs or
225 three cats (3) in a single residential household if the owner obtains a permit from the
226 Environmental, Health, Safety, and Land Division for the additional animal. The
227 application for the permit must be signed by the owner and contain the signature of the
228 landowner of the residential household if the landowner is not the applicant.

229 (1) By seeking a permit for an additional dog or cat the owner agrees that he or
230 she shall reduce the number of licensed dogs or cats on the premises if there are
231 two (2) or more nuisance complaints against the residential household within one
232 (1) calendar year caused by, or related to, the number of dogs or cats housed on
233 the premises.

234 (2) If two (2) or more nuisance complaints are received against the residential
235 household due to the number of dogs or cats housed on the premises, the owner
236 shall reduce the number of animals within thirty (30) days.

237 304.7-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any
238 place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a
239 leash under the control of a person physically able to control the animal.

240 (a) A stray dog or cat running at large may be referred to the Oneida Police Department
241 or Oneida Conservation Department.

242 (b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat
243 running at large, the officer and/or warden shall, if possible, pick up and impound such
244 animal.

245 (c) Whenever any impounded animal bears an identification mark, such as a collar with
246 identification tags or license tag, the owner shall be notified as soon as reasonably
247 possible.

248 304.7-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and
249 impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a
250 nuisance if the actions of the dog or cat:

251 (a) resulted in two (2) or more verified disturbances due to excessive barking and/or
252 other noise by the animal, or the animal running at large; and/or

253 (b) resulted in one (1) or more verified disturbance due to threatening behavior by the

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254 animal running at large.

255 304.7-6. *Investigations for Suspected Animal Bites.* The owner shall notify the Oneida Police
256 Department in the event the owner's cat or dog bites a human or another domestic animal.

257 (a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

258 (1) Ascertain whether the domestic animal is properly licensed and has current
259 vaccinations.

260 (2) Ensure all information provided is correct.

261 (3) Contact the Environmental, Health, Safety and Land Division to provide
262 notification of the domestic animal bite.

263 (4) If the cat or dog has current rabies vaccinations, order the owner to:

264 (A) Quarantine the animal for ten (10) days; and

265 (B) Present the animal for examination by a veterinarian within twenty-
266 four (24) hours of the bite, on the last day of quarantine and on one (1) day
267 in between the first twenty-four (24) hours and the tenth (10th) day.

268 (5) If the cat or dog does not have current rabies vaccination, order the owner to:

269 (A) Quarantine the animal for ten (10) days or deliver the animal to an
270 isolation facility at the owner's expense. If a home quarantine is ordered,
271 the owner shall present the domestic animal for examination by a
272 veterinarian within twenty-four (24) hours of the bite, on the last day of
273 quarantine and on one (1) day in between the first twenty-four (24) hours
274 and the tenth (10th) day; or

275 (B) Euthanize the animal and send the specimen for analysis at the
276 owner's expense, if the animal has exhibited any signs of rabies.

277 (b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine
278 period. Upon expiration of all quarantine periods, if the veterinarian certifies that the
279 animal has not exhibited any signs of rabies, the animal may be released from quarantine.

280 (c) If the veterinarian certifies that the animal has exhibited any signs of rabies the
281 following shall occur:

282 (1) If the animal has current rabies vaccinations, the Oneida Police Officer or
283 Oneida Conservation Warden may order the animal to be euthanized and send the
284 specimen for analysis, to be paid for by the Nation.

285 (2) If the animal does not have current rabies vaccinations, the Oneida Police
286 Officer or Oneida Conservation Warden may order the animal to be euthanized
287 and send the specimen for analysis at the owner's expense.

288 304.7-7. *District Quarantine.* A district quarantine may be initiated by staff designated by the
289 Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida
290 Conservation Warden, and/or a Public Health Officer.

291 (a) If an area is subject to a district quarantine for rabies, all dogs and cats within the
292 district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not
293 confined, tied, leashed or muzzled is a public nuisance and may be impounded. All
294 Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the
295 enforcement of the quarantine.

296 (b) An animal that is immunized against rabies as evidenced by a valid certificate of

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297 rabies vaccination or other evidence is exempt from the district quarantine provisions of
298 this section.

299

300 **304.8. Livestock**

301 304.8-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in
302 order to keep livestock on land zoned residential.

303 304.8-2. *Limitations on Livestock.* Livestock kept on land zoned residential are subject to the
304 following limitations:

305 (a) One (1) large animal per one (1) acre. Examples of large animals include, but are not
306 limited to, horses, cows, and pigs.

307 (b) One (1) small animal per one-half (½) acre. Examples of small animals include, but
308 are not limited to, goats, and sheep.

309 (c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback
310 requirements can be met.

311 304.8-3. *Liability for Damage Caused by Livestock at Large.* Any person whose livestock
312 escapes from its normal confined area and becomes at large is responsible for any and all damage
313 to persons and property caused by such livestock while it is away from its normal confined area.

314

315 **304.9. Hens**

316 304.9-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land
317 Commission Division in order to keep hens on land zoned residential.

318 304.9-2. *Prohibition of Roosters.* An owner shall not keep a rooster on land zoned residential.

319 304.9-3. *Limit on the Number of Hens Allowed.* The number of hens an owner may keep is
320 dependent on the size of the residential lot.

321 (a) An owner may to keep up to four (4) hens on a residential lot that is two (2) acres in
322 size or smaller.

323 (b) An owner may keep up to eight (8) hens on a residential lot two (2) acres in size or
324 larger.

325 304.9-4. *Standards for Keeping Hens.* An owner shall keep hens in the following manner:

326 (a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

327 (b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to
328 keep hens and shall provide at least four (4) square feet of space per hen.

329 (c) No accessory structure used to keep hens shall be located within twenty-five feet
330 (25') of any principal structure which is not owned by the person permitted to keep the
331 hens.

332 (d) No accessory structure used to keep hens shall be located in a front or side yard.

333 (e) All hens shall be kept and handled in a sanitary manner to prevent the spread of
334 communicable diseases amongst birds or to humans.

335 304.9-5. *Prohibition of Nuisance Hens.* No owner may keep hens that cause any other nuisance
336 associated with unhealthy conditions, create a public health threat, or otherwise interfere with the
337 normal use of property or enjoyment of life by humans or animals.

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339 **304.10. Prohibited Animals**

340 304.10-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a
341 custodian, have custody or control of, or release to the wild on the Reservation a prohibited
342 animal.

343 304.10-2. *Prohibited Animals*. Prohibited animals include the following orders and families,
344 whether bred in the wild or in captivity, and any or all hybrids. The animals listed are intended to
345 act as examples and are not to be construed as an exhaustive list or limit the generality of each
346 group of animals, unless otherwise specified:

347 (a) *Class Mammalia*.

348 (1) Order Chiroptera. This includes all bat species.

349 (2) Order Artiodactyla. This includes hippopotamuses, giraffes, camels, and deer,
350 but does not include domestic cattle, swine, sheep, goats, alpaca, and llama as
351 exotic animals.

352 (3) Order Carnivora.

353 (A) Family Felidae. This includes lions, tigers, cougars, leopards, ocelots,
354 and servals, but does not include domestic cats as exotic animals.

355 (B) Family Canidae. This includes wolves, wolf hybrids, coyotes, coyote
356 hybrids, foxes, and jackals, but does not include domestic dogs as exotic
357 animals.

358 (C) Family Ursidae. This includes all bears.

359 (D) Family Mustelidae. This includes weasels, skunks, martins, and
360 minks, but does not include ferrets as exotic animals.

361 (E) Family Procyonidae. This includes raccoons, and coatis.

362 (F) Family Hyaenidae. This includes hyenas.

363 (G) Family Viverridae. This includes civets, genets, and mongooses.

364 (4) Order Edentata. This includes anteaters, armadillos, and sloths.

365 (5) Order Marsupialia. This includes opossums, kangaroos, wallabies, and sugar
366 gliders.

367 (6) Order Perissodactyla. This includes rhinoceroses, and tapirs, but does not
368 include horses, goats, and mules as exotic animals.

369 (7) Order Primates. This includes lemurs, monkeys, chimpanzees, and gorillas.

370 (8) Order Proboscidea. This includes elephants.

371 (9) Order Rodentia. This includes squirrels, beavers, porcupines, and prairie
372 dogs, but does not include guinea pigs, rats, mice, gerbils, and hamsters as exotic
373 animals.

374 (b) *Class Reptilia*.

375 (1) Order Squamata.

376 (A) Family Helodermatidae. This includes Gila monsters and Mexican
377 beaded lizards.

378 (B) Family Varanidae. This includes any monitor lizard which will
379 normally grow over two feet in length.

380 (C) Family Iguanidae. This includes green iguanas and rock iguanas, but
381 does not include all other types of iguanas which are not green or rock

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- 382 iguanas.
- 383 (D) Family Boidae. This includes all species whose adult length may
384 exceed eight (8) feet.
- 385 (E) Family Colubridae. This includes boomslangs and African twig
386 snakes.
- 387 (F) Family Elapidae. This includes coral snakes, cobras, and mambas.
- 388 (G) Family Nactricidae. This includes keelback snakes, but does not
389 include all other snakes not keelback.
- 390 (H) Family Viperidae. This includes copperheads, cottonmouths, and
391 rattlesnakes.
- 392 (2) Order Crocodylia. This includes crocodiles, alligators, caimans, and gavials.
- 393 (c) *Class Aves*.
- 394 (1) Order Falconiformes. This includes eagles, hawks, and vultures.
- 395 (2) Order Rheiformes. This includes rheas.
- 396 (3) Order Struthioniformes. This includes ostriches.
- 397 (4) Order Casuariiformes. This includes cassowaries and emus.
- 398 (5) Order Strigiformes. This includes owls.
- 399 (d) *Class Arachnida*.
- 400 (1) Order Scorpiones,
- 401 (A) Family Buthidae. This includes scorpions.
- 402 (2) Order Araneae,
- 403 (A) Family Therididae. This includes the Argentina red widow spider,
404 brown widow spider, red-black widow spider, red widow spider, southern
405 black widow spider, and Western widow spider.
- 406 (B) Family Laxoscelidae, This includes the brown recluse spider.
- 407 (e) *Class Chilopoda*.
- 408 (1) Order Scolopendromorpha,
- 409 (A) Family Scolopendridae. This includes centipedes.
- 410 (f) Any Federal or State endangered or threatened species.
- 411 304.10-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to:
- 412 (a) Individuals who are eligible for any grandfather provisions included in this law's
413 adopting resolution.
- 414 (b) A zoological park and/or sanctuary, an educational or medical institution, and/or a
415 specially trained entertainment organization who receives a permit from the
416 Environmental, Health, Safety, and Land Division to own, harbor or possess the
417 prohibited animal.
- 418 304.10-4. *Prohibited Animal Permit*. The Environmental, Health, Safety, and Land Division
419 may issue a prohibited animal permit if:
- 420 (a) the animal and animal quarters are kept in a clean and sanitary condition and
421 maintained to eliminate objectionable odors; and
- 422 (b) the animal is maintained in quarters so constructed as to prevent its escape.
- 423 304.10-5. *Release of Prohibited Animals*. The Environmental, Health, Safety, and Land
424 Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the

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425 Reservation without applying for and receiving a prohibited animal permit.

426 304.10-6. *Seizure of Prohibited Animals.* An unpermitted prohibited animal may be seized by
427 the Oneida Police Department and/or the Oneida Conservation Department.

428 (a) A prohibited animal that is seized shall be held by the Oneida Police Department, the
429 Oneida Conservation Department, or its designee until it can be determined if the animal
430 is an endangered or threatened species.

431 (b) At any time after such identification, the Oneida Police Department and/or Oneida
432 Conservation Department may seek an order from the Trial Court as to the care, custody
433 and control of the animal.

434 (c) If the Trial Court finds the animal has been taken, employed, used or possessed in
435 violation of this section, the owner shall be responsible for reimbursing the Oneida Police
436 Department and/or the Oneida Conservation Department for the cost of holding the
437 animal and any costs incurred in identifying the animal.

438 304.10-7. *Notice of Release or Escape.* The owner of a prohibited animal that has been released
439 or escapes shall immediately notify the Oneida Police Department and/or the Oneida
440 Conservation Department and shall be liable for any cost of recapture of the animal.

441 304.10-8. *Forfeiture of the Prohibited Animal.* An owner found in violation of this section shall
442 forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation
443 Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct
444 destruction or transfer of the animal to a qualified zoological, educational, or scientific institution
445 or qualified private propagator for safekeeping, with costs assessed against the owner.

446

447 **304.11. Dangerous Animals**

448 304.11-1. *Dangerous Animals.* No person shall own, keep, possess, return to or harbor a
449 dangerous animal. An animal shall be presumed to be dangerous if the animal:

450 (a) approaches or chases a human being or domestic animal in a menacing fashion or
451 apparent attitude of attack;

452 (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or
453 domestic animal;

454 (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

455 (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any
456 other jurisdiction.

457 304.11-2. *Dangerous Animal Determination.* An Oneida Police Officer or Oneida Conservation
458 Warden may determine an animal to be dangerous whenever, upon investigation, the officer
459 finds that the animal meets the definition of dangerous animal provided in section 304.11-1.

460 (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer
461 or Oneida Conservation Warden shall issue a written order with an accompanying
462 citation declaring the animal to be dangerous.

463 (b) The citation and order shall be personally delivered to the apparent owner or
464 custodian of the dangerous animal.

465 (c) Upon receipt of the written order and accompanying citation the owner shall remove
466 the dangerous animal from the Reservation within three (3) business days.

467 304.11-3. *Contesting a Dangerous Animal Determination.* If the owner wishes to contest the

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468 dangerous animal determination, he or she shall file with the Trial Court a written objection to
469 the order within three (3) business days of receipt of the order.

470 (a) The written objection shall include specific reasons for objecting to or contesting the
471 order. An owner may argue an animal should not be deemed dangerous due to the animal
472 biting, attacking or menacing any person and/or domestic animal because the animal was
473 acting to:

474 (1) defend its owner or another person from an attack by a person or animal;

475 (2) protect its young or another animal;

476 (3) defend itself against any person or animal which has tormented, assaulted or
477 abused it; and/or

478 (4) defend its owner's property against trespassers.

479 (b) Pending the outcome of the hearing, the animal shall be securely confined in a
480 humane manner either on the premises of the owner or caretaker, or with a licensed
481 veterinarian. If confined on the premises of the owner or caretaker, the following
482 requirements shall apply:

483 (1) *Leash and Muzzle*. No owner shall permit a dangerous animal to go outside its
484 kennel or pen unless the animal is securely restrained with a leash no longer than
485 four feet (4') in length by a person who is at least sixteen (16) years of age who is
486 in physical control of the leash, competent to govern the animal and capable of
487 physically controlling and restraining the animal. The owner shall not leash an
488 animal to inanimate objects such as a tree, post, or building. When the animal is
489 on a leash outside the animal's kennel, the owner shall muzzle the animal in a
490 humane way by a commercially available muzzling device sufficient to prevent
491 the animal from biting a person or other animal.

492 (2) *Confinement*. Except when leashed and muzzled the owner shall ensure the
493 dangerous animal is securely confined indoors or in a securely enclosed and
494 locked pen or kennel that is located on the premises of the owner and constructed
495 in a manner that does not allow the animal to exit the pen or kennel on its own
496 volition. The owner shall not permit an animal to be kept on a porch, patio, or in
497 any part of a house or structure on the premises of the owner that would allow the
498 animal to exit the building on its own volition. The owner shall not permit the
499 animal to be kept in a house or structure when the windows are open or when
500 screen windows or screen doors are the only obstacle preventing the animal from
501 exiting the structure.

502 (3) *Signs*. The owner of a dangerous animal shall display, in prominent places on
503 his or her premises near all entrances to the premises, signs in letters of not less
504 than two inches (2") high warning that there is a dangerous animal on the
505 property. A similar sign shall be posted on the kennel or pen of the animal. In
506 addition, the owner shall conspicuously display a sign with a symbol warning
507 children of the presence of a dangerous animal.

508 (4) *Notification*. The owner of a dangerous animal shall notify the Oneida Police
509 Department and/or the Oneida Conservation Department immediately if the
510 animal is at large, is unconfined, has attacked another animal, or has attacked a

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511 person.

512 (c) If an owner or caretaker fails to follow the requirements for harboring a dangerous
513 animal pending a hearing, the animal may be impounded by the Oneida Police Officer or
514 Oneida Conservation Warden issuing the dangerous animal determination.

515 304.11-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal
516 determination shall be held within fourteen (14) days of submission of the written objection with
517 the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the
518 animal is dangerous should be substantiated.

519 (a) If the Trial Court concludes that the determination that the animal is dangerous is
520 substantiated, then the Trial Court shall issue an order that mandates the animal be
521 removed from the Reservation within forty-eight (48) hours of the determination.

522 (1) The order shall contain the requirement that the owner notify the Oneida
523 Police Department within twenty-four (24) hours if the dangerous animal has
524 been sold or been given away. If the dangerous animal has been sold or given
525 away, the owner shall also provide the name, address and telephone number of the
526 new owner of the dangerous animal. If the dangerous animal is sold or given
527 away to a person residing outside the Reservation or to a person or entity that falls
528 outside of the jurisdiction of this law, the owner shall present evidence to the
529 Oneida Police Department showing that he or she has notified the police
530 department or other law enforcement agency of the animal's new residence,
531 including the name, address and telephone number of the new owner. The Oneida
532 Police Department shall forward all such notifications to the Environmental,
533 Health, Safety and Land Division within a reasonable amount of time.

534 (b) The Trial Court may order a dangerous animal to be destroyed. If such an order is
535 issued, the Trial Court shall require the owner submit proof of destruction within five (5)
536 business days from a licensed veterinarian. If the owner does not satisfy these
537 requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall
538 seize the animal and enforce compliance at the cost of the owner.

539 (c) The Trial Court may mandate attendance at an additional Trial Court hearing if
540 restitution is appropriate.

541 304.11-5. *Appeal of the Trial Court's Decision.* An appeal of the Trial Court's decision on the
542 dangerous animal determination may be appealed to the Nation's Court of Appeals.

543 (a) An appeal shall be submitted to the Court of Appeals within five (5) business days
544 from the date of the Trial Court's decision.

545 (b) Upon an appeal to the Court of Appeals, the order to remove the animal from the
546 Reservation or any order to destroy an animal is stayed pending the outcome of the
547 appeal.

548 604.11-6. *Dangerous Animal Exception.* The Trial Court may provide an exception to the
549 dangerous animal provisions of this law for a law enforcement or military animal upon
550 presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of
551 the animal.

552
553 **304.12. Owner Liability**

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554 304.12-1. An owner shall be liable for damages caused by his or her domestic animal.
555 (a) *First Offense.* The owner is liable for the full amount of damages caused by the
556 domestic animal.
557 (b) *Subsequent Offenses.* The owner shall be liable for two (2) times the full amount of
558 damages caused by the domestic animal if the owner knew or should have known that the
559 domestic animal previously caused damages.

560

561 **304.13. Enforcement of Violations**

562 304.13-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this
563 law may include fines, penalties and conditional orders in accordance with the fine, penalty, and
564 licensing fee schedule.

565 304.13-2. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Trial
566 Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30)
567 days after the citation was issued, excluding dangerous animal citations which shall follow the
568 process contained in section 304.11.

569 (a) Persons wishing to contest a citation shall appear at the prehearing, at which time the
570 Trial Court shall accept pleas which either contest or admit committing the act for which
571 the citation was issued.

572 (b) In addition to scheduling requested hearings, the Trial Court may also make
573 conditional orders at the prehearing which are effective until the matter is resolved.

574 304.13-3. *Citation Hearing.* The Trial Court shall schedule a hearing as expeditiously as
575 possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing,
576 for all persons entering a plea contesting the fact that they committed the act for which a citation
577 was issued.

578 304.13-4. *Appeals of the Trial Court's Determinations.* Any person wishing to contest the
579 determination of the Trial Court may appeal to the Nation's Court of Appeals in accordance with
580 the Rules of Appellate Procedure.

581 304.13-5. *Fines.* All fines shall be paid to the Trial Court. Cash shall not be accepted for
582 payment of fines. Money received from fines shall be contributed to the General Fund.

583 (a) Fines shall be paid within ninety (90) days after the order is issued or upheld on final
584 appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may
585 seek to collect the money owed through the Nation's garnishment and/or per capita
586 attachment process.

587 (1) The ninety (90) day deadline for payment of fines may be extended if an
588 alternative payment plan is approved by the Trial Court.

589 (b) Community service may be substituted for part or all of any fine at the minimum
590 wage rate of the Nation for each hour of community service.

591

592 *End.*

593

594 Adopted - BC-03-13-96-B

595 Amended - BC-06-22-11-G

596 Amended - BC-06-28-17-B

597 Amended - BC-__-__-__-__

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598



AMENDMENTS TO DOMESTIC ANIMALS LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Environmental Health, Safety and Land Division	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<p>To eliminate rulemaking authority within this law and instead adopt changes to the Domestic Animals fine, penalty and fee schedule by BC Resolution;</p> <p>To place new guidelines and restrictions on the use of tethers,</p> <p>To lower the space requirements for dog kennels;</p> <p>To reduce the limit on number of dogs allowed on a residential lot from three (3) to two (2);</p> <p>To reduce the limit on total number of cats and dogs allowed on a residential lot from five (5) to four (4);</p> <p>To create a permit process for individuals who wish to own additional dogs or cats in excess of the limit;</p> <p>To require a conditional use permit to keep hens on residential lots, to be approved by the Land Commission;</p> <p>To limit the number of hens allowed on a residential lot to between four (4) and eight (8) hens, depending on lot size;</p> <p>To update the process for OPD, Conservation and the Judiciary to declare an animal a “Dangerous Animal”;</p> <p>To eliminate the separate “Vicious Animal” designation and replace it with a single “Dangerous Animal” category;</p> <p>To revise the “Dangerous Animal” designation so that animals declared “dangerous” must be removed from the reservation or euthanized, pending appeal;</p> <p>To revise the timelines and requirements to request and hold a hearing to contest Dangerous Animal declarations.</p>		
Purpose	<p>To protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential within the Reservation; and establish consequences for damages caused by domestic animals [see 304.1-1].</p>		
Affected Entities	<p>All tribal members, members of other federally recognized tribes, and the Nation’s entities and corporations within the reservation; Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual Tribal members and/or lands held in trust; Any other individuals who have consented to the jurisdiction of the Nation; Oneida Police Department; Oneida Environmental Health, Safety and Land Division; Oneida Conservation Department; Oneida Environmental Resource Board; Oneida Comprehensive Health Division, Oneida Land Commission; Oneida Emergency Management Coordinator, Oneida Judiciary.</p>		

Affected Legislation	Garnishment law; Per Capita law; Rules of Appellate Procedure; Zoning and Shoreland Protection law; Landlord Tenant law; Hunting, Fishing and Trapping law, Emergency Management and Homeland Security law.
Public Meeting	A public meeting has not yet been held.

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

- 2 A. The Domestic Animals law was first adopted by the Oneida Business Committee on March 13, 1996.
 3 Domestic animals are animals commonly owned as household pets, including, but not limited to, dogs,
 4 cats, guinea pigs, hamsters, rabbits, and turtles.
- 5 B. On September 13, 2018, representatives from the Environmental Health, Safety and Land Division,
 6 Oneida Police Department, Oneida Community Health Services and Environmental Resources Board
 7 submitted a memo to the Legislative Operating Committee in support of amending the Domestic
 8 Animals law. The memo noted that the Domestic Animal law is needed to protect public health and
 9 safety and proposed changes to Dangerous and Vicious Dogs section, violations, enforcement and
 10 citations.
- 11 C. The LOC added the Domestic Animals Law to the Active Files List on September 19, 2018. Since that
 12 time, a work group of representatives from Environmental Health Safety and Land Division, Oneida
 13 Police Department, Oneida Community Health Services and Environmental Resources Board has met
 14 to review the law and suggest amendments. Many of the proposed amendments reflect the feedback
 15 and suggestions of this work group.
 16

17 **SECTION 3. CONSULTATION AND OUTREACH**

- 18 A. Representatives from the following departments or entities participated in the development of this law
 19 and legislative analysis: Oneida Environmental Health and Safety Division, Oneida Comprehensive
 20 Health Division – Community Health, Environmental Resource Board, Oneida Police Department, and
 21 Oneida Law Office.
- 22 B. The following laws were reviewed in the drafting of this analysis: Garnishment law; Per Capita law;
 23 Zoning and Shoreland Protection law; Landlord Tenant law, Hunting, Fishing and Trapping law; Rules
 24 of Appellate Procedure. In addition, the following domestic animal laws from other municipalities or
 25 tribal nations were reviewed:
- 26 ■ City of Green Bay – Chapter 8 Public Health and Welfare
 - 27 ■ City of De Pere – Chapter 86 Dogs and Other Animals
 - 28 ■ City of Seymour – Chapter 6 Animals
 - 29 ■ Village of Ashwaubenon – Chapter 4 Animals
 - 30 ■ Village of Hobart – Chapter 102 Animals
 - 31 ■ Village of Howard – Chapter 4 Animals
 - 32 ■ Menominee Nation – Chapter 255 Animals
 - 33 ■ Stockbridge-Munsee – Chapter 16 Public Peace and Good Order Ordinance

34
 35 **SECTION 4. PROCESS**

- 36 A. Thus far, amendments to this law have followed the process set forth in the Legislative Procedures Act
 37 (LPA).
- 38 B. The law was added to the Active Files List on September 19, 2018.
- 39 C. At the time this legislative analysis was developed, the following work meetings were held/scheduled
 40 regarding the development of this law and legislative analysis:
- 41 ■ October 5, 2018: Work Meeting with Environmental Health, Safety and Land Division (EHS�D),
 42 Comprehensive Health Division – Community Health Services (CHD-CHS), Oneida Police
 43 Department (OPD), Environmental Resource Board (ERB), and Oneida Law Office.
 - 44 ■ October 23, 2018: Work Meeting with EHS�D, CHD-CHS, OPD, ERB and Oneida Law Office.

- 45 ▪ November 9, 2018: Work Meeting with EHSLD, OPD and CHD-CHS.
- 46 ▪ December 13, 2018: Work Meeting with EHSLD, ERB and OPD.
- 47 ▪ December 19, 2018: LOC Work Meeting.

48
 49 **SECTION 5. CONTENTS OF THE LEGISLATION**

50 A. **Removal of Rulemaking for Fines, Penalties and Licensing Fee Schedule.** The current Domestic
 51 Animals Law grants rulemaking authority in accordance with the Administrative Rulemaking Law to
 52 the Environmental Health and Safety Division and the Environmental Resource Board to develop rules
 53 to establish and maintain:

- 54 ▪ A fine and penalty schedule, to set fine amounts for violations of the Domestic Animals law;
- 55 ▪ A licensing and fee schedule, to set the cost for animal licenses and fees.;
- 56 ▪ Other rules as necessary to enforce and implement this law.

57 **Adoption of Fee Schedule by Business Committee Resolution.** Under the proposed draft, this
 58 rulemaking authority is eliminated. Instead, the fine, penalty, licensing and fee schedule will be
 59 developed by Environmental Health, Safety and Land Division (EHSLD) & Environmental Resource
 60 Board (ERB) and then adopted by the Oneida Business Committee by resolution [see 304.5-3].

61
 62 **Chart 1. Adopting Fines, Penalty and Licensing Fee Schedule - Comparison**

	Current Law	Proposed Law
<i>How is Fee Schedule Adopted?</i>	Administrative Rulemaking	Business Committee Resolution
<i>Who Develops the Fee Schedule?</i>	EHSLD & ERB	EHSLD & ERB
<i>Who Approves the Fee Schedule?</i>	Oneida Business Committee	Oneida Business Committee
<i>Public Meeting Required?</i>	Yes, a public meeting and comment period on the proposed fee schedule is required under the Administrative Rulemaking Law. Public notice of the hearing and consideration of all comments received is required.	No, a public hearing and comment period is not required.
<i>Fee Schedule Discussed and Approved at a Business Committee Meeting?</i>	Yes, the fee schedule is placed on the agenda of a Business Committee Meeting for consideration. BC Agendas are noticed to the public, and the public may make comments at the BC Meeting.	Yes, the fee schedule is placed on the agenda of a Business Committee Meeting for consideration. BC Agendas are noticed to the public, and the public may make comments at the BC Meeting.

- 63
 64 ▪ **Current Status of Rule:** Domestic Animals law Rule No. 1 – Licensing Fees, Fines and Penalties
 65 became effective on 4/25/2018. Rule No. 1 would be repealed upon adoption of this law. In its
 66 place, the Business Committee would need to adopt a resolution setting a new fee, fine and penalty
 67 schedule for the Domestic Animals law.

68 B. **Removal of Rulemaking Authority for Disease Investigation and Quarantine Process.** In addition,
 69 the current Domestic Animals law grants rulemaking authority to EHSLD, Emergency Management

70 Coordinator and the Comprehensive Health Division to develop rules related to disease investigation
 71 and quarantines. For example, the investigation of a dog that is suspected of rabies [see 304.5-4].
 72 ■ **Adoption of Disease Investigation and Quarantine SOPs.** Instead, these same entities will now
 73 establish standard operating procedures (SOPs) regarding disease investigation and quarantines.
 74

75 **Chart 2. Adopting Disease Investigation & Quarantine Procedure – Comparison**

	Current Law	Proposed Law
<i>How are disease investigation and quarantine procedures adopted?</i>	Administrative Rulemaking	Standard Operating Procedures.
<i>Who Develops the Disease Investigation and Quarantine Process?</i>	EHSLD, Emergency Management Coordinator and Comprehensive Health Division.	EHSLD, Emergency Management Coordinator and Comprehensive Health Division.
<i>Who Approves the Disease Investigation and Quarantine Process/</i>	Oneida Business Committee	EHSLD, Emergency Management Coordinator and Comprehensive Health Division.
<i>Public Meeting Required?</i>	Yes, a public meeting and comment period on the proposed fee schedule is required under the Administrative Rulemaking Law. Public notice of the hearing and consideration of all comments received is required.	No, a public hearing and comment period is not required.

76 ■ **Current Status of Rule:** At the time this analysis was drafted, a rule for investigation and quarantine
 77 procedures had not yet been adopted. However, both the current and proposed law include
 78 procedures within the law regarding quarantines for dog bites and district-wide quarantines. Upon
 79 adoption of these amendments, standard operating procedures will need to be developed.

80 **C. Restrictions & Guidelines on Use of Tethers.** These amendments add new restrictions on the use of
 81 tethers. Under the current law, there are no restrictions on tethering.

- 82 ■ Under the proposed amendments, several new restrictions and guidelines for tethering are added
 83 [see 304.6-3]:
- 84 ○ Tethers must be connected by a buckle type collar or body harness made of leather or nylon.
 - 85 ○ Choke collars and prong collar head harnesses are prohibited.
 - 86 ○ The tether must be at least twelve (12) feet long and allow the animal to move in all
 87 directions.
 - 88 ○ The total weight of the tether must not exceed ten percent (10%) of the animal’s body
 89 weight.
 - 90 ● This is to ensure that the animal can move freely without being weighed down by
 91 a heavy tether or chain.
 - 92 ○ The animal must be tethered to prevent injury, strangulation, or entanglement and allow
 93 the animal to access water and shelter.
 - 94 ○ Animals that are sick, injured, or nursing cannot be tethered.
 - 95 ○ Animals cannot be tethered on vacant property or land with an unoccupied dwelling.
 - 96 ○ Animals cannot be tethered in a manner that allows them to cross onto public space, such
 97 as a sidewalk, or property of others.

- 98 ▪ **What is Tethering?** According to the Humane Society of the United States, “tethering” or
 99 “chaining” refers to “the practice of fastening a dog to a stationary object and leaving them
 100 unattended.” “Tethering is not meant to refer to an animal being walked on a leash or cases of
 101 supervised, temporary tethering while an owner is present.” [see Humane Society website,
 102 Chaining and Tethering Dogs FAQ <https://www.humanesociety.org/resources/chaining-and-tethering-dogs-faq>].
 103
- 104 ▪ **Why Can Tethering Be Harmful to Dogs?** According to the Humane Society, tethered dogs may
 105 suffer from “irregular feedings, overturned water bowls, inadequate veterinary care, poor sanitary
 106 conditions and exposure to extreme temperatures and weather.” The Humane Society also argues
 107 that tethering dogs may be a risk factor for dog bites and attacks. The Humane Society states that
 108 “dogs tethered for long periods can become highly aggressive... Dogs feel naturally protective of
 109 their territory and respond according to a “fight or flight” instinct... A tethered dog, unable to “take
 110 flight,” resorts to attacking an unfamiliar animal or person.” [see
 111 <https://www.humanesociety.org/resources/chaining-and-tethering-dogs-faq>].
- 112 ▪ **Tether Restrictions in Other States.** According to the American Veterinary Medical Association,
 113 as of April 2018, there were 32 states that placed restrictions on tethering animals. In addition,
 114 EHSLD identified over 100 municipalities nationwide that either prohibit or limit the use of
 115 tethering.
- 116 ▪ **Tether Restrictions in Wisconsin.** Research gathered by EHSLD identified two other Wisconsin
 117 municipalities that limit the use of tethering: Racine, WI and Linn, WI. Neighboring municipalities
 118 such as the city of Green Bay and city of De Pere do not place limits on tethers.

119 **D. Dog Kennel Space Requirements.** The space requirements for dog kennels under this law have been
 120 reduced. The purpose of adjusting the space requirements is to better match the square-footage of
 121 commonly available kennels on the market. The following chart illustrates the changes in kennel space
 122 requirements [see 304.6-2(c)(1)]:
 123

124 **Chart 3. Comparison of Kennel Space Requirements.**

Weight of the Dog	Current Law	Proposed Law
Between 1 and 35 lbs	80 square feet	60 square feet
Between 35 and 75 lbs	100 square feet	80 square feet
75 lbs and greater	120 square feet	100 square feet

125

126 **E. New Limits on Number of Dogs and Cats.** These amendments establish new limits on the number of
 127 dogs and cats that may be kept in a residential household. A residential household is “a residential lot,
 128 except for those residential lots designed as multi-family lots, in which each family unit within the lot
 129 constitutes a separate household” [see 304.3-1(i)].
 130

131 **Chart 4. Limits on Maximum Number of Dogs and Cats Per Household.**

Animals Per Household	Current Law	Proposed Law
Number of Dogs	3	2
Number of Cats	3	3
Number of Dogs & Cats Combined	5	4

- 132
- 133 ▪ **Limit on Number of Dogs.** Under current law, up to three (3) dogs may be kept by a single
 134 residential household. Under these proposed amendments, the limit on the number of dogs will be
 135 lowered to two (2) [see 304.7-3].
- 136 ▪ **Limit on Number of Cats.** The limit on the number of cats in a residential household remains
 137 unchanged at three (3) cats [see 304.7-3].

- 138 ▪ **Limit on Total Number of Dogs & Cats Combined.** The limit on the total number of dogs and cats
139 combined in a residential household has been lowered from five (5) dogs and cats combined to four
140 (4) dogs and cats combined.
- 141 ▪ **Exceptions & Grandfather Clause [see 304.7-3(a)].**
- 142 ○ **Grandfather Clause.** The LOC intends to include a grandfather clause in the adopting
143 resolution, stating that residential households who currently have more than two dogs or
144 four dogs and cats combined will be allowed to keep their animals.
- 145 ○ **Other Exceptions.** The restrictions on the number of dogs and cats do not apply to persons
146 who reside on a farm, or households keeping a litter of pups or kittens for up to five (5)
147 months from birth.
- 148 **F. New Permit Process to Keep Additional Dogs or Cats.** These amendments create a new permit process
149 for individuals who wish to keep more than two (2) dogs, three (3) cats, or four (4) dogs and cats
150 combined. For each additional dog or cat above the limit, the owner will apply for a permit from the
151 Environmental, Health, Safety and Land Division [see 304.7-3(b)].
- 152 ▪ **Applying for Permit for Additional Dogs or Cats.** The owner of the animal and the landowner must
153 both sign the application. In addition, the owner must agree that if the household receives two (2)
154 or more nuisance complaints related to their animals within (one) 1 calendar year, the owner must
155 reduce the number of animals within thirty (30) days.
- 156 ▪ **Guidelines.** The amendments do not include any guidelines regarding how EHSLD should
157 determine whether to grant a permit for an additional animal. EHSLD will have discretion to
158 approve or reject any applications above the limit.
- 159 **G. Keeping Hens.** These amendments add new restrictions and guidelines for keeping hens on a residential
160 lot, commonly known as “backyard hens.” Note that this does not apply to property zoned agricultural,
161 such as commercial farms [see 304.9].
- 162 ▪ **Conditional Use Permits for Keeping Hens.** These amendments alter the requirements for a
163 conditional use permit to keep hens on a residential lot. Currently, a permit is only required for
164 individuals keeping more than four (4) hens on their property. Now, anyone keeping a hen on their
165 property, even one hen, will be required to apply for a conditional use permit.
- 166 ▪ **Permits Issued by Land Commission Instead of Conservation.** The conditional use permits for
167 keeping hens will now be issued by the Oneida Land Commission rather than the Conservation
168 Department. The Land Commission is already responsible for issuing conditional use permits for
169 livestock such as horses, cows, and pigs [see 304.8]. This change is meant to consolidate permits
170 for hens and livestock in one place.
- 171 ▪ **New Limit on Number of Hens.** Under the current law, there is no restrictions on the number of
172 hens an owner may keep on their residential lot. These amendments place a new limit the number
173 of hens on a residential lot based on the size of the property:
- 174 ○ No more than four (4) hens on a property that is two acres in size or smaller.
175 ○ No more than eight (8) hens on a property that is two acres in size or larger.
- 176 **H. Seizure of Exotic Animals.** Under the current law, an unpermitted exotic animal, such as a wolf hybrid
177 or large snake, may be seized by the Oneida Conservation Department or its designee. This has been
178 changed to state that the unpermitted exotic animal may be seized by the Oneida Police Department
179 and/or the Oneida Conservation Department [see 304.10-6].
- 180 **I. Declaring an Animal Dangerous & Removing Dangerous Animals from Reservation.** Under the
181 current law, when a domestic animal, such as a dog, exhibits dangerous behavior, an Oneida Police
182 Officer or Conservation Warden may declare the animal “dangerous” or “vicious” based on the level
183 of behavior. Examples of this behavior include chasing, biting, and attacking another animal or person.
- 184 ▪ **Current Dangerous/Vicious Animal Process.** The following describes the current process to
185 declare a dog “dangerous” or “vicious”:
- 186 ○ **Dangerous Dog.** If an animal is declared “Dangerous,” the owner may keep the dog if they
187 follow certain restrictions for leashing, muzzling, confinement, public signage,

- 188 microchipping, and liability insurance. If they are unwilling or unable to follow these
 189 restrictions, the owner must remove the dog from the reservation or have it euthanized.
 190 ○ **Vicious Dog.** If the animal is declared “Vicious,” the Trial Court will order the animal to
 191 be removed from the reservation or destroyed.
 192 ○ **Determining Dangerous vs. Vicious.** Under the current law, the difference between
 193 whether a dog must be removed from the reservation or not can depend on minor details
 194 that must be parsed out by the Trial Court. For example, if a dog bites and lacerates
 195 someone, but the injury does not require stitches, then the dog is declared “dangerous”
 196 instead of “vicious” and could potentially be kept on the reservation.
 197 ○ **Comparison to Neighboring Municipalities.** A review indicates that unlike Oneida, most
 198 neighboring municipalities do not have separate “dangerous” and “vicious” animal
 199 designations. Instead, these municipalities have a single “dangerous animal” designation.
 200 In addition, unlike Oneida, these neighboring municipalities do not allow dogs declared
 201 “dangerous” to be kept within their boundaries.
 202 ■ **Elimination of Vicious Animal Designation.** This law eliminates the “Vicious Animal”
 203 designation and creates a single “Dangerous Animal” designation, with a requirement that any
 204 animal declared “dangerous” be removed from the reservation or destroyed, pending appeal [see
 205 304.11].
 206 ○ **Effect.** The effect is that owners will not be able to keep dogs declared dangerous on the
 207 reservation. Eliminating the “Vicious Animal” designation and requiring all animals
 208 declared “Dangerous” to be removed from the reservation or destroyed is intended to
 209 increase public safety. This also places Oneida’s laws in line with neighboring
 210 municipalities and simplifies the process for OPD, Conservation and the Trial Court.
 211
 212

Chart 5. Current Law – Dangerous & Vicious Animal Declaration Process

	<i>Dangerous Animal Declaration</i>	<i>Vicious Animal Declaration</i>
<i>Reasons an Animal Declared Dangerous or Vicious</i>	<ul style="list-style-type: none"> - Approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack, without provocation, or; - Bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal without provocation 	<ul style="list-style-type: none"> - An animal previously declared dangerous not in compliance with requirements of the law. - Has killed a domestic animal or pet without provocation on public or private property - Without provocation, has inflicted substantial bodily harm on a person where substantial bodily harm means a bodily injury that causes a laceration that requires stitches, any fracture of a bone, a concussion, a loss or fracture of a tooth or any temporary loss of consciousness, sight or hearing. - Is suspected, to be owned, trained or harbored for the purpose of dog fighting. - Has been declared to be a vicious animal and/or ordered to be destroyed in any other jurisdiction.
<i>Can the Owner Keep the</i>	YES, Owner can keep animal on the reservation if they comply with requirements for leash, muzzle,	NO, the Judiciary Trial Court will order the animal to be removed from the reservation or destroyed.

<i>Animal on the Reservation?</i>	confinement, posting signs on property, spay and neuter, liability insurance, or microchipping. If the owner is unwilling or unable to comply, the animal must be removed from the reservation or euthanized.	
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213 **Exception: An animal may not be deemed dangerous if it bites, attacks, or menaces any*
 214 *person or animal to defend its owner or another person from attack, protect its young or*
 215 *another animal, or defend itself against any person or animal which has tormented, assaulted*
 216 *or abused it.*

217 **Chart 6. Proposed Law: Dangerous Animal Declaration Process**

	Dangerous Animal Designation
<i>Reasons Animal Declared Dangerous</i>	<ul style="list-style-type: none"> - Approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack - Bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal - Is suspected to be owned, trained or harbored for the purpose of dog fighting, and/or - Has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.
<i>Can Owner Keep the Animal?</i>	NO, the dangerous animal will be ordered removed from the reservation within 3 business days.
<i>Opportunity to Contest and Appeal?</i>	YES, the owner may contest the dangerous animal declaration by filing a written objection with the Trial Court within 3 business days. The owner may appeal the Trial Court’s decision to the Appeals Court.

219 **Exception: An animal may not be deemed dangerous if it bites, attacks, or menaces any*
 220 *person or animal to defend its owner or another person from attack, protect its young or*
 221 *another animal, or defend itself against any person or animal which has tormented, assaulted*
 222 *or abused it.*

- 224 **J. Contesting Dangerous Animal Determination.** Under the current law, owners whose dogs are declared
 225 dangerous automatically receive a pre-hearing date with the Judiciary Trial Court with their citation.
 226 The pre-hearing date is held at least thirty (30) days after the citation is issued [see 304.11-3].
- 227 ■ **Owner Must Request Hearing.** Under the new law, individuals who wish to contest a dangerous
 228 animal determination must file a written objection to the order within three (3) business days in
 229 order to receive a hearing. If the owner does not file within three (3) days, they will not receive a
 230 hearing and must remove the animal.
 - 231 ■ **Date of Hearing.** In addition, the hearing for the dangerous animal determination will now be held
 232 by Trial Court within 14 days of the written objection, rather than 30 days after the citation. This
 233 is to ensure that hearings for dangerous animal are held quickly in the interest of public safety. In
 234 addition, ERB explained that the original 30 day deadline was likely based on ERB’s hearing
 235 schedule prior to hearing authority being transferred to the Oneida Judiciary.
 - 236 ■ **Keeping Dangerous Animal Pending Hearing & Appeals.** Owners of a dangerous animal may
 237 keep the animal on the Reservation pending the outcome of hearings and appeals, but only if the
 238 animal is confined in accordance with the requirements in this law. These requirements include
 239 leash, muzzle, secure confinement, signs warning of dangerous animal on the property, and
 240 notifying OPD or Conservation if the animal is at large, unconfined, or attacks another animal or

241 person. If the owner is unable or unwilling to follow these requirements, the animal must be
242 removed from the reservation.

243 **K. *Minor Drafting Changes.*** Minor drafting and formatting changes have been made throughout the law
244 for clarity.
245

246 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

247 **A. *References to Other Laws.*** The following laws of the Nation are referenced in the Domestic Animals
248 law. These amendments do not conflict with any of the referenced laws.

- 249 ■ *Garnishment law [see 304.13-5(a)].*
- 250 ■ *Per Capita law [see 304.13-5(a)].*
- 251 ■ *Rules of Appellate Procedure [see 304.13-4].*

252 **B. *Other Laws that Reference Domestic Animals.*** The following laws of the Nation reference the
253 Domestic Animals law. These amendments do not conflict with any of the referenced laws.

- 254 ■ *Zoning and Shoreland Protection law*
- 255 ■ *Landlord Tenant law*
- 256 ■ *Hunting, Fishing and Trapping law*
- 257 ■ *Emergency Management and Homeland Security law*

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

260 **A. *Right to Keep Dangerous Animals Within the Reservation.*** This law eliminates the separate
261 “dangerous” and “vicious” animal classifications, and instead combines them into a single “dangerous
262 animal” classification. Previously, if an animal was declared “dangerous” by OPD or Conservation, the
263 owner could keep the dangerous animal on the reservation if they complied with certain requirements.
264 Under these amendments, if an animal is declared dangerous and the declaration is uncontested by the
265 owner or upheld by the Judiciary, the owner will be required to remove the animal from the reservation
266 or have it euthanized.

267 **B. *Deadline to Contest Dangerous Animal Declaration.*** Under current law, an owner whose animal is
268 declared dangerous automatically receives a pre-hearing date with their citation. This hearing is held at
269 least 30 days from the date of citation. These amendments eliminate the automatic pre-hearing. Instead,
270 it is the owner’s responsibility to request a hearing within 3 business days of the citation in order to
271 receive a hearing.

272 **C. *Right to Keep More than 4-8 Hens on a Residential Lot.*** Currently, there is no restriction on the
273 number of hens an owner may keep on their residential lot. This law will limit the number of hens to 4
274 or 8 hens per residential lot, depending on the lot size.
275

276 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

277 **A. *Enforcement.*** Oneida Police Officers and Conservation Wardens have the authority to investigate
278 complaints involving domestic animals; enforce provisions of this law through appropriate means,
279 including but not limited to seizing any animal that is taken, employed, used, or possessed in violation
280 of this law and/or mistreated, rabid or otherwise in danger or dangerous; issuing citations consistent
281 with the fine and penalty schedule developed in accordance with this law; and using force to stop an
282 immediate threat to public safety caused by an animal [see 304.5-2].
283

284 **SECTION 9. OTHER CONSIDERATIONS**

285 **A. *Oneida Nation Domestic Animal Data.*** The following data is provided for information.

- 286 ■ ***Oneida Police Department Data.*** Between 12/6/2016 to 12/6/2018:
 - 287 ○ Number of Animal Calls – 810
 - 288 ○ Number of Animal Citations - 33
 - 289 ○ Number of Animal Bites – 12

Source: Oneida Police Department, communication by email 12/6/2018

- **Pet License Data.** Between 1/3/2016 to 12/13/2018:
 - Number of Pet Licenses Issued – 348
 - Source: Oneida Environmental, Health Safety and Land Division, communication by email 12/13/2018.

B. Limits on Number of Animals - Comparison to Other Municipalities. The following comparisons to other municipalities are provided for information.

Chart 7. Comparison - Limit on Number of Dogs and Cats.

Municipality/Tribal Nation	Maximum Number of Dogs	Maximum Number of Cats
Oneida Nation (proposed)	2	3
City of Green Bay	2	3
City of De Pere	2	3
Village of Ashwaubenon	2	2
Village of Howard	2	n/a
Village of Hobart	2	n/a
Menominee Nation	3	n/a

Chart 8. Comparison - Limit on Number of Hens.

Municipality/Nation	Max # of Hens w/Permit
Oneida Nation (proposed)	Between 4-8, depending on size of the lot
City of De Pere	4
City of Green Bay	4
Village of Ashwaubenon	4
Village of Howard	Between 4-8, depending on size of the lot
Village of Hobart	6

C. Fines, Penalties and Licensing Fee Schedule. Upon the adoption of this law, it will be necessary for the Oneida Business Committee to adopt a resolution setting the fines, penalties and licensing fees under this law. At the time this analysis was drafted, a workgroup consisting of EHSLD, ERB, CHS-CHD, and Oneida Police Department intends to submit a proposed fee schedule to the LOC and BC for consideration.

- **Recommendation:** The LOC should include an updated fine, penalty and licensing fee schedule resolution with the adoption materials for these amendments. A summary of the current fee schedule is included below for information [see 3. O.C. 304 Domestic Animals Rule #1 – Licensing Fees, Fines and Penalties]. Whether to change any of these amounts is a policy decision for the LOC and the Business Committee.

Chart 9. Summary of Current Fee Schedule for Licenses and Permits.

License/Permit Type	Fee (per animal)	License/Permit Period
Cat License	\$5 if spayed/neutered; or \$10	January 1-December 31
Dog License	\$5 if spayed/neutered; or \$10	January 1-December 31
Exotic Animal Permit - Reference 304.8-2	\$10 (all exotics)	January 1-December 31

Hen Permit	\$10 (5 or more)	January 1-December 31
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315 Source: 3. O.C. 304 Domestic Animals Rule #1 – Licensing Fees, Fines and Penalties

316 Chart 10. Summary of Current Fine and Penalty Schedule.

Violation	1st Offense	2nd Offense	3rd Offense and up
DOG/CAT REQUIREMENTS			
No required license	\$25	\$50	\$100
Improperly/no attached license	\$25	\$50	\$100
No current rabies vaccine	\$150	\$500	\$750
Failure to obey district quarantine	\$500	\$750	\$1,000
Animal running at large	\$150	\$500	\$750
Nuisance animal	\$150	\$500	\$750
Exceeding limit of allowed animals (per animal)	\$25 ea.	\$50 ea.	\$100 ea.
TREATMENT OF ANIMALS			
Failure to provide food/water	\$500	\$750	\$1,000
Failure to comply with shelter standards	\$150	\$500	\$750
Failure to meet enclosure space standards	\$150	\$500	\$750
Failure to comply with sanitation standards	\$150	\$500	\$750
Mistreatment of animals	\$500	\$750	\$1,000
PROHIBITED ANIMALS			
Keep/Release prohibited or exotic animal	\$500	\$750	\$1,000
Possessing prohibited or exotic animal without required permit	\$150	\$500	\$750
Failure to provide notice of release/escape	\$500	\$750	\$1,000
LIVESTOCK			
Keeping livestock with no conditional use permit	\$100	\$200	\$300
Violate livestock lot requirements	\$150	\$500	\$750
Livestock at large	\$150	\$500	\$750
Keeping hens without required permit	\$100	\$200	\$300
Prohibited keeping of rooster(s)	\$100	\$200	\$300
Keeping hen(s) in prohibited manner	\$100	\$200	\$300
Nuisance hen(s)	\$100	\$200	\$300
DANGEROUS ANIMALS			
Harboring a Dangerous Animal	\$500	\$1,000	\$2,000
Failure to post required dangerous animal sign(s)	\$100	\$200	\$300
Failure to spay/neuter required animal	\$150	\$500	\$750
Failure to provide/ provide proof of required liability insurance	\$150	\$500	\$750
Failure to notify of insurance policy cancelation	\$150	\$500	\$750
Failure to microchip required animal	\$150	\$500	\$750

Failure to comply with ongoing notification requirements	\$150	\$500	\$750
Bringing/Keeping a vicious animal	\$750	\$1,500	\$2,500
Failure to provide required proof of destruction	\$150	\$500	\$750
Failure to notify police of animal bite	\$150	\$500	\$750
Failure to quarantine	\$500	\$750	\$1,000
LIABILITY FOR DAMAGE(S)			
Damage caused by animal	\$100	\$200	\$300

Source: 3. O.C. 304 Domestic Animals Rule #1 – Licensing Fees, Fines and Penalties

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- D. Permits for Additional Dogs and Cats.** EHSLD will need to create an application process for individuals who wish to keep additional dogs or cats in excess of the limit established in this law. This law does not include guidelines for how EHSLD should approve or reject applications.
- *City of Green Bay Example.* The City of Green Bay has a similar permit process for additional dogs and cats, and their application includes the following information: Veterinary records from the past year and proof of current vaccinations, proof of current animal licenses, and a statement explaining why the individual is seeking to keep extra animals. According to a local news report from 2018, the city of Green Bay rarely turns down requests for a third dog.
 - *Recommendation.* EHSLD should consider creating a standard operating procedure and application form for this process. Since EHSLD will have its own discretion, a standard operating procedure will ensure applications are handled uniformly.
- E. Communication to Oneida Police Department and Conservation.** Upon adoption of this law, the separate “dangerous” and “vicious” animal categories will be replaced by a single “dangerous” animal declaration.
- *Recommendation:* This change in guidelines should be communicated to Oneida Police Officers and Conservation Wardens who are responsible for issuing dangerous animal declarations.
- F. Provisions from Other Domestic Animal Laws.** A review of other Domestic Animals laws identified the following provisions that are not currently included in in the Oneida Domestic Animals Law. These issues did not come up as areas of concern during the development of these amendments. The following is provided as information on animal issues that neighboring municipalities may be addressing.
- Beekeeping Regulations (*Green Bay Sec 8.09.7 and De Pere Sec 86-7*)
 - Loud or Persistent Barking or Howling Dogs (*Green Bay Sec 8.08 and Howard Sec 4-29*)
 - Animal Waste on Property other than Owner (*De Pere 86-5(c)(1)(a) and Howard Sec 4-3*)
- G. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [*see Legislative Procedures Act 1 O.C. 109.6-1*].
 - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [*see Legislative Procedures Act 1 O.C. 109.6-1(a) and (b)*].



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



AGENDA REQUEST FORM

- 1) Request Date: March 4, 2019
- 2) Contact Person(s): Victoria Flowers
 Dept: Environmental, Health & Safety
 Phone Number: (920)869-4548 Email: vflowers@oneidation.org
- 3) Agenda Title: Environmental Review Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Define the activities that require, and establish a process to conduct environmental review of the proposed activity's impact to the environment. This is similar to the requirements of the federal government to conduct a National Environmental Policy Act review on all government actions

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

- 1) Sisseton TEPA
- 2) Swinomish Tribal Code Title 19
- 3) Jamestown, S'Klallam Title 27 Tribal Environmental Policy
- 4) Oglala Sioux Tribal Environmental Code
- 5) Please list any laws, policies or resolutions that might be affected:
Oneida Zoning, Oneida Leasing, Land Use Technical Unit
- 6) Please list all other departments or person(s) you have brought your concern to:
Planning, Zoning, Land Management
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why:
This process is being used, though not consistently, and it requires guidelines for application.

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

Signature of Requester:
Victoria Flowers

Digitally signed by Victoria Flowers
 Date: 2019.03.05 07:27:20 -06'00'

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

Title 19 – Environmental Protection

Chapter 1 – Environmental Policy Act

Sec.

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Legislative History

Enacted:

Environmental Protection, Ord. 177 (9/5/03), BIA (10/28/03).

Repealed or Superseded:

Tribal Environmental Policy Act, Ord. 168 (6/3/03), BIA (6/12/03) (repealing Ord. 43A).

Amending Ord. 58, Ord. unnumbered (7/12/89), Enacting Res. 89-7-65.

Establishing the Swinomish Cultural and Environmental Protection Agency, Ord. 58, Enacting Res. 88-4-18 (5/5/88).

Environmental Policy Act, Ord. 43A (11/3/77), BIA (2/3/78).

[Ed. Note. Ord. unnumbered (7/12/89) and Ord. 58 were repealed with Title 21 – Archaeological and Cultural Resources]

19-01.010 Title.

This Chapter shall be referred to as the Tribal Environmental Policy Act.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.020 Purpose and Scope.

- (A) The primary purpose of this Act is to promote the general welfare of tribal members and others living on Reservation lands, by creating and maintaining conditions under which humanity and nature can exist in productive and enjoyable harmony.
- (B) Specific goals are:
- (1) To ensure that the Reservation is safe, healthful, productive, and aesthetically and culturally pleasing;
 - (2) To preserve areas of historic, archeological and cultural significance;
 - (3) To ensure an environment that is compatible with the desired Swinomish lifestyle - present and future; and
 - (4) To attain the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable and unintended consequences.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.030 Authority.

This Chapter is enacted in accordance with Article VI, Section 1(k), (l) and (r), of the Constitution of the Swinomish Indian Tribal Community.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.040 Jurisdiction.

Jurisdiction over the people and property subject to this Chapter shall be to the maximum extent permitted by law.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.050 Findings.

[Reserved]

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.060 Construction.

[Reserved]

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.070 Definitions.

- (A) **“Planning Commission”** means the Swinomish Planning Commission or its designee, except in Section 19-01.140, where it only means the Swinomish Planning Commission.
- (B) **“Planning Department”** means the Office of Planning and Community Development of the Swinomish Indian Tribal Community.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.080 Action Significantly Affecting the Quality of the Environment.

- (A) The Planning Commission shall write or cause to be written a detailed statement for every action significantly affecting the quality of the environment. The statement shall include:
 - (1) The environmental impact of the proposed action;
 - (2) Any adverse environmental effects which cannot be avoided should the proposal be implemented;
 - (3) Alternatives to the proposed action;
 - (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
 - (5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.
- (B) The Planning Commission shall utilize a systematic, interdisciplinary approach, which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making that may have an impact on the environment.
- (C) The Planning Commission shall identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations. Federal or jointly developed federal-tribal environmental review documents may be considered in fulfillment of the requirements of this Chapter.

- (D) The Planning Commission may require proponents of an action to provide information or reports to assist in the determination of the environmental impacts and significance of such actions.
- (E) The Planning Commission shall study, develop and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.
- (F) The Planning Commission may develop a list of activities with no appreciable impact on the environment that are exempt from the requirements of this Chapter. The Planning Department may require the proponent of the action to submit information regarding the proposed action to determine whether the proposed action fits within one of the exemptions on the list.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.090 Preliminary Determination of Significance.

- (A) The Planning Commission shall identify actions significantly affecting the quality of the environment.
- (B) In making this preliminary determination, the Planning Commission shall consider:
 - (1) Whether the action is highly controversial;
 - (2) Whether an otherwise minor action will have cumulatively significant impact;
 - (3) Any secondary effects;
 - (4) The nature of the setting where the proposed action would be taken;
 - (5) Any mitigation requirements, which will reduce the environmental effects of the proposed action; and
 - (6) All known and probable beneficial and detrimental environmental effects. Even if on balance the Planning Commission believes that the effect will be beneficial, the action may still have a significant effect on the environment.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.100 Use of Preliminary Determination.

- (A) If the Planning Commission determines:
 - (1) That the action does not significantly affect the quality of the environment, it shall prepare a declaration of non-significance, which shall be located in the

Tribal Office and published in a local newspaper of suitable size and general circulation. No action shall be taken for ten (10) days following publication of such declaration of non-significance; or

- (2) That the action has a significant effect on the quality of the environment; it shall prepare a declaration of significance, which shall be marked and designated as such and filed in the Planning Department.
- (B) If the Planning Department issues a declaration of significance, the proposed action shall not proceed until the Planning Department issues an Environmental Impact Statement (EIS).

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.110 Draft EIS Preparation and Content.

- (A) When an EIS is required, the Planning Commission shall prepare a draft EIS which shall satisfy, to the fullest extent possible, the requirements of Section 19-01.080.
- (B) The draft EIS shall include the following:
 - (1) A description of the proposed action, its purposes and the environment, which will be affected;
 - (2) A description of any effect it may have on population or growth;
 - (3) The relationship of the proposed action to land use plans for the affected area;
 - (4) The positive and negative, known and probable, effects of the proposed action on the environment. This should include secondary as well as primary effects;
 - (5) Alternatives to the proposed action that might reduce or eliminate adverse impacts including sufficient analysis of the environmental benefits, costs and risks of such alternatives;
 - (6) A brief section summarizing those environmental effects discussed in Section 19-01.110(B)(4) that are adverse and unavoidable;
 - (7) A brief discussion of the extent to which the proposed action involves tradeoffs between short-term gains at the expense of long-term environmental losses, or vice-versa; and
 - (8) A description of those impacts discussed in Section 19-01.110(B)(6) that irreversibly curtail the range of potential uses of the environment.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.120 Agencies with Special Expertise.

In preparing the draft EIS, the Planning Commission may consult with, and obtain comments from, agencies with special expertise.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.130 Circulation of Draft EIS.

- (A) Copies of the draft EIS shall be kept in the Tribal Office for public inspection.
- (B) Copies of the draft EIS shall be sent to those agencies consulted during preparation of the draft EIS.
- (C) Any person may request copies of the draft EIS from the Planning Commission. Copies shall be provided at no more than the cost of printing and mailing.
- (D) A notice announcing the availability of the draft EIS shall be published in a local newspaper of suitable size and general circulation.
- (E) Agencies and the public shall have thirty (30) days to comment on the proposed action. The Planning Commission may grant a fifteen (15) day extension when it believes such an extension is necessary.
- (F) Copies of all the comments shall be kept in the Tribal Office for public inspection.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.140 Public Hearing.

- (A) After publication of the draft EIS, the Swinomish Planning Commission shall hold a public hearing, whenever appropriate, for the consideration of environmental aspects of the proposed action and to provide the public with relevant information.
- (B) In determining whether a public hearing is appropriate, the Swinomish Planning Commission shall consider such factors as the magnitude of the proposed action, the degree of interest in it, the complexity of the issues, and the extent to which the public has already been involved.
- (C) Ten (10) days prior to the hearing, the Swinomish Planning Commission or its designee shall cause to be published a notice of the time and place of the hearing in a local newspaper of suitable size and general circulation in Skagit County.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.150 Preparation and Circulation of Final EIS.

- (A) The Planning Commission shall review the environmental effects of the proposed action in light of the opposing views and responsible opinions that were brought to the Planning Commission's attention during the thirty (30) day comment period.
- (B) The Planning Commission should make meaningful reference in the final EIS to any responsible opposing view not adequately discussed in the draft EIS and should indicate the Planning Commission's response to the issues raised.
- (C) The revised EIS, together with substantive comments received on the draft EIS (or summaries thereof) shall be circulated in the same manner as the draft EIS.
- (D) If the Planning Commission determines that the draft EIS is sufficient and needs no revision, it shall circulate a statement to that effect. The draft EIS, together with the statement, shall constitute the final EIS.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.160 Planning Commission Decision.

The Planning Commission may not take action on the proposal for seven (7) days after publication of availability of the final EIS.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

19-01.170 Repealer.

This Chapter hereby repeals and supersedes Ordinances 168 and 43A.

19-01.180 Severability.

If any section, subsection, clause or phrase of this Chapter is for any reason determined to be invalid or unconstitutional, such determination shall not affect the validity or constitutionality of the remainder of this Chapter.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).



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OGLALA SIOUX TRIBE: LAW AND ORDER CODE

Received: 2002.

OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

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§100 Tribal Council Findings

The Oglala Sioux Tribal Council finds:

(1) that the Oglala Sioux Tribal Constitution, Article IV, sections (m) and (n), empowers the Oglala Sioux Tribal Council to protect and preserve the Oglala Sioux peoples' health and welfare and their air, land, water and historical, cultural and natural resources;

(2) that the Tribal Council does carry out those responsibilities through its ordinances and resolutions;

(3) that there is a historical, cultural and spiritual relationship between the Oglala Sioux people and the natural environment;

(4) that unmonitored growth and development is occurring, and will continue to occur, within the tribe's jurisdiction that is harming, or has the potential to harm, the Oglala Sioux peoples' health and welfare and their air, land, water and other historical, cultural and natural resources.

(5) that unmonitored growth and development threatens or interferes with and has a direct effect on the tribal government carrying out its responsibilities under its constitution, ordinances, resolutions, customs and traditions.

(6) that unmonitored growth and development threatens or interferes with economic activity within the tribe's jurisdiction because it increases the cost of doing business within the Tribe and burdens tribal services.

(7) that due to the adverse effects from unmonitored development and interference there is a critical and continuing need to monitor growth and development through an environmental review permit process.

(8) that it is necessary to collect and analyze information and data on development activity and its effect within the tribe's jurisdiction to prevent damage or harm to the Oglala Sioux people and the Pine Ridge Indian Reservation environment and to manage, develop, and protect the Oglala Sioux people's historical, cultural and natural resources in an environmentally and economically sound manner.

§101 Declaration of Policy

The Oglala Sioux Tribal Council declares that it is the tribe's policy to protect and preserve the Pine Ridge Indian Reservation environment and to provide a safe and habitable homeland for the Oglala Sioux people's present and future generations by establishing minimum procedures to monitor growth and development within the tribe's jurisdiction which will protect the reservation's environment and promote the Oglala Sioux people's stability and security.

§102 Definitions

(1) "Appeals Committee" means the Coordinators of the Committees of the Tribal Council and one representative of the Grey Eagle Society.

(2) "Commercial" means a private or public corporation or entity occupied with business and commerce or activity of general social interest to the Tribe.

(3) "Developer" means any person or entity, tribal or non-tribal, private or governmental, who performs, or plans to perform, development activities within the tribe's jurisdiction.

- (4) "Development" means any activity which results in a significant change in a structure's use or appearance, or a significant change in a land site's use or appearance.
- (5) "Environmental Health Technical Team" means those Oglala Sioux Tribal Program Directors and/or Department heads, or their representatives, designated in OST RESOLUTION NO. 97-74, as amended by OST Resolution 98-04XB, including Solid Waste Management, Water and Sewer Program, Rural Water Supply System, Land Office, Environmental Protection Program, Water Resource Department, Community Health Representative Program, Housing Authority, Badlands Bombing Range Project, Health and Human Services Committee Coordinator, Revenue Office, Transportation Office and Tribal Employment Rights Office, and those other representatives as the Tribal Council may from time to time add by Resolution duly adopted, and all of whose activities are regularly reported to the Tribal Council's Health and Human Services and Land Committees.
- (6) "Environmental Review Permit" or "permit" means a document issued by the Environmental Health Technical Team which indicates that any proposed development within the tribe's jurisdiction has been reviewed for compliance with this code.
- (7) "Environmental Review Permit Screening Committee" means representatives from three Environmental Health Technical Team member departments who shall be selected on a rotating basis and who shall serve a three calendar month term for each rotation in which the department is on the Environmental Review Permit Screening Committee.
- (8) "Land" means any ground, soil, or earth whatsoever, including fields, meadows, pastures, woods, waters, marshes, wetlands, and rock.
- (9) "Low Impact Development" mean(s) an activity which has no significant change on a structure's use or appearance or no significant change on a land site's use or appearance.
- (10) "Significant" means the change is:
- (a) highly controversial;
 - (b) otherwise minor but might have a cumulatively significant effect;
 - (c) creates secondary effects;
 - (d) unsuitable for the nature of the setting where the proposed action would be taken or;
 - (e) may have probable beneficial environmental effects, but on balance the Environmental Health Technical Team believes that although the effect will be beneficial, the action may still have a significant effect on the environment.
- (11) "Structure" means that which is built or constructed whether installed on, above, or below the surface of land.
- (12) "Working days" means those days when tribal offices are regularly open for business and does not include weekend days, holidays when tribal offices are regularly closed, or those days officially closed by the Tribe.

§103 Permit Requirements for Development; Other Tribal and Federal Law Still Apply

(1) The Tribe prohibits development within its jurisdiction unless the Environmental Health Technical Team issues an Environmental Review Permit for the development; provided that for an Oglala Sioux tribal member a permit shall not be required for any traditional religious activity of the Oglala Sioux people.

(2) Although the Environmental Health Technical Team issues a Tribal Environmental Review Permit the developer must comply with all other Tribal or Federal law that applies to the development and to activities which may affect the Oglala Sioux people or Tribal resources

§104 Power to Conduct Review and Issue an Environmental Review Permit; Conditions Upon Determination to Withhold A Permit

(1) The Environmental Health Technical Team shall review an Environmental Review Permit application and:

(a) issue the permit when it determines that the development is low impact, subject to conditions that it or the designated tribal departments may impose under tribal or federal law;

(b) issue the permit where all designated tribal departments sign-off, subject to conditions that it or the designated tribal departments may impose under tribal or federal law; or

(c) deny the permit where a designated tribal department withholds sign-off, subject to § 104(2).

(2) When the Environmental Health Technical Team determines that development does not comply with federal or tribal law so that an Environmental Review Permit can not issue it must provide the applicant with a written explanation that:

(a) identifies the particular tribal department(s) that withheld sign-off;

(b) explains the reason why sign-off was withheld; and

(c) explains the conditions the applicant must meet to obtain sign-off.

The applicant is then responsible for obtaining, within 90 days from the date of the filing of the application , the tribal department's sign-off before the Environmental Health Technical Team issues or denies the Environmental Review Permit. The Environmental Health Technical Team may for good cause extend by up to 30 days the 90 day time period.

§105 Permit Application Requirements

(1) The Land Office will make available to a developer an Environmental Review Permit application to file with the Land Office . The application shall include, at a minimum:

- (a) The applicant's name;
- (b) The applicant's job title if the applicant is submitting the application for the applicant's employer;
- (c) A brief description of the proposed activity;
- (d) The land's legal description or location for the proposed site and a copy of the necessary permits, leases, easements or other possessory interests that allow the applicant to conduct the proposed activity on the described land.
- (e) a certification that the applicant has all permits, licenses, bonds or other clearances, including archaeological historical, and cultural clearances, required by tribal law or regulation to conduct the proposed activity; and
- (f) any information or documentation to support a request for a low-impact activity determination.

(2) An application for commercial development shall be accompanied by a \$100.00 application fee.

§106 Permit Application Procedure

(1) The applicant shall file the application in the Land Office. The Land Office shall:

- (a) provide the applicant with a receipt for the application stamped with the date and time the application was filed and, where required, a receipt for the application fee;
- (b) make seven copies of the original application, and
 - (i) place the original application in the Environmental Review Permit permanent file;
 - (ii) keep one copy on file in the Land Office to be available for public inspection
- (c) provide four copies to the Environmental Review Permit Screening Committee who shall review the application and make a determination that:
 - (i) the proposed activity is low impact and does not require review by designated tribal departments and recommend to the Environmental Health Technical Team that the permit issue. The Environmental Health Technical Team may impose minimal conditions on the permit; or
 - (ii) the proposed activity requires full review by designated tribal

departments and that the appropriate routing slip shall be attached to the four application copies for circulation to the following designated tribal departments for review and sign-off:

Copy I to the Tribal Land Office; the Tribal Environmental Specialist; the Water Resources Department; and Solid Waste Management

Copy II to the Badlands Bombing Range Project; the Pesticides Enforcement Program; the Groundwater Protection Program; and the Natural Resources Regulatory Agency.

Copy III to the Rural Water Supply System; the Water and Sewer Program; and the Health and Human Services Committee Coordinator.

Copy IV to the Revenue Office; the Tribal Employment Rights Office; and the Housing Authority.

(d) provide the Tribal District Office, and Tribal Council representative(s) from the Tribal District, where the proposed site is located with a copy of the application within five days from when the application was filed.

(2) Each designated tribal department must complete its review within three (3) working days from when it receives the application and sign-off or withhold sign-off on the application. A department that withholds sign-off must state the specific reason(s) for withholding its sign-off and describe the conditions the applicant needs to meet to obtain department sign-off. A department's failure to complete its review within three (3) working days shall mean it signs-off.

(3) The Environmental Health Technical Team shall take no more than fifteen (15) working days from the date the application is filed to issue or deny the permit, subject to § 104 (2) . The applicant may consider the permit denied and seek any remedies available under § 107 when the Environmental Health Technical Team fails to complete the application review process within fifteen (15) working days.

§107 Appeals and Judicial Review

(1) (a) Any person aggrieved by an Environmental Review Permit being issued or denied shall seek administrative review within ten (10) working days from that decision by filing a Notice of Appeal with the Secretary of the Land Committee on behalf of the Appeals Committee.

(b) The Secretary of the Land Committee shall upon receipt of the Notice of Appeal provide a copy to the Environmental Health Technical Team and, if the appeal is for the issuance of a permit, a copy to the permittee. The Environmental Health Technical Team shall, within ten (10) working days from receipt of the Notice of Appeal, forward to the Secretary of the Land Committee a copy of all records and documents in the files regarding the permit application and review.

(c) The Appeals Committee shall, within 30 working days from receiving the records and documents, decide the appeal based on the record and any written submissions from interested parties. Written submissions must be filed with the Secretary of the Land Committee within twenty (20) working days from the filing of the Notice of Appeal. The decision of the Appeals Committee shall be final for the Tribal Administration.

(d) The burden of proof is with the party bringing the appeal.

(e) Where the appeal challenges the Environmental Health Technical Team issuing a permit, the permit shall be held in abeyance pending the Appeals Committee's decision.

(2) Any person who was a party to the appeal before the Appeals Committee and receives an adverse decision shall file an appeal for relief other than money damages in the Oglala Sioux Tribal Court against the Environmental Health Technical Team within 30 calendar days from the date of the adverse decision. Tribal Court review is limited to:

(a) whether the decision is supported by substantial evidence;

(b) whether the permit is issued or denied in compliance with the Environmental Review Code; or

(c) whether the action of the Environmental Health Technical Team is contrary to tribal law or is arbitrary and capricious.

§ 108 Authority to Seek Enforcement

The Tribal Environmental Specialist is authorized, with the Tribal Attorney's assistance, to issue a Cease and Desist Order, Compliance Order or other similar order as the Environmental Protection Program shall deem necessary to enforce this Code including seeking in the Oglala Sioux Tribal Court any remedy otherwise available under Tribal law, including, but not limited to, an order that the unpermitted activity be stopped, an order for any unpermitted development to be removed, and/or an order for money damages in an amount necessary to remedy any adverse effects caused by the unpermitted activity.

§ 109 Severability.

In the event that any one or more of the provisions contained in this Code shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of this Code; and this Code shall be construed as if that invalid, illegal or unenforceable provision had never been contained in this Code.

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

ORDINANCE OF THE OGLALA SIOUX TRIBE ESTABLISHING A POLICY FOR THE PROTECTION AND PRESERVATION OF THE ENVIRONMENT AND THE HEALTH AND SAFETY OF THE OGLALA SIOUX PEOPLE OF THE PINE RIDGE INDIAN RESERVATION BY THE ADOPTION OF THE "OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE."

WHEREAS, the Oglala Sioux Tribal Council is empowered pursuant to Article IV (m) & (n) of the Oglala Sioux Tribal Constitution to protect and preserve the Oglala Sioux people's health and welfare and their air, land, water, and historical, cultural and natural resources, within the boundaries of the 1851 Treaty, and

WHEREAS, there is a historical, cultural and spiritual relationship between the Oglala Sioux people and the natural environment, and

WHEREAS, unmonitored growth and development is occurring, and will continue to occur, within the tribe's jurisdiction that is harming, or has the potential to harm, the Oglala Sioux people's health and welfare and their air, land, water, and other historical, cultural and natural resources, and

WHEREAS, unmonitored growth and development threatens or interferes with and has a direct effect on the ability of the tribal government to carry out its responsibilities under its Constitution, ordinances, codes, resolutions, customs and traditions, and

WHEREAS, unmonitored growth and development threatens or interferes with economic activity within the tribe's jurisdiction because it increases the cost of doing business within the Tribe and burdens tribal services, and

WHEREAS, as a result of the adverse effects from unmonitored development and interference there is a critical and continuing need to monitor growth and development within the Oglala Sioux tribe's jurisdiction, and

WHEREAS, it is necessary to collect and analyze information and data on development activity and its effect within the tribe's jurisdiction to prevent damage or harm to the Oglala Sioux people and the Pine Ridge Indian Reservation environment and to manage, develop, and protect the Oglala Sioux people's historical, cultural and natural resources in an environmentally and economically sound manner, now

THEREFORE BE IT ORDAINED, that it is the policy of the Oglala Sioux Tribe in order to protect and preserve the Pine Ridge Indian Reservation environment and to provide a safe and habitable homeland for the Oglala Sioux people's present and future generations by establishing minimum procedures to monitor growth and development within the tribe's jurisdiction which will protect the reservation's environment and promote the Oglala Sioux people's stability and security, and

BE IT FURTHER ORDAINED, that the Oglala Sioux Tribal Council does hereby adopt the "Oglala Sioux Tribal Environmental Review Code" (attached hereto and incorporated herein by this

reference) which shall become effective thirty days after adoption by the Oglala Sioux Tribal Council.

C-E-R-T-I -F-I-C-A-T-I-O-N

I, as undersigned Secretary of the Oglala Sioux Tribal Council, hereby certify that this Ordinance was adopted by a vote of: 15 for; 0 against; 0 abstain; 0 not voting, during a REGULAR SESSION, held on the 28th day of April, 1998.

_____/s/_____

THERESA B. TWO BULLS
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:

_____/s/_____

JOHN W. STEELE
President
Oglala Sioux Tribe

Application Routing Chart (1 of 2)

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Date Filed _____

Permit Application No. _____

Initial _____

ENVIRONMENTAL REVIEW PERMIT APPLICATION

	Applicant's Name:

Applicant's Signature:	

Type of water system development will use (where applicable):

Please attach any permits, licenses, bonds or other clearances, including archeological, historical
required by tribal and federal law to conduct the proposed activity

Please attach information and documentation to support your request, if any, that the proposed

ENVIRONMENTAL REVIEW PERMIT
APPLICATION

ROUTING SLIP

COPY 1

The Environmental Review Permit Screening Committee finds that the proposed activity
requires full tribal department's review.

Sign off (please initial within three days of date submitted)	Withhold Sign-Off (See explanation)	Date Submitted
---	--	----------------

Tribal Land
office

Environmental
Specialist

Water
Resource
Department

Solid Waste
Management

Conditions or explanation to withhold:

ENVIRONMENTAL REVIEW PERMIT APPLICATION

ROUTING SLIP

COPY II

The Environmental Review Permit Screening Committee finds that the proposed activity requires full tribal department's review.

Sign off

Withhold Sign-Off

Date Submitted

(please initial within three
days of date submitted)

(See explanation)

Badlands
Bombing

	Range Project	
	Pesticide Enforcement Program	
	Groundwater Protection Program	
	Natural Resource Regulatory Agency	

Conditions or explanation to withhold:

ENVIRONMENTAL REVIEW PERMIT APPLICATION

ROUTING SLIP

COPY III

The Environmental Review Permit Screening Committee finds that the proposed activity requires full tribal department's review.

Sign off
(please initial within three
days of date submitted)

Withhold Sign-Off
(See explanation)

Date Submitted

Tribal
Employment
Rights
Office

Housing
Authority

Conditions or explanation to withhold:

OGLALA SIOUX TRIBE PERMIT
ENVIRONMENTAL REVIEW

NO. _____

The Environmental Health Technical Team determines that the Environmental Review Permit re
the Permit will issue subject to the following conditions:

ENVIRONMENTAL HEALTH TECHNICAL TEAM:

Dated: _____

Application Routing Chart (2 of 2)

*Digitizer's Note: This one-page chart could not be easily digitized into HTML format while still preserving the original format. Contact the National Indian Law Library for assistance accessing this chart.

ENVIRONMENTAL REVIEW PERMIT
SCREENING COMMITTEE RECOMMENDATION

The Environmental Review Permit Screening Committee has reviewed Application Number: _____ and recommends to the Environmental Health Technical Team (EHTT) that the EHTT issue an Environmental Review Permit subject to the conditions described below since the proposed activity is Low Impact.

Conditions:

Environmental Review Permit Screening Committee

Attest: _____

Dated: _____

Dear Applicant:

I am writing to inform you that the Oglala Sioux Tribal Environmental Health Technical Team has
Review Permit Application, along with information, written or verbal, if any, and now denies
following tribal department(s) withheld sign-off:

for the following reasons:

Under Oglala Sioux Tribal Environmental Review Code, § 107, you have the right to app

Appeals Committee
c/o Secretary of the Oglala Sioux Tribal Council Land Committee
P.O. Box H
Pine Ridge South Dakota 57770

Your appeal must be in writing by filing a Notice of Appeal (attached) and must be received no la
from the date of this letter. This appeal must be accompanied by a copy of your applicator

To expedite the appellate process and to ensure full consideration of your appeal, you may subr

why you believe this decision is in error. This statement of reasons must be filed with the Secretary of the Tribal Council Land Committee within twenty (20) working days from the filing of the Notice of Appeal.

Under Oglala Sioux Tribal Environmental Review Code, § 107(I)(e), if an appeal is taken your permit shall be held in abeyance pending the Appeals Committee's decision.

Dated: _____

Enviro

Dear Applicant:

I am writing to inform you that the Oglala Sioux Tribal Environmental Health Technical Team has reviewed Environmental Review Permit Application No. _____ submitted by you, along with information, written or verbal, if any, and now issues Oglala Sioux Tribe Permit Environmental Review No. _____ for the proposed activity described in your application.

Under Oglala Sioux Tribal Environmental Review Code, § 107, you have the right to appeal this decision to:

Appeals Committee
CIO Secretary of the Oglala Sioux Tribal Council
Land Committee
PO Box H
Pine Ridge, South Dakota 57770

Your appeal must be in writing by filing a Notice of Appeal (attached) and must be received no later than ten (10) working days from the date of this letter. This appeal must be accompanied by a copy of your application and this decision letter.

To expedite the appellate process and to ensure full consideration of your appeal, you may submit a statement of the reasons why you believe this decision is in error. This statement of reasons must be filed with the Secretary of the Oglala Sioux Tribal Council Land Committee within twenty (20) working days from the filing of the Notice of Appeal.

Under Oglala Sioux Tribal Environmental Review Code, § 107(I)(e), if an appeal is taken your permit shall be held in abeyance pending the Appeals Committee's decision.

Dated: _____

Environmental Health Technical Team

Dear

I am sending you an Environmental Review Permit Application, No. _____ as required under the Oglala Sioux Tribal Environmental Review Code, § 106(1)(d). This application is sent to you for informational purposes only.

Dated: _____

Dear Applicant:

I am writing to inform you that the Oglala Sioux Tribal Environmental Health Technical Team has Review Permit Application, along with information, written or verbal, if any, and cannot cor application since the following tribal department(s) withheld sign-o

for the following reasons:

The following conditions must be met, within 90 days from the date of the filing of the appli

Dated: _____

Enviror

ENVIRONMENTAL REVIEW PERMIT SCREENING COMMITTEE

The Environmental Review Permit Screening Committee (Screening Committee) is defined in §102 (7) of the Oglala Sioux Tribal Environmental Review Code (ERC) Pursuant to§106 (1) (c) of the ERC, the Screening Committee has responsibility to provide an initial screening to all Environmental Review Permit Applications to determine whether the proposed development is low impact or requires the full review of the Environmental Health Technical Team (EHTT) The Screening Committee is made up of representatives from three EHTT member departments. These representatives are selected on a rotating basis and serve a three calendar month term for each rotation in which the department is on the Screening Committee. In order to establish the initial rotation and the following rotations the EHTT adopted the following schedule to begin on June 1, 1998:

Date 1998	Department	Representative	Alternate
June	Water Resources	Joe Amiotte	Delinda Simmons
June-July	Tero	Don Twiss	N/A
June/July/August	Housing Authority	Earl Neumeyer	N/A
July/August/September	Water and Sewer Program	Pat Brewer	Rilda Hill

August/September/October	Solid Waste Program	John Her Many Horses	Bobby Sullivan
September/October/November	Environmental Specialist	Kim Clausen	Jody Plenty Wounds
October/November/December	Badlands Bombing Range Project	Emma Featherman Sams	Keena Clausen
November/December/January '99	Revenue Office	Davey Pourier	Carol Weston
December/January/February '99	Health and Human Services Committee Coordinator	Stacey Ecoffey	Fawn Conroy
1999			
January/February/March	Rural Water Supply System	Calvin Ghost Bear	Reno Red Cloud
February/March/April	Land Office	Robin White	Ila Twiss
March/April/May	Community Health Representative	Jim Waters	N/A
April/May/June	Transportation	Diane Zephier	N/A

APPEAL PROCESS

* Digitizer's Note: This one-page chart could not be easily digitized into HTML format while still preserving the original format. Contact the National Indian Law Library for assistance accessing this chart.

Timelines for Taking an Appeal of a Decision of the Environmental Health Technical Team on the Issuance of an Environmental Review Permit.

*Digitizer's Note: Contact the National Indian Law Library for assistance accessing this chart.

10 days Within Which to file Notice of Appeal

----->

10 days from Notice of Appeal for EHTT to Transmit copy of Records to Secretary of Land Committee

*****----->

20 days from Notice of Appeal for any Interested party to file a Written submission to the Appeal Board

*****----->

30 days from the time the records are transmitted by the EHTT to consider and decide the appeal

*****----->

	10 Days	20 Days	30 Days	40 Days	
Decision by the EHTT ->	Notice of Appeal Must be Filed ->	Copy of Records Must be Sent to Secretary of Land ->	Appeal Decided by Appeal Committee	->	

*Indicates that the time could begin to run anytime during this period.

APPEAL COMMITTEE FOR OGLALA SIOUX TRIBAL ENVIRONMENTAL HEALTH TECHNICAL TEAM

-----,

Appellant,

V.

NOTICE OF APPEAL

OGLALA SIOUX TRIBAL ENVIRONMENTAL HEALTH TECHNICAL TEAM,

Appellee.

Notice is hereby given that _____, (check one) _____ applicant, _____ interested party, hereby appeals to the Appeals Committee the Environmental Health Technical Team's decision, or failure to act in a timely manner, to (check one) _____ issue, _____ deny the permit pursuant to Environmental Review Permit Application Number _____ to _____ on _____, 19_____.

Dated: _____

Signature

Name

Address/Phone and fax number

APPEAL COMMITTEE FOR OGLALA SIOUX TRIBAL
ENVIRONMENTAL HEALTH TECHNICAL TEAM

_____ ,

Appellant,

V.

NOTICE TO
ENVIRONMENTAL
HEALTH
TECHNICAL
TEAM

OGLALA SIOUX TRIBAL ENVIRONMENTAL HEALTH TECHNICAL
TEAM,

Appellee.

I am notifying you that the appellant is appealing to the Appeal Committee, your failure to act in a timely manner, or your decision to issue/deny the permit pursuant to Environment Review Permit Application Number _____ to _____ on _____, 19____.

You shall submit to me a copy of all records and documents *in* your files regarding the permit application and review within ten (10) days from your receipt of this Notice.

You shall submit to me any additional written material, if any, to uphold your decision within twenty (20) working days from your receipt of this Notice.

Secretary, Tribal Council Land Committee

Dated:_____

APPEAL COMMITTEE FOR OGLALA SIOUX TRIBAL ENVIRONMENTAL HEALTH TECHNICAL TEAM

Appellant,

V.

NOTICE TO PERMITTEE

OGDLALA SIOUX TRIBAL ENVIRONMENTAL HEALTH TECHNICAL TEAM,

Appellee.

I am notifying you that the appellant is appealing to the Appeal Committee, the Oglala Sioux tribe's Environmental Health Technical Team's decision to issue you Permit No. _____ .

You shall submit to me any written material to uphold the Oglala Sioux Tribal Environmental Health Technical Team's decision to issue you Permit No. _____ within twenty (20) working days from your receipt of this Notice.

The Appeal Committee stays the Oglala Tribal Environmental Health Technical Team's decision to issue you Permit No. _____ until it decides the appeal or the Tribal Court decides an appeal taken to it from the Appeal Committee.

Secretary, Tribal Council Land Committee

Dated:_____

Timelines for Taking an Appeal of a Decision of the Environmental Health Technical Team on the Issuance of an Environmental Review Permit.

*Digitizer's Note: Contact the National Indian Law Library for assistance accessing this chart.

10 days Within Which to file Notice of Appeal

----->

10 days from Notice of Appeal for EHTT to Transmit copy of Records to Secretary of Land Committee

*****----->

20 days from Notice of Appeal for any Interested party to file a Written submission to the Appeal Board

*****----->

30 days from the time the records are transmitted by the EHTT to consider and decide the appeal

*****----->

	10 Days	20 Days	30 Days	40 Days	
Decision by the EHTT ->	Notice of Appeal Must be Filed ->	Copy of Records Must be Sent to Secretary of Land ->	Appeal Decided by Appeal Committee		->

*Indicates that the time could begin to run anytime during this period.

THE NEED FOR AND BENEFITS OF AN ENVIRONMENTAL REVIEW CODE

FOR THE PROTECTION OF THE OGLALA SIOUX PEOPLE

The people of the Oglala Sioux Tribe live on a portion of their ancestral lands reserved by their predecessors as a permanent homeland. It is the responsibility of the Oglala Sioux Tribe to care for and protect the Oglala Sioux people, the lands set aside by their ancestors, and the resources and the environment of the Reservation for the benefit of the Oglala Sioux people both in the present and for future generations. There are significantly increased risks in the modern world from the use of toxic substances which appear in water supplies, in underground water, in the air we breathe, and in the environment around us. There is, as well, the need to assure that the children, the elderly and those at risk live in a safe environment, free of toxic and hazardous materials, and that all the people of the reservation have access to safe drinking water and clean air.

The Oglala Sioux people have always had traditional unwritten laws and practices that by their nature provided for the responsible use and protection of the resources and welfare of the Reservation and its people. But over time there has been a loss of the awareness by some of the people of the importance of following these unwritten traditions. It is, therefore, necessary for the Tribe to translate into written laws some of these traditional protections for members of the tribe from activities which may damage their rights.

These responsibilities mean that it is essential that the Oglala Sioux people^{114 of 176} have the information which is vital to making informed decisions about the present and future uses of reservation lands, water, air and other natural, cultural and historical resources. They must also understand the impacts of proposed and existing development activities on the air, land, water and human resources of the Reservation. The Oglala Sioux people must also assure that the use of the reservations resources are protected from significant deterioration, depletion or pollution as a result of unmanaged development within the Oglala Sioux tribe's jurisdiction.

The federal government has, moreover, adopted a range of environmental laws which impose significant responsibilities on the government and people of the Oglala Sioux Tribe. Failure to comply with or meet the minimum requirements of these laws and regulations could result in substantial fines or penalties, or the loss of significant opportunities to receive federal support for the protection of the Reservation environment. Such fines or mandatory expenditures imposed on the Oglala Sioux people for violations of federal environmental laws or mandatory compliance with such laws could result in significant funds being diverted away from other tribal priorities. Finally, there are significant opportunities for the Oglala Sioux people to benefit from the management of federal environmental laws through delegation of such programs from the United States Environmental Protection Agency.

As a result of the importance of providing protection for the Oglala Sioux people and the natural and cultural resources of the Reservation, the Tribal government created by Tribal Resolution 97-74 the Environmental Health Technical Team (EHTT or Tech Team). The Tech Team is made up of representatives from tribal departments involved with management of programs affecting the health of the Oglala Sioux people and the reservation environment. After many months of working together on the range of issues before them the Tech Team determined that the environmental laws of the Reservation were inadequate to provide the level of protection needed by the Oglala Sioux people or even required by federal law. To begin the process of bringing the tribe's laws and policies current with the needs of the people and the requirements of the law it was decided that it was necessary to get a much better handle on the actual state of the environment and the development that was taking place on the Reservation.

One of the most effective tools for bringing the tribe's laws and policies current was determined to be the adoption and implementation of a Tribal Environmental Review Code. This code would serve a number of important purposes. First, it would provide the important data gathering function that gives the Oglala Sioux people and the Tribal departments information on essential environmental information, such as: how many septic fields are being constructed and where they are; how many hook-ups there are to public water systems and whether they are using dangerous materials such as lead; where businesses are being sited and whether they handling or storing hazardous or toxic materials; whether proposed developments are being sited near drinking water wellheads, or public water ways, or on soil types that will not accommodate leach fields; and an array of additional important information. Besides being an essential source of information about development and its affects on the health and environment the Environmental Review Code would provide the various Tribal departments with notice that developments are being proposed which may involve the mission of that particular department. This notice would allow that department to determine if the tribal regulations which that department is charged with implementing are being met by the developer and his/her contractors. It would also allow the Tribe to assure that related requirements for Tribal Employment (TERO) and financial Revenue Office) responsibilities to

the Tribe are current. In addition, the Environmental Review Code would provide important development information to the Oglala Sioux Tribe through their District Councils and their Tribal Council Representatives.

The Environmental Review Code will also provide the basis for the Tribe to provide enhanced protection for the Reservation's populace and resources through Tribal departments, further enhancing the exercise of tribal sovereignty, rather than having that function fall to the State or Federal agencies which would otherwise claim the need and, therefore, the right to step in. Finally, it provides the information necessary for the Tribe to determine whether the needs of the Oglala Sioux people in environmental protection are being met in the areas of safe drinking water, minimum water quality standards, pesticide control, air pollution, and all related areas. The Environmental review Code is an important tool to allow the Tribe to meet its responsibilities to protect and plan for the future of the Oglala Sioux people and the Reservation environment.

OGLALA SIOUX TRIBE

PROPOSED ENVIRONMENTAL REVIEW CODE

LEGISLATIVE REPORT AND ANALYSIS

Prepared for the
Oglala Sioux Tribal Council
By The Native American
Rights Fund
January 29-30, 1998
Rapid City, South Dakota

SECTION BY SECTION LEGISLATIVE REPORT FOR THE PROPOSED OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

THE FOLLOWING IS A SECTION BY SECTION ANALYSIS OF THE MEANING AND PURPOSE OF THE PROPOSED ENVIRONMENTAL REVIEW CODE FOR THE OGLALA SIOUX PEOPLE.

PROPOSED OGLALA SIOUX TRIBAL ENVIRONMENTAL REVIEW CODE

§100 Tribal Council Findings

Sections 101 (1) through (8) set forth the findings which support the need for the proposed Environmental Review Code, including the following:

- (1) that the Oglala Sioux tribe's Constitution provides that the tribal government is empowered to protect and preserve the health and welfare of the Oglala Sioux people and their land and natural resources;
- (2) that the Tribe carries out its constitutional responsibilities through the adoption of tribal ordinances and regulations;
- (3) that there is a historic, cultural and spiritual relationship between the Oglala Sioux people and the natural environment;
- (4) that there is unmonitored growth and development on the Reservation which has the potential to harm the land and natural resources, and other historical and cultural resources, or threaten the health or welfare of the Oglala Sioux people;
- (5) that unmonitored growth and development on the Reservation will continue to occur threatening to interfere with the ability of the Tribal government to carry out its lawful responsibilities;
- (6) that unmonitored growth and development impacts the economic viability on the Oglala Sioux people and makes it necessary to gather as much information as possible on those activities and their impacts to inform the Tribal Government concerning those impacts;
- (7) that the monitoring and analysis by the Tribe through its agencies of the growth and development is necessary to gauge the impacts of those activities on the health and welfare of the Oglala Sioux people and resources and environment of the Reservation in order to prevent harm to the citizens and resources of the Oglala Sioux Tribe; and
- (8) that monitoring growth will permit the Tribe to collect and analyze information and data on development activity within the Reservation in order to better protect the Reservation's people and resources.

§101 Declaration of Policy

This section sets forth the policy of the Tribe to protect and preserve the Pine Ridge Indian Reservation environment and to provide a safe and habitable homeland for the Oglala Sioux people's present and future generations. This policy is implemented by establishing minimum procedures to monitor growth and development within the tribe's jurisdiction, and adopting minimum procedures which will help to protect the reservation's environment and to promote the Oglala Sioux people's stability and security.

§ 102 Definitions

This section sets out the meaning of particular words as used in the proposed Environmental Review Code. This is done to assure people understand the meaning of these words as they are used in the draft code.

§103 Permit Requirements for Development; Other Tribal and Federal Laws Still Apply

Subsection (1) provides that development within the tribe's jurisdiction is prohibited unless the developer has obtained an Environmental Review Permit from the Tribe. The exception to this requirement is if the development is by a tribal member for a traditional religious activity of the Oglala Sioux people.

Subsection (2) makes it clear that obtaining an Environmental Review Permit is not a substitute for compliance with other tribal or federal laws that apply to the person or activity involved.

§104 Power to Conduct Review and Issue an Environmental Review Permit; Conditions Upon Determination to Withhold A Permit

Subsection (1) places the responsibility for the review of the Environmental Review Permit application on the Tribal Environmental Health Technical Team (hereinafter "Tech Team"). It also delegates the authority to the Tech Team to determine that the permit:

- (a) should issue because the proposed activity will have a low impact on the environment,
- (b) should issue because after review, all of the tribal departments reviewing the permit have signed off on environmental review, or
- (c) deny the permit because one of the tribal departments reviewing the application withholds sign-off.

Subsection (2) requires that when an application is denied because it does not comply with tribal or federal law, then the Tech Team must:

- (a) identify the particular tribal department(s) that withheld sign-off;

(b) explain the reason why sign-off was withheld; and

(c) explain the conditions the applicant must meet to obtain sign-off.

This information is required so that the applicant will know exactly why the permit was denied and what must be done to get the permit issued.

If the applicant still wants the permit, it is his/her responsibility to meet whatever requirements have been listed to obtain sign-off by the tribal department(s) which withheld sign-off. This must, however, be done within 90 days from the time the permit was filed. The Environmental Health Technical Team may, for good cause, extend the 90 day time period for up to an additional 30 days. The judgment as to what is "good cause" is left up to the Tech Team.

§105 Permit Application Requirements

Subsection (1) provides that the Land Office will provide an application form to a developer. The form must have the details of the information required, including the name of the applicant and whether the applicant is a person, a business, religious organization or other entity. If the applicant is not an individual person the applicant must also list his/her job title when filing the application on behalf of a business or other entity. There must be a description of what the developer intends to do along with a description of the land on which the development is to take place. This will allow the reviewers of the permit application to determine whether the developer has an appropriate legal right or title to do the proposed development on the land, and whether he/she has all of the necessary permits, licenses, bonds or other clearances, including archeological, historical, and cultural clearances, required by Tribal law or regulation to conduct the proposed activity.

If the developer believes that the proposed development is low impact and does not require review by all of the tribal departments listed as reviewers, the applicant can list the reasons the proposed development should be considered low impact and request that a permit issue without full review. An example of the type of development that would be included here is fencing.

Subsection (2) provides for a one-hundred dollar (\$100.00) fee to be paid by applicants for a commercial development. This fee is to help defray the costs of review which are typically higher for a commercial development, which usually have more impacts than private development.

§106 Permit Application Procedure

Subsection (1) requires that the application be filed in the Tribal Land Office. The Land Office will then do a the following:

(a) Provide the applicant with a receipt for the application stamped with the date and time the application was filed and, where required, a receipt for the application fee.

(b) Make seven (7) copies of the original application, and

(i) place the original application in the Environmental Review Permit permanent file; and

(ii) keep one copy on file in the Land Office to be available for public inspection.

(c) Provide four copies to the Environmental Review Permit Screening Committee. The Screening Committee must then review the application and make a determination whether:

(i) the proposed activity is low impact and does not require review by designated tribal departments. If it doesn't, the Screening Committee will recommend to the Tech Team that the permit be issued. If the Tech Team agrees it must issue the permit BUT may place minimal conditions on it; or

(ii) the proposed activity requires full review by designated tribal departments. If so, the Screening Committee will attach the appropriate routing slip to four of the application copies for circulation to the following designated tribal departments for review and potential sign-off:

Copy I to the Tribal Land Office; the Environmental Protection Program; the Water Resources Department; and Solid Waste Management.

Copy II to the Badlands Bombing Range Project; the Pesticides Enforcement Program; the Groundwater Protection Program; and the Natural Resources Regulatory Agency.

Copy III to the Rural Water Supply System; the Water and Sewer Program; and the Health and Human Services Committee Coordinator.

Copy IV to the Revenue Office; the Tribal Employment Rights Office; and the Housing Authority.

(d) Provide a copy to the Tribal District Office, and Tribal Council representative(s) from the Tribal District where the proposed site is located. This must be done within five (5) days from when the application was filed. This is done to make sure that the local people and their representatives are aware of proposed developments in their communities and allow local people the opportunity for any appropriate input.

Subsection (2) sets out the procedure for the review of the application once the Screening Committee determines that full review is required. Each tribal department designated in Section 106(1) (c) (ii) is required to review the permit application. Each designated department

must complete its review within three (3) working days from when it receives the application and either sign-off or withhold sign-off on the application. The three (3) day requirement is to assure that the application moves through the review process as quickly as possible consistent with competent review. Any department that withholds sign-off must state the specific reason(s) for withholding its sign-off and describe the conditions the applicant must fulfill to obtain department sign-off. A tribal department may only withhold sign-off if the proposed activity as described in the permit fails to comply with some requirement of tribal or applicable federal law.

If a tribal department fails to complete its review within three (3) working days then the application is treated as though that department has signed off. The reasoning behind this is that it is important that the application receive timely review and doesn't get bottled up on some department's desk.

Subsection (3) sets out the time frame for completion of the review of a permit application. The entire review process available to the tribal departments listed in Section 106(1) (c) (ii) must be completed within fifteen (15) working days from the date the permit application is filed. The fifteen day deadline includes the decision by the Tech Team whether to issue the permit, subject to any conditions attached pursuant to §106(2) [which requires that any department which withholds sign-off must list the reasons why and what must be done to obtain sign-off] . If the Tech Team fails to act on an application within fifteen (15) working days the applicant can treat that failure as a denial of the permit for the purpose of taking an appeal under § 107 (Appeals and Judicial Review).

Failure of the Tech Team to complete review and decision within fifteen (15) working days gives the applicant the option of either seeking appeal immediately, or waiting to see why the permit application has been delayed. If the delay is because a tribal department has withheld sign-off, the applicant can work with that department to remedy whatever deficiency the department has identified as the reason for withholding sign-off. This must, however, be completed within ninety (90) days from the filing of the permit as provided in § 104 The applicant may either work with the tribal department and the Tech Team or take an appeal to the Appeals Committee at any time they feel they have been wrongfully denied sign-off. Once the Tech Team does act on the permit and denies it pursuant to § 104 (1) (c) then the applicant has only ten (10) working days in which to file an appeal.

§107 Appeals and Judicial Review

This section describes the rights of any person who feels their rights have been violated. The person may appeal the action (or inaction after 15 days) of the Tech Team in reviewing and issuing or denying a permit application. Subsection (1) describes the process for taking an appeal to the Appeals Committee, which is made up of the Coordinators of the Committees of the Tribal Council and one representative of the Grey Eagle Society.

Subparagraph (a) provides that any person aggrieved by either an Environmental Review Permit being issued or denied must file their appeal for administrative review within ten (10) working days from that decision. They do this by filing a Notice of Appeal with the Secretary of the Land Committee. The Secretary accepts the filing on behalf of the Appeals Committee. When the Secretary gets a notice of Appeal there are several things that must be done and deadlines for each one. First, on the same date as the Appeal is filed the Secretary must provide a copy of the Notice of Appeal to the Tech Team. This is because it is the action (or inaction within 15 days) of the Tech Team that is being appealed, and because the Tech Team has the records containing

the application and all of the review documents from the various tribal departments. If the appeal is because the Tech Team issued a permit someone believes should, for some legal reason, not have been issued, then the Secretary must also provide a copy to the permittee because the permit is held in abeyance until the appeal is decided..

Once the Tech Team gets the Notice of Appeal it has ten (10) working days within which to forward to the Secretary of the Land Committee a copy of all of the records which it has on the application and the decision (or failure to decide) There is also a time of twenty (20) working days from the filing of the Notice of Appeal in which the Tech Team, the permittee, the person appealing, or any other interested person, may file with the Appeals Committee any information, evidence or other documents relevant to the appeal. The Appeals Committee must then decide the appeal based on the information submitted to it within thirty (30) working days from the time that it receives the records from the Tech Team. The Appeals Committee must uphold the action of the Tech Team unless there is an adequate showing that the Tech Team violated tribal or applicable federal law in some way. The burden of proof is on the party bringing the appeal. If the appeal is on the basis that a permit was improperly issued, the permit is suspended pending the outcome of the appeal.

Subparagraph (c) provides that the decision of the Appeals Committee shall be final for the Tribal Administration. This is the basis for taking an appeal to Tribal Court.

Subsection (2) provides for an appeal to the Oglala Sioux Tribal Court from the decision of the Appeals Committee by any person who was a party to the Appeal before the Appeals Committee. A party receiving a final decision by the Appeals Committee may file an appeal in the Oglala Sioux Tribal Court against the Tech Team within 30 calendar days from the date of the decision of the Appeals Committee. The Tech Team is identified in order to make it clear who should be identified in the appeal. The right to appeal to tribal court is for the sole and limited purposes of reviewing the decision of the Environmental Health Technical Team and/or the decision of the Appeals Committee. The Tribal Court review is strictly limited in subparagraphs (a) through (c) to: (a) whether the decision is supported by substantial evidence; (b) whether the permit is issued or denied in compliance with the Environmental Review Code; or (c) whether the action of the Environmental Health Technical Team is contrary to tribal law or is arbitrary and capricious. Relief is limited to other than money damages.

§ 108 Authority to Seek Enforcement

This section makes the entire code enforceable. Without it the code may mean nothing. It allows the Tribal Environmental Specialist, with the Tribal Attorney's assistance, to issue a Cease and Desist Order against unpermitted development. The Environmental Specialist may, on his/her own, issue an order to a developer to stop what they are doing. But the developer may simply ignore them. So the Environmental Specialist may also go to the Oglala Sioux Tribal Court and ask for any remedy otherwise available under Tribal law, including, but not limited to, an order for unpermitted activity to be stopped, an order for any unpermitted development to be removed, and/or an order for money damages in an amount necessary to remedy any impacts occasioned by the unpermitted activity. This will give the Tribe the ability to make the Environmental Review Code meaningful.

§ 109 Severability

This section provides that should any portion of the Environmental Review Code be held to be invalid, illegal or unenforceable for any reason, the rest of the Code shall not be effected.

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Title II – Tribal Environmental Policy Act (“TEPA”)

61-02-01 Purposes

There are two primary purposes for this Title II: a) To insure that proper and meaningful consideration of environmental factors, is made by any person, government, or corporate entity prior to approval of activities within the Reservation which may significantly affect Sisseton Wahpeton Oyate homelands, the political integrity, economic security, specifically the health and welfare of the Sisseton Wahpeton Oyate; and b) to assure that the groups, individuals, or institutions potentially affected by the activities are adequately informed about the activity.

61-02-02 Definitions for Title II

For the purposes of this Title II, the following terms shall have the meanings set forth below:

- (a) “Action” – means a new and/or continuing set of activities, including projects, programs, and revised codes or regulations entirely or partly financed, assisted, conducted or approved by a Tribal department. Example: construction of a school, or housing project.
- (b) “Activity” or “activities” – means a portion of an action that includes: (1) any significant disturbance of land surface or subsurface within the Reservation; and (2) any other significant disturbance within the Reservation, including research projects, that impact water, domestic and wild animals, air, plants or humans, their facilities and/or cultural, spiritual or historical sites and objects.
- (c) “Affect” – means for the purposes of this Title II the same as impact.
- (d) “Applicant” – means the person, entity, or agency requesting a permit to conduct an Activity or Action, as defined in this Act, within the Reservation.
- (e) “Environmental documents” – means for the purpose of this Title II – Tribal Environment Policy Act, the following definitions:
 - (1) Environmental assessment (EA) – a document designed to assist in determining whether impacts of a proposed activity are significant or not.
 - (2) Environmental impact statement (EIS) – an in depth analysis of the proposed activity which have or may have a significant impact on the Reservation environment.
 - (3) Finding of no significant impact (FONSI) – a determination that no EA or EIS is required for the proposed activity or activities and a permit may be issued; or, that minor special conditions or mitigations may be required and a permit may be issued with the special conditions or mitigations set forth in the permit.

- (4) List of categorical exclusions (CE) – a list of activities maintained and published by OEP that have been determined to not have possible significant environmental impacts and will be excluded from in depth environmental analysis.
 - (5) Environmental permit (permit) – the document issued by OEP to applicants after environmental review that will contain the permission to proceed with the action and any required special conditions or mitigations; or issued as a categorical exclusion.
 - (6) Record of decision – The final decision document issued so that the reader can understand these major issues without referring to the EA or EIS. The record of decision is signed by OEP with enough information on reasons for: 1) disapproving the permit; or 2) the alternatives and their impacts, the rationale in selecting the chosen alternative, and the extent of mitigation and monitoring the public can expect.
- (f) “Permit applicant” – means any person or Department Administrator, Program Director or Tribal Officer filing an application with OEP for an Environmental Permit.
 - (g) “Person” – means any individual over eighteen (18) years of age, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal agents or assignees, including a Department Administrator, Program Director or Tribal Officer within the Tribal Government, its agencies, departments, committees, and sub-entities.
 - (h) “Pollutant” – means any substance or energy entering the environment as a direct or indirect result of human activity that alters or has the potential to alter the physical, chemical, biological, cultural, spiritual or aesthetic properties of the environment.
 - (i) “Primary Family Residence”- A home where a family lives continuously for a minimum of six months. This home is recognized as a being the permanent residence for a family. Primary Family residence status is evidenced by the family calling the home in question its permanent residence, the family’s ability to receive its mail there, the family being seen by neighbors and community members as living there on at least a weekly basis, and by the home being recognized as the primary residence of the family by tribal programs and/or one of the resident’s employers.
 - (j) “Tribal Environmental Policy Act” (TEPA) – means this entire Title II.

61-02-03 General Roles

- (a) OEP shall draft regulations for the administration and enforcement of this TEPA, and present to Tribal Council for approval. OEP shall then inform the public.

- (b) OEP shall post in public places, and on the OEP Website a listing of proposed activities that are: 1) categorically excluded, 2) possibly harmful and in need of an EA; or 3) to have "low impact" on the environment and not subject to in-depth study.
- (c) OEP shall have the administrative responsibility as the initial contact for permit applicants. Within 30 days of receipt of the permit application, OEP shall provide a report to EPAC that a permit application has been filed and include a brief description of the proposed activity. In some instances OEP may find no need for an applicant to need a permit. OEP will then post such an instance as stated in (b) above.
- (d) OEP shall have responsibility for maintaining a reference system of permit applications filed with OEP and determinations made on permit applications.
- (e) Within thirty (30) days of receipt of the permit application, and any draft environmental documents, the OEP shall make a preliminary determinations whether a proposed activity based on the nature of the activity: 1) could have "significant" adverse impacts; 2) is on the list of categorical exclusions; 3) possibly harmful and in need of an environmental assessment; or 4) probably, more likely than not, has no significant adverse environmental impact or "low impact" on the environment and is not subject to in-depth study.
- (f) All permits are one (1) year or less in duration. Should a project's duration exceed one (1) year, a permit must be renewed prior to the end date of the original permit.
- (g) If the OEP's preliminary determination is that there is no significant impact or need for in-depth environmental study, OEP shall issue the environmental permit and, if needed, state any required special conditions or mitigations to be set forth in the environmental permit.
- (h) If the permit applicant is a Department Administrators, Program Director or Tribal Officer, he/she shall prepare his/her own respective environmental documents based on their span of authority over their program responsibilities.
- (i) If a proposed activity requires an EA or EIS, a public hearing shall be scheduled by the permit applicant to take place within thirty (30) days of receipt of notification by the permit applicant that an EA or EIS is required. The permit applicant shall hold the hearing and the applicant shall be given an opportunity to give a presentation on the proposed activity for a reasonable amount of time. The notice shall state the time and place of the hearing and state the subject matter. The notice shall be published in the tribal newsletter at least fifteen (15) days before the hearing is held.
- (j) The permit applicant shall, according to the provisions of this TEPA, write the draft environmental documents, (that is, the draft EA or EIS, draft Permit, mitigated FONSI, and draft record of decision) and make the draft environmental documents available for public review for at least thirty (30) days.

- (k) Within ten (10) days of receipt of the draft environmental documents from the permit applicant, the OEP shall make a final decision on whether the environmental documents are adequate and sufficient to make a final decision on the permit application. The OEP shall approve, approve with conditions, or disapprove the permit application. OEP shall issue the environmental permit. The OEP shall advise the permit applicant of the appeal procedures.
- (l) If a non-tribal permit applicant or person contests the OEP's final decision, the applicant or person may request a public hearing before the EHP. A request for hearing must be filed within fifteen (15) days of the date of the OEP's signature on environmental documents. The EHP shall conduct the public hearing and issue an administrative order deciding the matter.

61-02-04 Types of Land-Use Activities this TEPA applies to:

- (a) Every person seeking to conduct an activity defined by §61-02-02(b) shall submit a permit application to OEP.
- (b) Structures in existence prior to the adoption of this Title and homes that serve as Primary Family Residences for SWO tribal members are exempt from the permit requirements of this Title. Modification to such structures or any new or additional activities constructed on the structure must have a permit or an exemption letter as required by this Title.
- (c) All persons, entities, or agencies conducting any of the following activities within the exterior boundaries of the Reservation shall be required to obtain an environmental permit prior to taking any physical action upon the environment:
 - (1) Preparation of a site for the construction of a building or area for purposes of human habitation, business use, or public area;
 - (2) Construction, placement, or expansion of any structure to be used for industrial, commercial, or residential purposes;
 - (3) Construction, placement, or expansion of any public or private road or bridge, right of way, transportation facility, or public facilities of any nature; or
 - (4) Other activities such as constructing dams and timber harvest; and other potential ground or air disturbing activities.
- (d) Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

"Permittee consents to the jurisdiction of the Sisseton Wahpeton Oyate/Oyate with respect to those activities conducted pursuant to this

permit issued by the Office of Environmental Protection pursuant to the provisions of the Sisseton- Wahpeton Oyate Tribal Environmental Protection Code. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit."

61-02-05 Direct and Indirect Costs of Permit Application Process

- (a) An application fee shall be paid by the permit applicant prior to processing the application in an amount determined by OEP and set forth in regulations approved by Tribal Council.
- (b) The permit applicant may be required to pay for the direct and indirect costs of environmental review, including costs of necessary studies, consultants, and preparation of any required environmental documents including the EA or EIS and record of decision.
- (c) If the action is a tribal activity or project and the Department Administrator, Program Director or Tribal Officer has submitted the permit application, the Tribe shall fund the cost of the direct and indirect costs of environmental review, including costs of necessary studies, consultants, and preparation of any required environmental documents including the EA or EIS and record of decision.

61-02-06 Environmental Review Procedure

- (a) In addition to requirements set forth in regulations implementing this Title, the general content to be included in the EIS includes:
 - (1) The environmental impacts of the proposed activity or activities;
 - (2) Any adverse environmental effects which cannot be avoided should the project be implemented;
 - (3) Alternatives to the proposed action; and
 - (4) Environmental impacts of the proposed alternatives.
- (b) Tribal regulations implementing this Title provides specific EIS format requirements which include:
 - (1) Cover sheet; Summary page; Purpose and Need Statement; Description of the proposed activity and alternatives; Description of the affected environmental areas; Environmental consequences; List of preparers; and an Appendix.

- (c) EIS analysis requirements are specifically set forth in regulations which generally include:
- (1) Use of a systematic, interdisciplinary approach that insures the use of natural and social sciences;
 - (2) Application of best available science to the proposed activity and alternatives;
 - (3) Examination of the relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity;
 - (4) Any irreversible and irretrievable commitments of resources which would be involved if the proposed action were to occur;
 - (5) The analysis of cumulative impacts;
 - (6) The analysis of social, cultural, and economic impacts; and
 - (7) Any beneficial impacts the project may produce.
- (d) An activity may be deemed to have a significant environmental impact if any of the following conditions (but not limited to the following conditions) stated below, exist:
- (1) The proposed activity has been determined by a federal, local, or state agency, to have a significant environmental impact;
 - (2) The proposed activity may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and/or distribution of the significant percentage of the population of the Reservation;
 - (3) The effects resulting from any structure or facility constructed or operated under the proposed activity may conflict with Tribal, local, regional, Federal or State land use plans or policies;
 - (4) The proposed activity may significantly affect wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposed action may be located in wetlands;
 - (5) The proposed activity or any structure or facility constructed or operated under the proposed activity may significantly affect threatened and endangered species or their habitats identified by the Department of Interior's list or the Tribe's list;
 - (6) Implementation of the proposed activity may directly cause or induce changes that significantly displace population; adversely affect the character of

existing residential areas; adversely affect a floodplain; or adversely affect significant amounts of important farmlands;

- (7) The proposed activity may, directly, indirectly or cumulatively have significant adverse effects on parklands, preserves, or other public lands or areas of recognized scenic, recreational, archaeological, cultural, spiritual or historic value; and/or
- (8) The proposed activity may, directly or through induced development, have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats.

61-02-07 Permit Limitations, Conditions and Mitigation

- (a) After a final determination by OEP, upon finding no significant environmental impact, determining whether a categorical exclusion applies, or upon the completion of an EA or EIS, OEP will issue the permit.
- (b) In issuing a permit, OEP may include conditions and mitigation requirements to reduce, prevent, or mitigate significant adverse impacts and to protect the Reservation environment from degradation. Mitigation may include monetary compensation to the Tribe or others for adverse impacts to the Reservation environmental and natural resources, and may also include requirements of replacement or restoration of impacted resources.

61-02-08 Record of Decision

- (a) In addition to requirements set forth in regulations implementing this Title, within fifteen (15) days of the OEP's decision to sign the final EA or EIS, to issue a permit, to deny a permit, or to issue a permit subject to conditions, the OEP shall write a record of decision which shall briefly state:
 - (1) The reason(s) in support of the decision;
 - (2) Advise the applicant of the procedure to be followed if the applicant chooses to appeal the decision;
 - (3) Inform the applicant of what the conditions are, if the permit is issued subject to conditions;
 - (4) If the permit is denied, advise the applicant whether the OEP would reconsider the applicant if certain changes were made; and
 - (5) Advise the applicant that failure to comply with the order may be grounds for enforcement and penalties under this Title.

- (6) Advise the applicant of the appeals process under this Title.
- (7) Post the permit information on the OEP website.

61-02-09 Enforcement

- (a) OEP shall enforce this Title, with the assistance of the Tribe's law enforcement officials in emergency situations. OEP shall have the authority to bring emergency actions in Tribal Court when necessary. Such actions against the Sisseton-Wahpeton Oyate, its agencies, departments, committees, or other sub-entities shall be limited to the issuance of declaratory and/or injunctive relief and shall be brought to the Tribal Chairman for resolution.
- (b) Any person who fails to comply with any provision of this Title shall be subject to penalties as well as any other remedies set forth herein or in implementing regulations. In the event of non-compliance, the OEP shall serve the alleged violator, in person or by certified mail, with a notice of non-compliance. The notice of non-compliance shall further state which provisions of this Title are allegedly not being complied with. The notice of non-compliance shall further specify the remedial action(s) that must be taken to correct such non-compliance, as well as the Title provisions or regulations mandating that such action(s) shall be taken.
- (c) Any permit issued by the OEP may, after an opportunity for a hearing, be modified, suspended, or revoked, in whole or in part, for cause, including but not limited to:
 - (1) Violation of any terms or conditions of the permit or this Title;
 - (2) Misrepresentation or failure to disclose fully all relevant information; or
 - (3) A change in any condition that requires either a temporary or permanent modification or cancellation of the permit.
- (d) Whenever, on the basis of any information available to it, the OEP finds that there is cause for modifying, suspending, or revoking a permit, in whole or in part, the OEP shall notify the permittee by certified mail or personal service of its intention to modify, suspend, or revoke the permit, in whole or in part. Such notice shall specify the information upon which the OEP relies, and, if OEP intends to modify the permit, shall explain the modifications that OEP intends to make in the permit. Such notice shall be both published and posted in one or more public places in a timely manner. OEP shall hold a public hearing and give public notice of the date, time, and place of the public hearing on a proposed permit modification, suspension, or revocation within thirty (30) days of the public hearing.
- (e) In the event of non-compliance with any notice of non-compliance, the OEP may order the cessation of such activity without additional notice to the alleged violator if

the non-compliance is not remedied within five (5) days of the public hearing. The alleged violator shall be served with a statement of the reason(s) for the cessation order, and the actions the alleged violator must take before the order will be lifted. A copy of this cessation order and a statement of reasons(s) for the order shall be promptly delivered to the Chairman of the Sisseton Wahpeton Oyate.

- (f) In the event an alleged violator fails to take action in accordance with a cessation order served pursuant to this Title, the OEP may pursue one or more of the following remedies:
- (1) Continue its cessation order;
 - (2) Impound vehicles and equipment after written notice to the alleged violator;
 - (3) Request the Secretary of the Interior to serve notices of intent to cancel any relevant lease pursuant to federal law for using the leased premises for unlawful conduct or for an unlawful purpose, specifying the basis for the notice; and/or
 - (4) Assess penalties as set forth in this Title and take any other action deemed appropriate so long as the rights of due process guaranteed by the Indian Civil Rights Act, 25 U.S.C. §§ 1301 *et seq.*, and the Constitution of the Sisseton Wahpeton Oyate are not infringed upon.
- (g) Civil Penalties – Any person found violating this Title shall be subject to civil penalties of up to five thousand dollars (\$5,000.00) per day for each day of such violation or continued violation of an order to cease Activity. The OEP shall personally, or via certified United States mail, first class, serve the alleged violator with notice of the penalty. The penalty shall be due and payable to the OEP within twenty (20) days of such notice. Failure to pay any penalties imposed shall be considered an additional violation of this Title.
- (h) Any person aggrieved by any enforcement action taken by the OEP may appeal to the Environmental Hearing Panel and request a hearing for consideration and determination of whether OEP's enforcement action is fair, just and supportable by the circumstances. The filing of an appeal shall not stay any order to cease an activity, impound vehicles or equipment or both and/or restrict access to the site of any operation, or pay penalties.

61-02-10 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

Title 27

Tribal Environmental Policy Act (TEPA)

Chapters:

27.01	General Provisions
27.02	Procedures
27.03	Environmental Review
27.04	Standards

Chapter 27.01

General Provisions

Sections:

27.01.01	Title
27.01.02	Definitions
27.01.03	Administration of Title
27.01.04	When this Title is Applicable
27.01.05	When this Title is Not Applicable
27.01.06	Sovereign Immunity
27.01.07	Severability
27.01.08	Policies and Procedures

Section 27.01.01 Title

This Title shall be known as the Jamestown S' Klallam Tribal Environmental Policy Act ("TEPA") and may be cited as the TEPA or the Tribal Environmental Code.

Section 27.01.02 Definitions

For the purposes of this Title, certain definitions may be included in referenced or incorporated documents, if they are not included in the following list:

- A. "Affected party" includes citizens or agents of the Jamestown S'Klallam Tribe that will or may be affected by proposed action subject to this Title;
- B. "Agency" means any Jamestown S'Klallam Tribal board, commission, department, or officer, authorized by law to propose rules for adoption by the Tribal Council or to adjudicate contested cases, except that the term "agency" shall not include either the Tribal Council or the Tribal Court;
- C. "Applicant" means any person, entity, tribe or agency seeking approval or a permit;
- D. "Categorical Exemption" means an exemption to the coverage of this Title, with each exemption specifically adopted by the Tribal Council. An exemption can be partial or whole, but must not be in conflict with existing federal, Tribal or state law or regulations, as applicable;
- E. "Chief Executive Officer" or "CEO" means the Tribe's senior executive officer or their designee;
- F. "Council" or "Tribal Council" means the Jamestown S'Klallam Tribal Council;
- G. "Critical habitat," "endangered species," "wildlife," "plant," "species" and "threatened species" have the same meanings as defined in Section 3 of the Federal Endangered Species Act, 16 USC § 1532, unless the context clearly requires a different meaning. As used herein, "Protected Species" means both "endangered" and "threatened species";
- H. "Cultural Resource" means:
 - (a) Any product of human activity or any object or place given significance by human action or belief, and in the case of this Title, actions and beliefs related to the Tribe, its ancestors and its citizens;
 - (b) Any archaeological materials or objects, including human remains, of cultural or historic significance obtained from cultural or historic sites; and

(c) Any protected archaeological, cultural, or historical site;

I. "Culturally Sensitive Area" means an area known to contain, or suspected of containing, Cultural Resources or important archaeological and spiritual sites, including geologic features, historical buildings, monuments, cemeteries, and other significant sites contributing to the local Indian history and important to the continuance of the Tribe's identity and culture;

J. "Determination of Mitigated Significant Impact" means the written decision by the Planning Director that a proposal which incorporates the defined mitigation measures is not likely to have a significant adverse impact. The defined mitigation measures become a requirement for the project to proceed;

K. "Determination of No Significant Impact" means the written decision by the Planning Director that a proposal is not likely to have a significant adverse environmental impact;

L. "Determination of Significance" (DS) means the written decision by the Planning Director that a proposal is likely to have a significant adverse environmental impact, and therefore an EIS is required;

M. "Environmentally Sensitive Area" means an area that meets the criteria set out in Washington Administrative Code ("WAC") 173-360-520 (1) to (4);

N. "Impact" means the effects or consequences of actions and shall include direct and indirect effects, as well as the cumulative effects of the action and other existing, proposed or probable actions;

O. "Land Consolidation Plan" means the plan adopted by the Tribe and approved by the United States Bureau of Indian Affairs in 1986;

P. "Mitigation" means:

(a) avoiding the impact altogether by not taking a certain action or parts of an action;

(b) minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or

(e) compensating for the impact by replacing or providing substitute resources or environments

Q. "National Environmental Policy Act (NEPA)" means the federal act (42 U.S.C. 4321 et seq) that requires federal agencies to consider the environmental impacts of proposed federal projects which could significantly affect the environment;

R. "Natural Resources Department" means the Jamestown S'Klallam Natural Resources Department;

S. "NR Director" means the Director of the Natural Resources Department or their designee;

T. "Non-project Actions" involve land use and other management plans that govern the development or management of land (generally describes a series of connected actions);

U. "Person" means any individual; association of individuals; partnership; private, public, Tribal or municipal corporation or LLC, Tribal enterprise, company, business enterprise, any county, Tribal, federal, state or local government, or any governmental entity;

V. "Planning Department" means the Jamestown S'Klallam Tribe Planning Department;

W. "Planning Director" means the Director of the Planning Department for Jamestown S'Klallam Tribe.

X. "Policy and Procedures" means any policies and procedures which have been promulgated by the Tribe to implement the provisions of this Title;

Y. "Pollutant" means any substance or energy entering the environment as a direct or indirect result of human activity that alters or has the potential to alter the physical, chemical, biological, cultural, spiritual or aesthetic properties of the environment;

Z. "Pollution" shall mean the presence in the environment of sufficient quantities of pollutants as may be injurious to public health, safety or welfare, or to domestic, commercial, agricultural, or recreational uses, or to livestock, wildlife, fish or other aquatic life;

AA. "Proposed Action" and "Action" mean a development project, construction, or other activity for which an applicant is requesting tribal review, approval or a permit. Actions also include the adoption or amendment of tribal comprehensive land use plans, building and zoning codes or other tribal legislative proposals.;

AB. "Ordinary High Water Mark (OHWM)" means the mark on all lakes, streams and tidal waters which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland: Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high water and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood;

AC. "Protected lands" means:

(a) All lands within the Reservation; and

(b) All lands outside the Reservation which are owned by the Tribe or held by the United States in trust for the Tribe or its citizens;

AD. "Reservation community" means all persons who reside on or otherwise conduct business or other activities on any lands, whether trust or fee, within the exterior boundaries of the Jamestown S'Klallam Reservation;

AE. "Reservation resources" or "Reservation environment" means land, surface and ground water, fish, biota, plants, animals, air, wildlife and capital improvements on the Jamestown S'Klallam Reservation;

AF. "State Environmental Policy Act (SEPA)" means the Washington State Environmental Policy Act, Ch. 433.21C RCW as amended. Other states may have similar acts, with similar titles and will be referenced, when appropriate, by appending the state name to the state environmental policy act;

AG. "Significant" means a reasonable likelihood of more than a moderate adverse impact on environmental quality. Significance involves context and intensity and does not lend itself to a formula or quantifiable test. Considerations in determining significance include:

(a) Context, which may vary with the physical setting;

(b) Intensity, which depends on the magnitude and duration of an impact; and

(c) Severity of an impact, which should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred;

AH. "Tribal Environmental Policy Act (TEPA)" means the environmental policy act of the Jamestown S'Klallam Tribe as codified in this Title 27 of the Tribal Code. Other tribes may have similar acts, with similar titles and will be referenced, when appropriate, by appending the name of the tribe to its tribal environmental policy act, ordinance or code;

AI. "Tribal Non-Fee Land" means those lands, both trust and reservation, for which the United States Government, as trustee, holds legal title for the Tribe, as beneficiary. It includes uplands, tidelands and wetlands within the boundaries of trust and reservation lands;

AJ. "Tribal Fee Land" means all land owned by the Tribe in fee simple;

AK. "Tribal Treaty Rights Land" means land that the Tribe may have treaty rights on, or rights to cultural resources on, but in which the Tribe has no fee interest or trust or reservation interest; and

AL. "Tribe" means the Jamestown S'Klallam Tribe.

Section 27.01.03 Administration of Title

Section 27.01.04 When this Title is Applicable

The requirements of this Title shall apply for the following Actions on Tribal Non-fee Land:

- A. Land development and project proposals subject to approval or permit by the Tribe; or
- B. Any other action that may have a significant adverse impact to the environment, including impacts to Treaty Rights, cultural or archeological resources of the Tribe.

The requirements of this Title shall also apply when the Tribe determines that it should be the lead agency for project environmental review on Tribal Fee Land and Tribal Treaty Rights Land.

Section 27.01.05 When this Title is Not Applicable

Then requirements of this Title shall not apply when:

- A. Members of the Tribal staff are acting in a non-lead agency, consultative capacity regarding environmental and related issues on Tribal Fee Land, Tribal Treaty Rights Land or other fee land, then this Title standards will not apply. In those cases, the Tribal staff shall formulate recommendations based upon best available science and the laws and regulations applicable to the land under NEPA, SEPA, or other environmental policy act of another jurisdiction, including those of other tribes, as appropriate.
- B. Any traditional or religious activities are being conducted by a citizen or citizens of the Tribe, unless a permit is required by any other provision of the Tribal Code.

Section 27.01.06 Sovereign Immunity

The Tribe, and each its constituent parts, is immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Tribal Council according to Title 22 of the Tribal Code. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts.

Section 27.01.07 Severability

If any provision of this Title or its application to any person or legal entity or circumstances is held invalid, the remainder of this Title or the application of its provisions to other persons, legal entities or circumstances shall not be affected.

Section 27.01.08 Policies and Procedures

The Planning Department is hereby authorized by the Tribal Council to develop policies and procedures for the implementation of this Title. The policies and procedures, shall include, but are not limited to:

- A. Provisions for interpreting and implementing this Title and for providing uniform guidelines to all Tribal agencies and departments and affected third parties;
- B. Procedures to be applied to the preparation, scope and coverage of an Environmental Checklist, including rules for timing of review, comment, data collection and other information; and
- C. Procedures for public notification of actions taken and documents prepared.
- D. All other reasonable actions as may be required to fulfill the intent of this Title.

Chapter 27.02

Procedures

Sections:

- 27.02.01 General Procedures**
- 27.02.02 Notification.**
- 27.02.03 Screening.**
- 27.02.04 Time Limits**
- 27.02.05 Cost of Documentation**
- 27.02.06 Emergency Activities**
- 27.02.07 Consultation Requirements**
- 27.02.08 Actions Subject to Environmental Review**
- 27.02.09 Actions not Subject to Environmental Review**
- 27.02.10 Notification**

Section 27.02.01 General Procedures

The following procedures will be used to conduct the environmental review and to assess potential environmental impacts on Tribal non-fee lands and other lands when the Tribe determines that it should be the lead agency for project environmental review:

Section 27.02.02 Notification.

Applicants seeking Tribal approval for a proposed project or land use action shall notify the Planning Department, in writing, concerning the proposed activity.

Section 27.02.03 Screening.

Upon receipt of the applicant's notification, the Department will perform an initial screening of the proposed activity and will notify the applicant, in writing, whether the project:

- A. Is categorically exempt from the requirements of this Title; or
- B. Is categorically exempt, but requires completion of an Environmental Checklist due to the location or scale of the proposed activity; or

C. Requires completion of an Environmental Checklist and demonstration that the action is in compliance with all applicable tribal, local, state and federal regulations; or

D. May require a federal environmental review, per the National Environmental Policy Act, pursuant to the proposed action involving a federal decision, action or funding. This may require that a neutral third party be retained to perform an environmental review, assessment, evaluation or Environmental Impact Statement ("EIS").

Section 27.02.04 Time Limits

Time limits imposed in this Title are guidelines and shall be construed in a manner that accomplishes the goals of this Title.

Section 27.02.05 Cost of Documentation

The cost of collecting and preparing any documentation and data shall be borne by the applicant.

Section 27.02.06 Emergency Activities

In the event of an emergency (i.e., flood, earthquake, etc.) declared by the Tribe, or declared by State or Federal governments and concurred upon by the Tribe for lands within its jurisdiction, construction and other activities that are directly related to the emergency shall be exempted from this Title, except that, to be declared a permanent structure after the emergency is over, they will be reviewed after the fact and be subject to conditions, removal and/or restoration as a result of an environmental review.

Section 27.02.07 Consultation Requirements

The Planning Department shall consult with other Tribal departments during the TEPA process commensurate with the type and scope of the environmental document. Consulted departments have a responsibility to respond in a timely and specific manner to requests for comments.

To the fullest extent possible, the Department will conduct the environmental review procedures in concurrence with any other environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other relevant environmental review laws and executive orders.

When the Tribe does not have a lead agency role, the Planning Department shall coordinate project review for Tribal capital projects and land-use management plans to assure consistency with Tribal goals and standards. When providing review as a non-lead agency, the Planning Department will consult with other Tribal departments.

Section 27.02.08 Actions Subject to Environmental Review

The following activities will normally be subject to environmental review and include, but are not limited to, the following:

A. Site development, for any reason, if the constructed footprint will exceed 400 sq. ft. However, if development is planned within a culturally or environmentally sensitive area, or required buffer, the proposal will also be subject to environmental review if the planned footprint is less than 400 sq. ft.;

B. Road construction or repair and right-of-way maintenance;

C. Construction or repair of culverts, underground structures or surface drainage ditches;

D. Construction of any water or flood related project if there will be any activity, wholly or partially, within the Ordinary High Water Mark, regardless of the nature or extent of the construction activity, including dredging, drilling, dumping, filling, removal of any sand, gravel, or minerals; or bulkheading, diking, riprapping or driving of piling;

E. Timber harvesting;

F. Proposed agricultural activities, including maintaining livestock, growing crops for commercial sale, or other farming activities;

G. Proposed aquaculture activities;

H. Spraying or other application of pesticides and herbicides except for use by single family residences or for normal landscaping activities on Tribal properties outside critical area buffers;

I. Clearing and grading where the proposed activity exceeds 7,000 sq ft;

J. Alteration of any building or structure of cultural or historical significance to the Tribe;

K. Actions for which a permit or approval is required by any other provision of the Tribal Code;

L. Any ground or surface water withdrawal;

M. Non-project Actions such as land-use and other management plans that govern the development or management of land (usually of a series of connected actions);

N. Activities that would normally be considered a categorical exclusion but due to their nature, scale or location, would result in a disturbance to:

(a) Environmentally sensitive areas;

(b) Culturally sensitive areas; or

(c) Any area greater than 7,000 sq ft of land.

Section 27.02.09 Actions not Subject to Environmental Review

The following activities shall be exempted from environmental review under this Title, except that the proposed activities may be regulated or permitted under other codes, ordinances, or agreements of the Tribe:

A. Residential home improvements;

B. Construction of garages, sheds, or carports that are attached or accessory to existing residential structures;

C. Businesses conducted in the home except where construction is required or hazardous materials are used or stored; or

D. Traditional, cultural or religious activities conducted by citizens of the Tribe, unless a permit is required by any other provision of the Tribal Code.

Section 27.02.10 Notification

Upon completion of the screening process, the Planning Department shall inform the applicant, in writing, of the proposal status, i.e.,:

- A. If the Department determines that the proposal is Categorically Exempt from a TEPA review, the provisions of this Title shall be deemed satisfied. This does not exempt the applicant from meeting any other applicable Tribal, local, state or federal regulations;
- B. If the Department determines that the proposal is ordinarily considered "Categorically Exempt," but under the conditions of the proposed project will require environmental review, then the applicant shall follow the procedures for environmental review set out in this Title;
- C. If the Department determines that the proposal is subject to an environmental review under this Title, the applicant shall be notified in writing and shall be required to complete an Environmental Checklist. The applicant may request a meeting with the Department to obtain information about the process; or
- D. If the Department finds that the proposal may be subject to an environmental review under NEPA, the applicant shall be responsible for coordinating with the lead federal agency. If the applicant is required to prepare environmental documentation, either an Environmental Assessment or an Environmental Impact Statement, under NEPA Regulations 40 CFR Part 1500, the provisions of this Title shall be deemed satisfied.

Chapter 27.03

Environmental Review

Sections:

- 27.03.01 Documentation**
27.03.02 Review of Impacts
27.03.03 Determination
27.03.04 Notification
27.03.05 Appeals

Section 27.03.01 Documentation

If the Department makes a determination that a proposed activity is subject to an environmental review under the requirements of this Title, the applicant shall be required to provide documentation, which may include, but is not limited to:

- A. Environmental Checklist. The Department will obtain information about the proposed activity through review of a completed Environmental Checklist. The Tribe shall make the Checklist available to the applicant, who shall be responsible for accurately and fully completing the document;
- B. Supplemental Documentation. To further assess the nature and scale of potential environmental impacts, the Department may require further exploration of the proposed action in the form of supplemental documentation; or
- C. Functionally Equivalent Documentation. The Department may use existing environmental or other documents if they adequately address the proposed activity. The proposal or action for which the document was prepared need not be identical to the proposed action, but must provide a reasonable basis for comparison and analyses. The Department shall review existing documents and determine whether the material is relevant and adequate.

Section 27.03.02 Review of Impacts

The Department shall review the applicant's completed Environmental Checklist, along with any additional documentation or information concerning the proposal, for the purpose of determining whether the proposed activity satisfies the policies and intent of the TEPA. The Department, in conducting its review of impacts, may include or consider the following:

A. Environmental Checklist. The Department will obtain information about the proposed activity through review of a completed checklist;

B. Consultation with Interested Parties and Agencies. Before issuing its determination, the Department or a consultant may consult with and solicit comments from any federal, state, or local governmental agency, which has jurisdiction by law or special expertise with respect to any potential environmental impact;

C. Site Visits/Meetings. To ensure completeness and accuracy of the checklist, the Department may request site visits and/or meetings with the applicant in order to obtain further information about the proposed activity;

D. Analysis and consideration of supplemental studies. Cost of conducting additional studies, if any, shall be borne by the applicant;

E. Opportunity for Tribal Citizen Comment. The Department shall provide opportunity for the Tribal citizens to review and comment on the environmental impacts of the proposed activity; and

F. Consideration of alternatives. The Department may request the applicant to explore reasonable alternatives and to evaluate the comparative merits of alternative courses of action.

Section 27.03.03 Determination

The Department shall take no more than 14 days upon receipt of a completed application to conduct a project review and make a determination.

After reviewing the completed Environmental Checklist, and any supplemental documentation, the Department shall make one of the following determinations:

A. "Determination of No Significant Impact" means that the Department, upon completing its review of the Environmental Checklist, will issue a determination of no adverse environmental impacts; or

B. "Determination of Mitigated Significant Impact" means that the Department, upon completing its review of the Environmental Checklist, require mitigation measures to reduce the action below the threshold of significant adverse impacts; or

C. "Determination of Significant Impact" means that the Department has identified one or more of the following conditions in the course of its review:

(a) Absent or insufficient information to perform a rigorous analysis of the potential environmental impacts;

(b) Inability to obtain required permit(s), where applicable, from local, state or federal agencies;

(c) Failure to comply with applicable federal consultation laws; or

(d) Potential for significant, adverse impacts that cannot be mitigated unless alternative proposal designs or activities are taken into consideration.

Applicants may work with the Department to address these conditions and may submit further analysis, alternatives and considerations in order that the activity may be reconsidered and satisfy this Title.

If the Department, upon completing its review of the Environmental Checklist, finds that the action will have significant, adverse environmental impacts and that those impacts require further evaluation and a substantive evaluation of alternatives, an Environmental Assessment or Environmental Impact Statement will be prepared by the applicant that meets the criteria for content and form established in 40 CFR Part 1502 of the US Council on Environmental Quality regulations.

Section 27.03.04 Notification

A. Written Notification to Applicant. Upon making its determination, the Director shall prepare a written notification, addressed to the project applicant, summarizing the determination. A copy of the Director's determination shall be provided to the CEO.

B. Binding Agreement. The written notification shall constitute a binding agreement between the applicant and the Tribe. Violation of the terms, during any phase of the activity may be subject to enforcement procedures.

C. Effectiveness and Expiration of a Determination of No Significant Impact. A Determination shall be valid for a period of three (3) years, or the expiration date of the associated permit, whichever is longer, subject to any conditions of approval related to the timing of regulated activities on all or a portion of the development proposal site. A Determination shall cease to be effective if the applicant fails to comply with any condition of approval.

D. Changes. Any significant change to a development proposal shall be disclosed by the applicant whereby a new environmental review may be required.

Section 27.03.05 Appeals

An applicant may appeal the Department's decision by requesting in writing that the Tribal Council evaluate and reconsider the Department's determination.

Any notice of appeal or request for reconsideration of a decision by the Department must be filed no later than 15 calendar days from the date the Determination was issued.

The appeal or request for reconsideration shall be made in writing and shall be served by certified mail, return receipt requested, to the Secretary of the Tribal Council, the CEO and/or the Director. The appeal or request for a rehearing shall contain a brief description of the proposed activity, the specific reasons for the appeal, and for the desired outcome.

The Tribal Council may only reverse a decision of the Department if the appealing party can show by clear and convincing evidence that the Department abused its discretion in the decision making process, or acted arbitrarily or capriciously; or if the project action is demonstrated to be not in compliance with this Title.

Chapter 27.04

Standards

Sections:

27.04.01 General Standards

27.04.02 Codification

Section 27.04.01 General Standards

The following general standards apply to proposed activities to be reviewed under this Title:

A. Preservation of Coastal Zone Functions. All activities shall be consistent with the management plan, guidelines and practices established in the Jamestown S'Klallam Coastal Zone Management Plan;

B. Preservation of Cultural and Archeological Resources. Activities shall be located, designed, constructed, and operated in a manner that minimizes adverse affects on the Tribe's cultural and archeological resources;

C. No Interference with Fishing Rights. No activity shall occur in a manner that causes interference with the exercise of the Tribe's treaty fishing rights. No activity shall block or impede the free movement of fish;

D. Water Quality/Fish and Wildlife Quality. Activities shall be located, designed, constructed, and operated in a manner which minimizes adverse affects on fish, shellfish, wildlife, water quality, and existing geohydraulic shore and stream processes;

E. Fish Wastes. Discharge of wastes from fish and shellfish processing into water bodies shall, at a minimum, meet the federal standards for those activities. Alternative uses for fish and seafood wastes, such as fertilizer, are encouraged;

F. Flood-Proofing. No activity shall be located in areas subject to flooding or tidal inundation unless complete flood-proofing measures have been provided and then only when the location of the structure will not aggravate flooding potentials of the nearby properties. Structures in the 100 year flood plain must comply with federal flood-proof standards necessary to obtain federal flood insurance, whether flood insurance is obtained or not;

G. Erosion Control. An erosion control plan must be approved prior to issuance of a determination under TEPA for any activity which would pose a risk of erosion during construction or afterward. No earth or debris resulting from the activity shall be allowed to enter streams, lakes or marine waters. No activity shall contribute to foundation instability or mass soil movement;

H. Use of Fill. Fill will not alter or prohibit the natural flow of surface water or groundwater, or present a geologic hazard. There shall be no excavation or filling of stream channels or lakes or alteration of stream courses unless required for a project that would enhance the biological productivity of the aquatic environment;

I. Clearing and Grading. All clearing and grading activities must be conducted in such a manner as to minimize sediment erosion. Measures must be implemented to control for export of sediment to surface waters, or sensitive areas;

J. Sewage Disposal; Well Drilling. Any activity which requires sewage disposal or water withdrawal shall not result in erosion, mass movement of soil, contamination of groundwater, saltwater intrusion, or any other adverse impacts to the environment. The Tribe may require the applicant to submit a report of a licensed engineer to prove the absence of a threat of all adverse environmental impacts; and

K. Aquifer Recharge/Drinking Water Protection. All actions within a designated aquifer recharge area or drinking water protection area shall prevent degradation of the quality of potable groundwater. Application of herbicides and pesticides in a drinking water protection area is prohibited except for conditional permits that may be given for agricultural (including tree farming) and residential application, when no reasonable alternative is available to control pests or plant growth.

Section 27.04.02 Codification

The Tribal Environmental Policy Act (TEPA) Code was approved on July 27, 2009 with Resolution #19-09.



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



AGENDA REQUEST FORM

- 1) Request Date: 2-28-19
- 2) Contact Person(s): Rae Skenandore
 Dept: NA
 Phone Number: 920-544-1856 Email: rskenanand@gmail.com
- 3) Agenda Title: Amendment to resolution 9-26-18 BCC Law Stipends
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The Land Commission is requesting a change to the resolution to allow for more flexibility in scheduling or rescheduling canceled meetings. We would like section 1 b of the resolution changed to state no more than 24 meetings per fiscal year instead of two meetings per month. It's my understanding that the Police Commission has the same concerns on the

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

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
stated above
- 6) Please list all other departments or person(s) you have brought your concern to:
The Land Commission and our BC liaison.
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why:

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

Signature of Requester:
Rae Skenandore

Digitally signed by Rae Skenandore
 Date: 2019.02.28 16:46:56 -06'00'

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



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



AGENDA REQUEST FORM

- 1) Request Date: March 6, 2018
- 2) Contact Person(s): Jo Anne House
Dept: Oneida Law Office
Phone Number: 920-869-4449 Email: jhouse1@oneidanation.org
- 3) Agenda Title: _____
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Finalizing directive from Oneida Business Committee.

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

- 1) Electronic report
- 2) Electronic attachments
- 3) Paper - Research
- 4) Books - IRB Management & Function

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

- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
An interim resolution is also attached.

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

Signature of Requester:

Please send this form and all supporting materials to:

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



MEMORANDUM

TO: David Jordan, Council Member/Chairman, Legislative Operating Committee

FROM: Jo Anne House, Chief Counsel  Digitally signed by Jo Anne House

DATE: March 6, 2019 Date: 2019.03.06 13:58:49 -06'00'

SUBJECT: Oneida Nation Institutional Review Board – Research, Thesis, Dissertation

The Oneida Business Committee has received several requests to provide a community support letter and/or authorization to conduct research. This research may involve studies of the Nation’s organizational units (gaming; k-12 school system; GTC meeting discourse), community (native corn growing and harvesting; language development) or business entities (banking; information transfers between business partners). Most of these research requests were made by students pursuing graduate degrees and writing master’s or doctoral papers. These requests have become more frequent as more Oneida members pursue graduate degree programs and the aspect of obtaining community support letters become more public.

There is also other research being conducted in coordination with the Oneida Nation. For example, the FY18 third quarter report of the Commission on Aging indicates that the commission is working with a study regarding “Alzheimer’s Clinical Trials” by creating contacts between the trials and Oneida members; a University of Minnesota study regarding “lived experiences of Alzheimer’s Disease and related dementias across disease trajectory to develop methods to assess the impact of ADRD in 3 Native American communities”; and two additional studies related to Alzheimer’s Disease in Indian country. These types of studies have the potential to have positive impacts on Oneida members, however, there is also the potential of negative impacts to those same members, the community and Indian country through mis-use or mis-characterization of the information, however unintentionally that may happen.

A request was made to develop a law regarding review of these types of projects. I have summarized the research findings below, attached a sample law, and provided background materials in hardcopy.

Background

Individual Protections

Many, if not all, research studies are conducted after review and approval by an Institutional Review Board (*IRB*). The *IRB* is generally attached to an academic institution such as a college

or university; or, attached to a medical provider or developer. In the academic case, the IRB is generally required to conduct a review because of receiving federal funding or being certified by the federal agency under higher education qualifications. In the medical provider or developer sense, the provider or developer is governed by federal law and regulation through FDA, DHHS, or other agency required to follow the regulations developed by DHHS, set forth at 45 C.F.R. Part 46, ethical standards of research involving human subjects, also known as the Common Rule.

Research is reviewed considering protecting the individual participating in the research from dangers related to the process, drug, treatment, etc., being studied. IRBs also review methodologies in the research proposal to ensure it meets scientific standards. In short, IRB review and approval of research protects the individuals and ensures that the research is directed toward a goal that improves the treatment or service or understanding of the general public. To that extent, research requests submitted to the Oneida Nation about the Oneida Nation meets scientific needs and protects the individual.

Community Protections

Recently, the national and international bodies – public and private entities – have begun looking at the effect of research studies on communities. A primary example that of the Havasupai Tribe and Arizona State University in 2004, for which the tribe sued the university for misuse of genetic information obtained under limited informed consent.¹ In a 2008 policy paper from the NCAI Policy Research Center, Sahota suggests that the current ethical standards used by NIH, DHHS and the FDA are focused on protecting the individual.² On the other hand, tribal nations are focused on protecting not only the individual, but the community social mores, culture and history, which are considered equally as important. Sahota suggested inclusion of the concept of “Tribal community” in the standards set by the Belmont Report.³

- Respect for persons *and respect for Tribal Community.*
- Beneficence. This principle means that researchers have an obligation to not har research volunteers *or the Tribal community* and to maximize possible benefits while minimizing possible harms of the research.
- Justice. This principle states that the burdens of research should be equally distributed amongst different groups, including individuals of different racial and socioeconomic backgrounds. *Tribal communities should not be asked to participate in research which is risky and is not likely to benefit them; yet Tribal communities should also be included in research that is potentially beneficial to them.* [Italics added.]

This is also the position of Moore, et al (2013) in their suggestion that tribal nations should also look to four ethical goals of community consultation.⁴

¹ Havasupai Tribe of the Havasupai Reservation v. Arizona Board of Regents and Therese Ann Markow, 220 Ariz. 214 (2008).

² Sahota, P.C. (2008) Research Regulation in American Indian/Alaskan Native Communities: Policy and Practice Considerations. NCAI Policy Research Center, 1-20.

³ National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (1979). The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research. Department of Health, Education, and Welfare.

⁴ Morton, D.J., Proudfit, J., Calac, D., et al (2013). Creating Research Capacity Through a Tribally Based Institutional Review Board. American Journal of Public Health 103(12) 2160-2164. pp. 2161-2163.

- Enhanced protection. Having community input to further protect participant's welfare and minimize risk beyond the original vision of the researchers, who may or may not have had prior community experience, contact or relationships in the tribal community.
- Enhanced benefits. For the best overall results, benefits, while aiding but the tribal community and the researchers, need to be specifically targeted for the community.
- Legitimacy. Tribal IRB review of research have a personal and community interest in the project and are able to express their opinions concerning any research project through the power and structure of the Tribal IRB.
- Shared responsibility. Ensures an active role in the community and a sense of moral responsibility for the project by both the investigator and the community.

The Common Rule (DHHS, 45 C.F.R. Part 46), now includes recognition of Tribal IRBs and their importance to review and approval of research.⁵

IRBs –Indian Health Service

The Indian Health Service operates a series of IRBs throughout the United States. For research involving the Oneida Nation, the IRB Chair and address is –

Antonio Guimaraes, MD Chair, Bemidji Area Publication Review Committee
(Human participants research clearance is referred to the NIRB)
522 Minnesota Avenue, NW
Bemidji, MN 56601
Phone: 218-335-3200
Fax: 218-444-0498

However, this involves human research which, generally, contains three elements.

- The Oneida Nation members are involved;
- There is federal funding; and
- The tribal IHS facility or IHS employees are involved.

For all other research, only the academic institution IRB would be reviewing the proposed research project.

If a tribal government has created a federally recognized IRB, then review from both the Tribal IRB and the IHS IRB is required. At least one tribal nation and one tribal college in Wisconsin have developed federally recognized tribal IRBs.

Brenda Owen, IRB Chair
Joan Greendeer-Lee, Secretary
N6520 Lumberjack Guy Road
Black River Falls, WI 54615
Phone: 715-284-9851 ext. 5052

Donna Powless, PhD, Vice-President of Academic Affairs
P.O. Box 1179
N172 State Hwy 47/55
Keshena, WI 54135
Phone: 715-799-5600, Ext. 306
Fax: 715-799-5951

Tribal Nations Legislative Actions

A search of the Internet has identified several tribal nations have adopted laws regarding research in Indian country.

- Navajo Nation Human Research Code,
http://nptao.arizona.edu/sites/nptao/files/navajo_nation_human_research_code_revised_0.pdf.

⁵ Hull and Wilson (2017) Beyond Belmont: Ensuring Respect for AI/AN Communities Through Tribal IRBs, Laws, and Policies. *American Journal of Bioethics* 17(7) 60-62.

3252. The purpose of this Code shall be to set forth the conditions under which investigators, physicians, researchers and others may perform research activities on living human subjects within the territorial jurisdiction of the Navajo Nation.

- Ho-Chunk Nation Code, Title 3, Section 3. Tribal Research Code, https://narf.org/nill/codes/hochunkcode/3HCC03_Research.pdf.

3 HCC 3(3). *Purpose.* The purpose of this Code is to define the Nation's research policies, and to establish a means by which tribal research policies will be administered by the Ho-Chunk Nation Institutional Review Board (IRB) and to provide for general procedures by which the IRB will grant permission to researchers to conduct research on Nation Territory. This Code provides for the following:

- a. An application and permitting procedure that applicant researchers must comply with in order to obtain permission to conduct research of any kind within the jurisdiction of the Nation.
- b. Standards of conduct designed to protect individuals, communities and the Nation itself from improper research procedures. The Ho-Chunk Nation IRB evaluates all proposals for appropriate ethical standards and expects compliance from applicant researchers.
- c. Provisions to protect the rights of individuals and the Nation in data.
- d. Provisions to ensure appropriate Nation and community participation in the design and evaluation of research, and appropriate local opportunities in employment in all research projects permitted on the trust lands and within the Ho-Chunk community.

In addition to the above, at least two model research codes are also available.

- Model Tribal Research Code, <https://ccph.memberclicks.net/assets/Documents/CBPRCurriculum/AppendixF/mdl-code.pdf>. This is more a questionnaire or checklist document that helps guide discussion and decision making/choices in developing a research code.
- Indigenous Research Protection Act, <http://www.ipcb.org/publications/policy/files/irpa.html>. This is a general code that sets up research ethical criteria and authorization procedures.

Analysis

After review of the information above, I have drafted a proposed law which would govern human research activities on the Oneida Reservation. This is a rough draft based on the Navajo Nation Code. The document presumes that significant rule-making would occur. In the alternative, several procedural documents are included in the materials which could be used to add to the law.

I have not attempted to create an IRB that would function beyond the Oneida Nation, such as review board for Department of Health & Human Services research grants. It is a supplementary research review protecting the interests of members and the Oneida Nation.

I have also drafted a resolution which could be utilized in the interim to address research requests in a more formal manner. Under the current process, research conducted by students on the Oneida Nation or its members is generally reviewed through the Oneida Law Office. A recommendation is submitted to the Oneida Business Committee to approve or disapprove the research. The researcher is then requested to provide a draft of the research paper for review

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prior to publication. There is no method of enforcing the need for review and approval of the research or the publication.

The second process is the approval by various entities of the Nation through letters of support to the researchers. The August 2018 report from ONCOA to the Oneida Business Committee identifies four or five research projects for which support and assistance is provided to external researchers by ONCOA. These are studies of age-related health conditions from universities, so it is presumed that the educational IRB has reviewed and approved the research.

If you have further questions, please contact me.

Human Subject Regulations Decision Charts

Human Subject Regulations Decision Charts

February 16, 2016

The Office for Human Research Protections (OHRP) provides the following graphic aids as a guide for institutional review boards (IRBs), investigators, and others who decide if an activity is research involving human subjects that must be reviewed by an IRB under the requirements of the U.S. Department of Health and Human Services (HHS) regulations at 45 CFR part 46. OHRP welcomes comment on these decision charts. The charts address decisions on the following:

- whether an activity **is research** that must be reviewed by an IRB
- whether the review may be performed by **expedited procedures**, and
- whether **informed consent** or its documentation may be waived.

Considerations

The charts are intended to assist IRBs, institutions, and investigators in their decision-making process and should not be used as substitutes for consulting the regulations. OHRP cautions that the full text of applicable regulatory provisions should be considered in making final decisions.

These charts are necessarily generalizations and may not be specific enough for particular situations. Other guidance documents are available related to specific topics, at [OHRP Policy Guidance by Topic](#). OHRP invites inquiries for additional information.

The charts do not address requirements that may be imposed by other organizations, such as the Food and Drug Administration, National Institutes of Health, other sponsors, or state or local governments.

[Chart 1](#): Is an Activity Research Involving Human Subjects?

[Chart 2](#): Is the Human Subjects Research Eligible for Exemption?

[Chart 3](#): Does Exemption 45 CFR 46.101(b)(1) (for Educational Settings) Apply?

[Chart 4](#): Does exemption 45 CFR 46.101(b)(2) or (b)(3) (for Tests, Surveys, Interviews, Public Behavior Observation) Apply?

[Chart 5](#): Does Exemption 45 CFR 46.101(b)(4) (for Existing Data, Documents, Records and Specimens) Apply?

[Chart 6](#): Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) Apply?

[Chart 7](#): Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) Apply?

[Chart 8](#): May the IRB Review Be Done by Expedited Procedures?

[Chart 9](#): May the IRB Continuing Review Be Done by Expedited Procedures?

[Chart 10](#): May Informed Consent Be Waived or Consent Elements Be Altered under 45 CFR 46.116(d)?

[Chart 11](#): May Documentation of Informed Consent Be Waived Under 45 CFR 46.117(c)?

[Download Decision Charts in PDF format - PDF](#)

Chart 1: Is an Activity Research Involving Human Subjects?

[View text version of Chart 1](#)

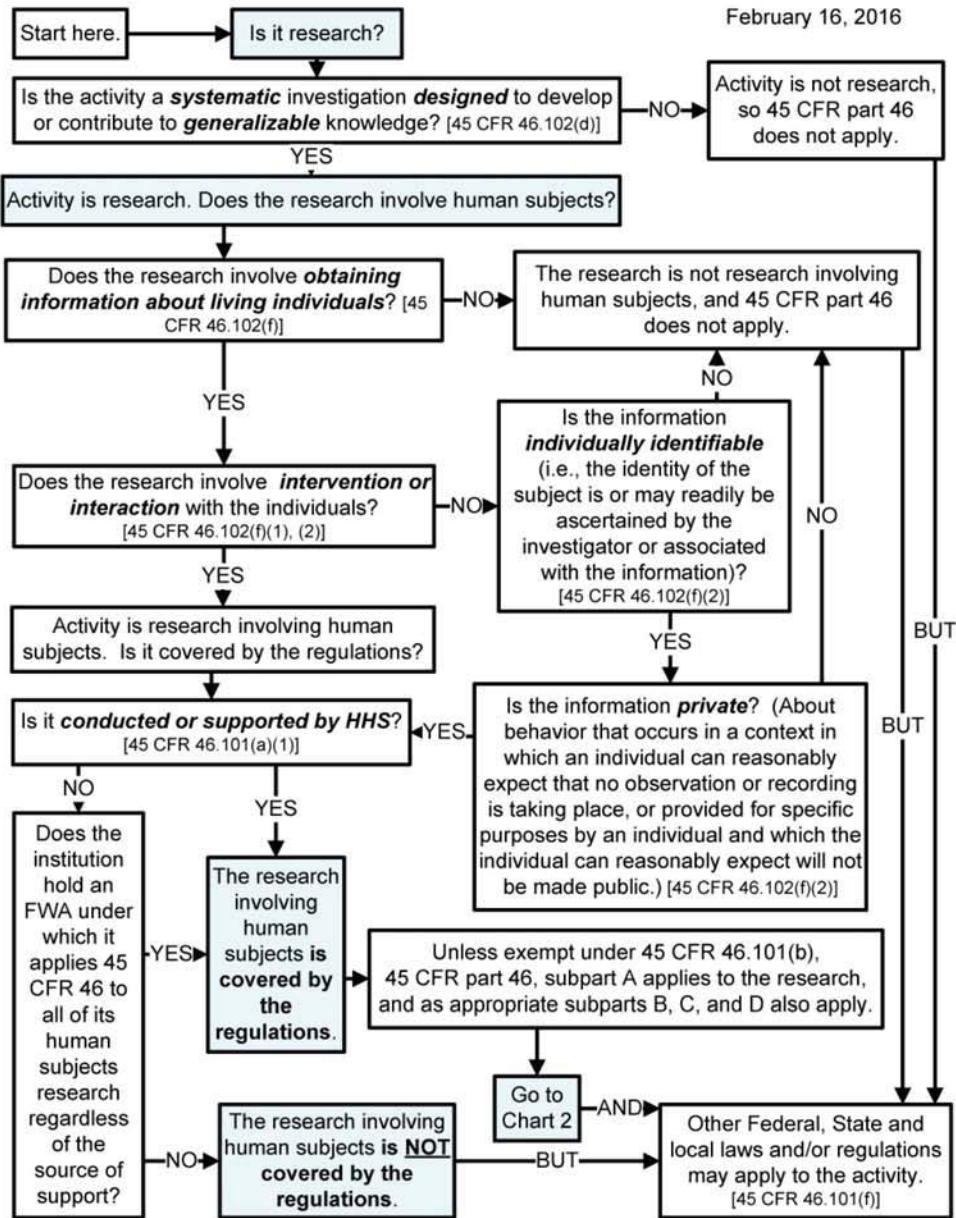


Chart 2: Is the Human Subjects Research Eligible for Exemption?

[View text version of Chart 2](#)

February 16, 2016

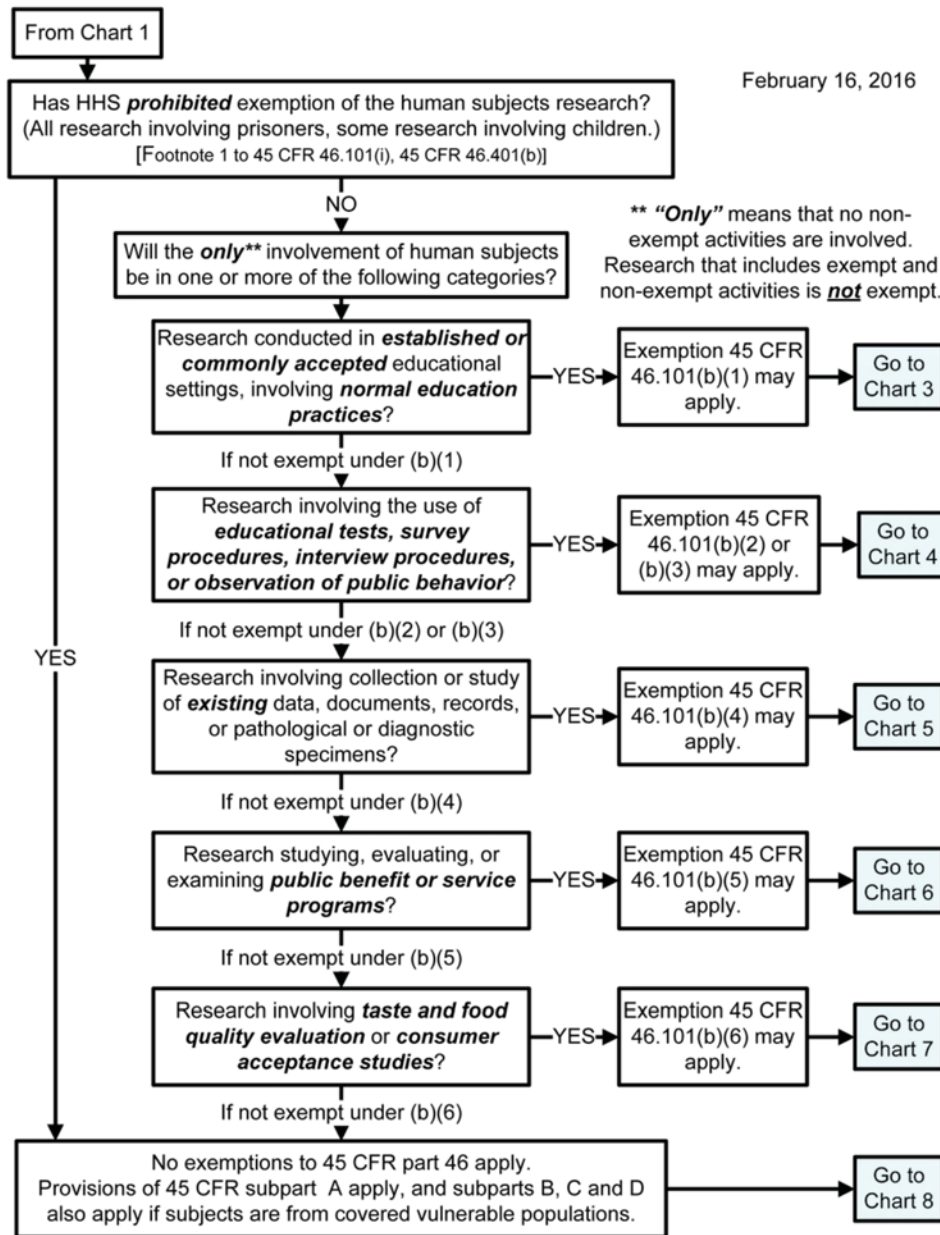
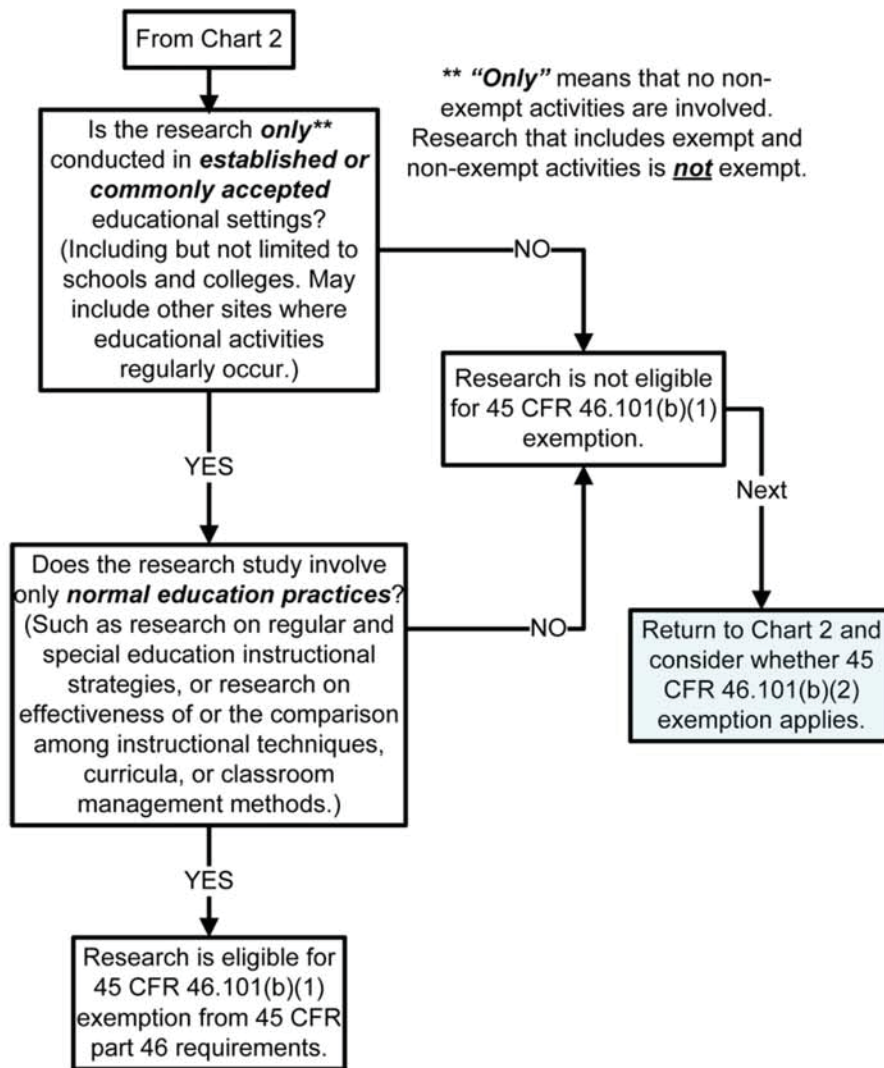


Chart 3: Does Exemption 45 CFR 46.101(b)(1) (for Educational Settings) Apply?

[View text version of Chart 3](#)



February 16, 20126

Chart 4: Does exemption 45 CFR 46.101(b)(2) or (b)(3) (for Tests, Surveys, Interviews, Public Behavior Observation) Apply?

[View text version of Chart 4](#)

February 16, 2016

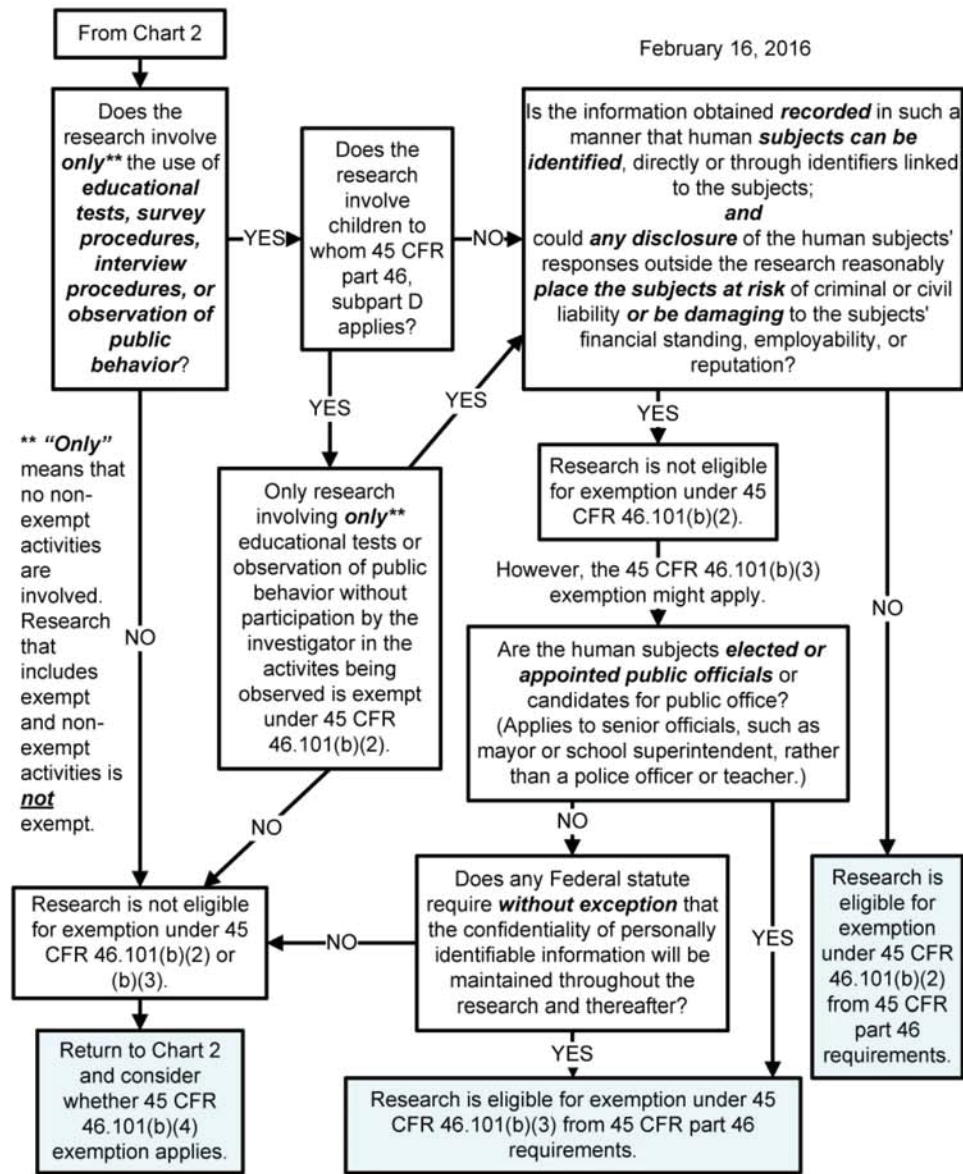
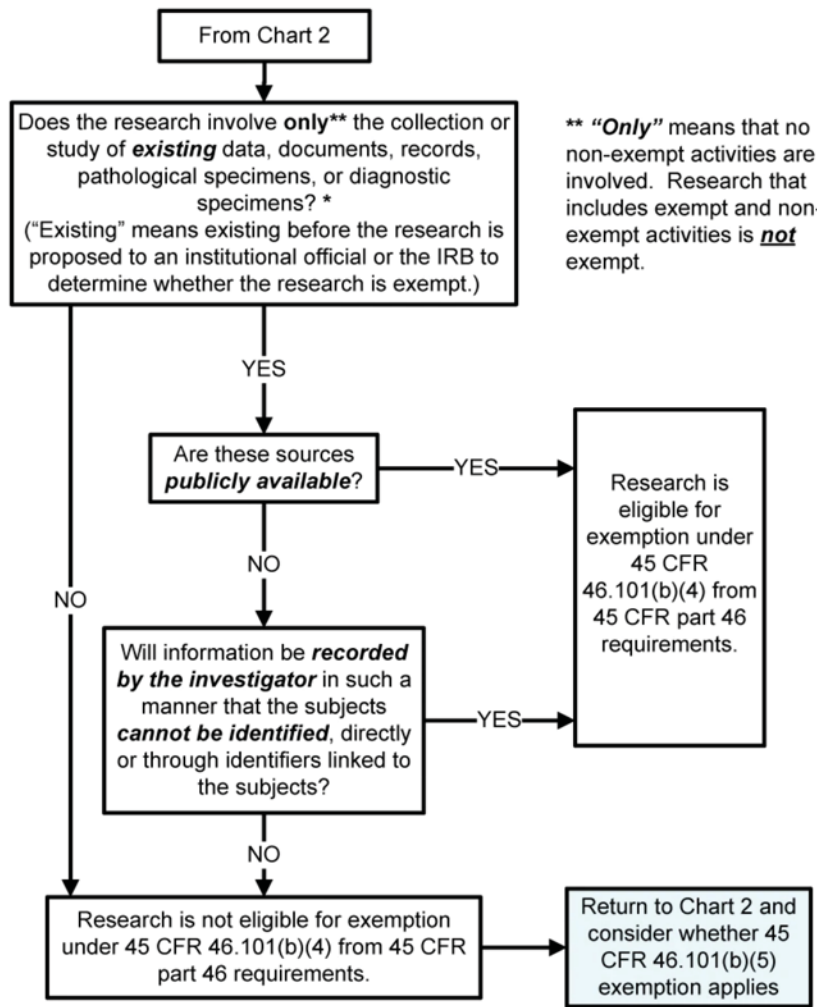


Chart 5: Does Exemption 45 CFR 46.101(b)(4) (for Existing Data, Documents, Records and Specimens) Apply?

[View text version of Chart 5](#)

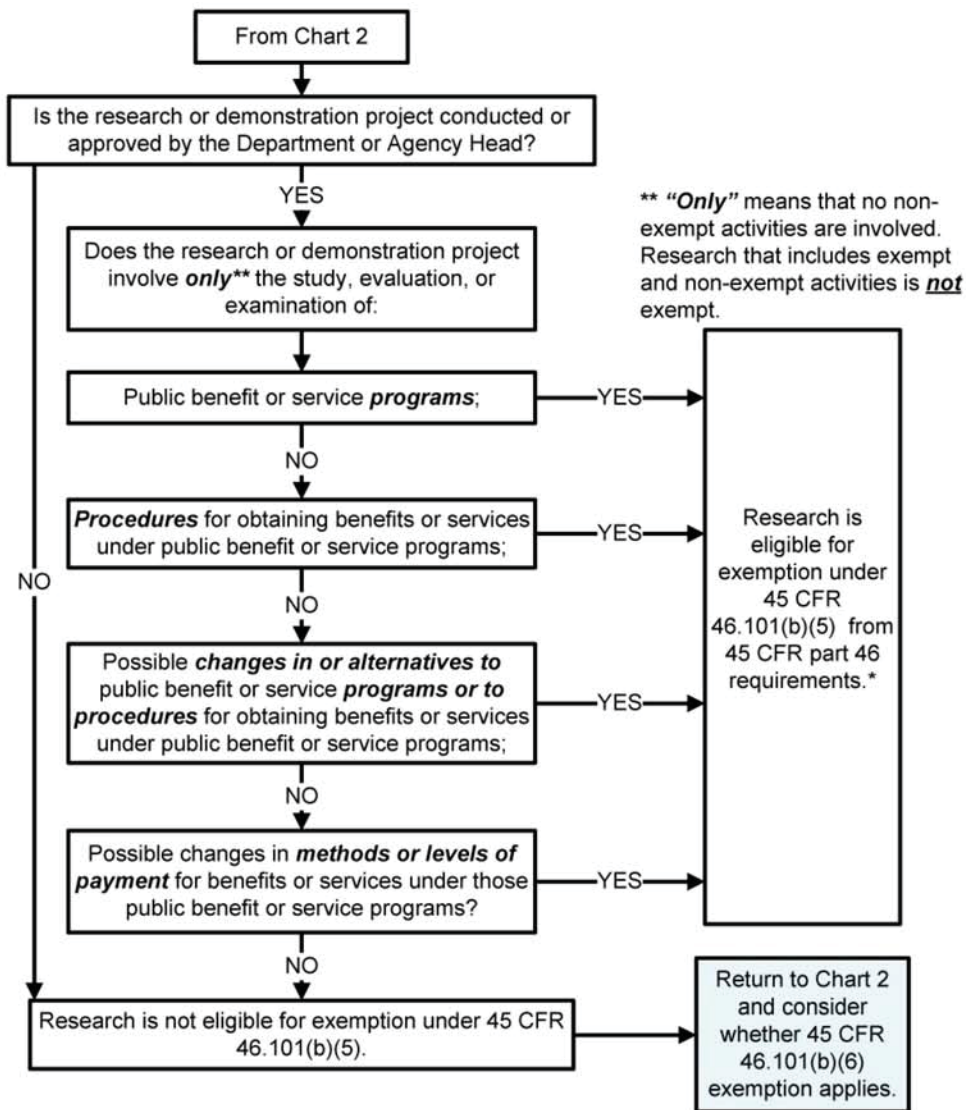


* Note: See OHRP guidance on research use of stored data or tissues and on stem cells at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/guidance-on-research-involving-stem-cells/index.html>, and on coded data or specimens at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/research-involving-coded-private-information/index.html> for further information on those topics.

February 16, 2016

Chart 6: Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) Apply?

[View text version of Chart 6](#)



* Note: See OHRP guidance on exemptions at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/exemptions-for-public-benefit-and-service-programs/index.html> for further description of requirements for this exemption.

February 16, 2016

Chart 7: Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) Apply?

[View text version of Chart 7](#)

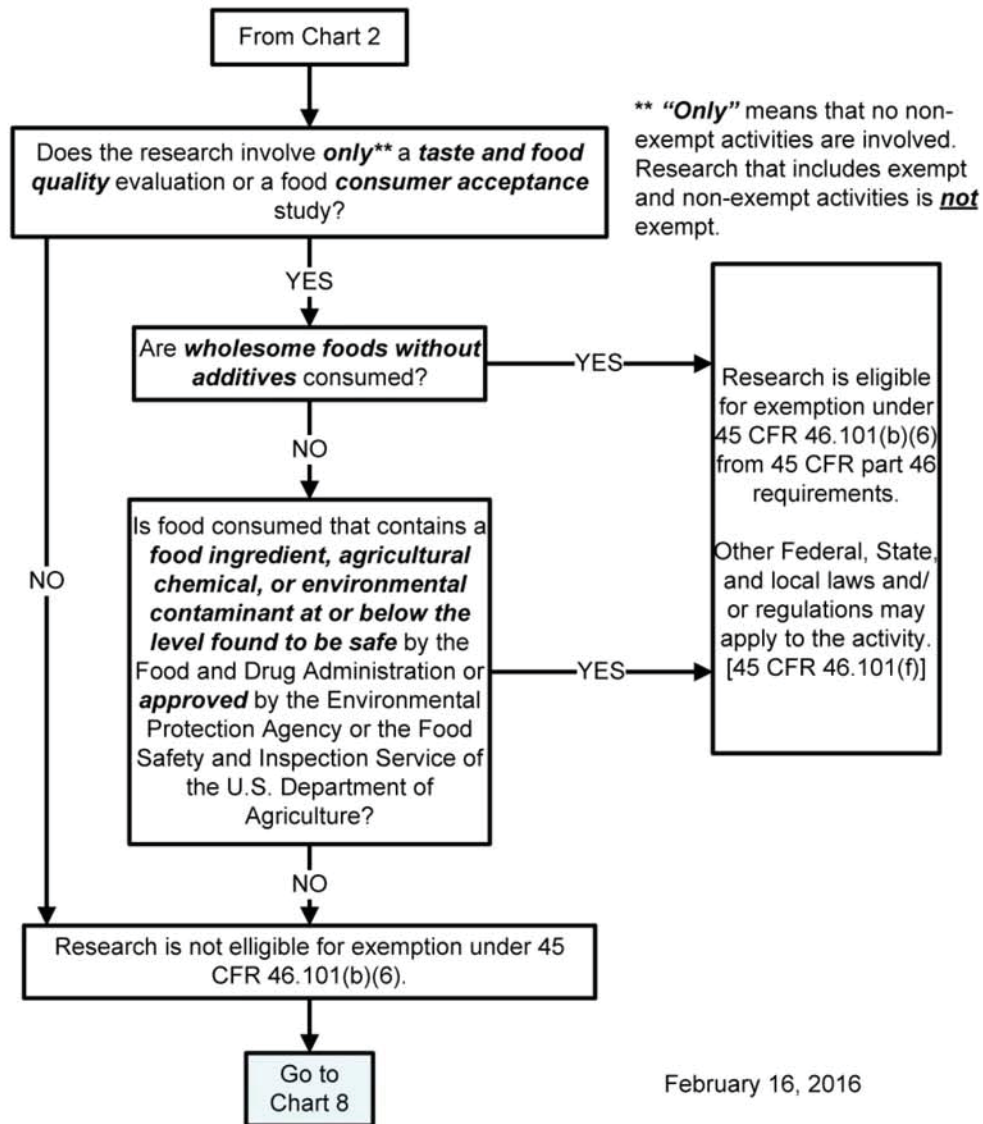
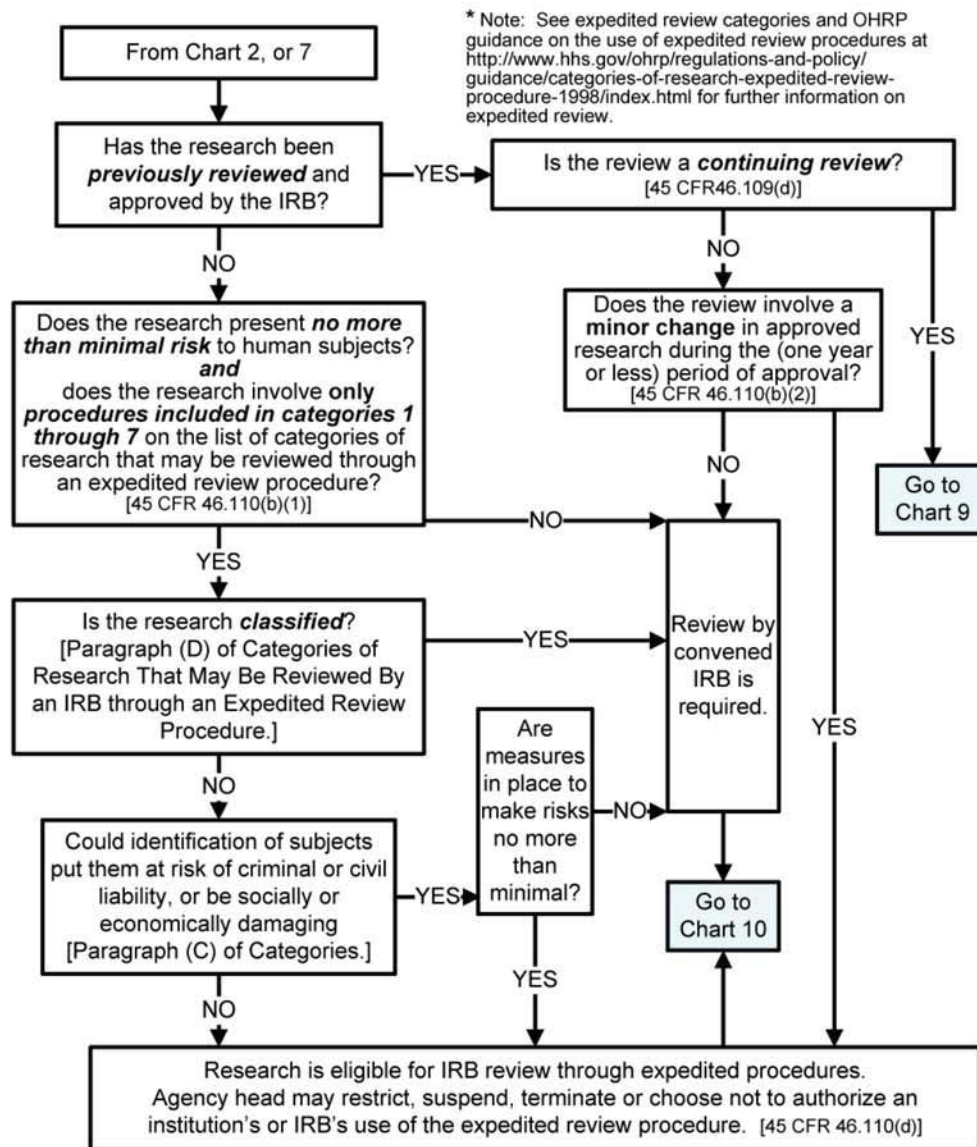


Chart 8: May the IRB Review Be Done by Expedited Procedures?

[View text version of Chart 8](#)



February 16, 2016

Chart 9: May the IRB Continuing Review Be Done by Expedited Procedures?

[View text version of Chart 9](#)

* Note: See OHRP guidance on the use of expedited review procedures in continuing review at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/guidance-on-continuing-review-2010/index.html> for further information on continuing review.

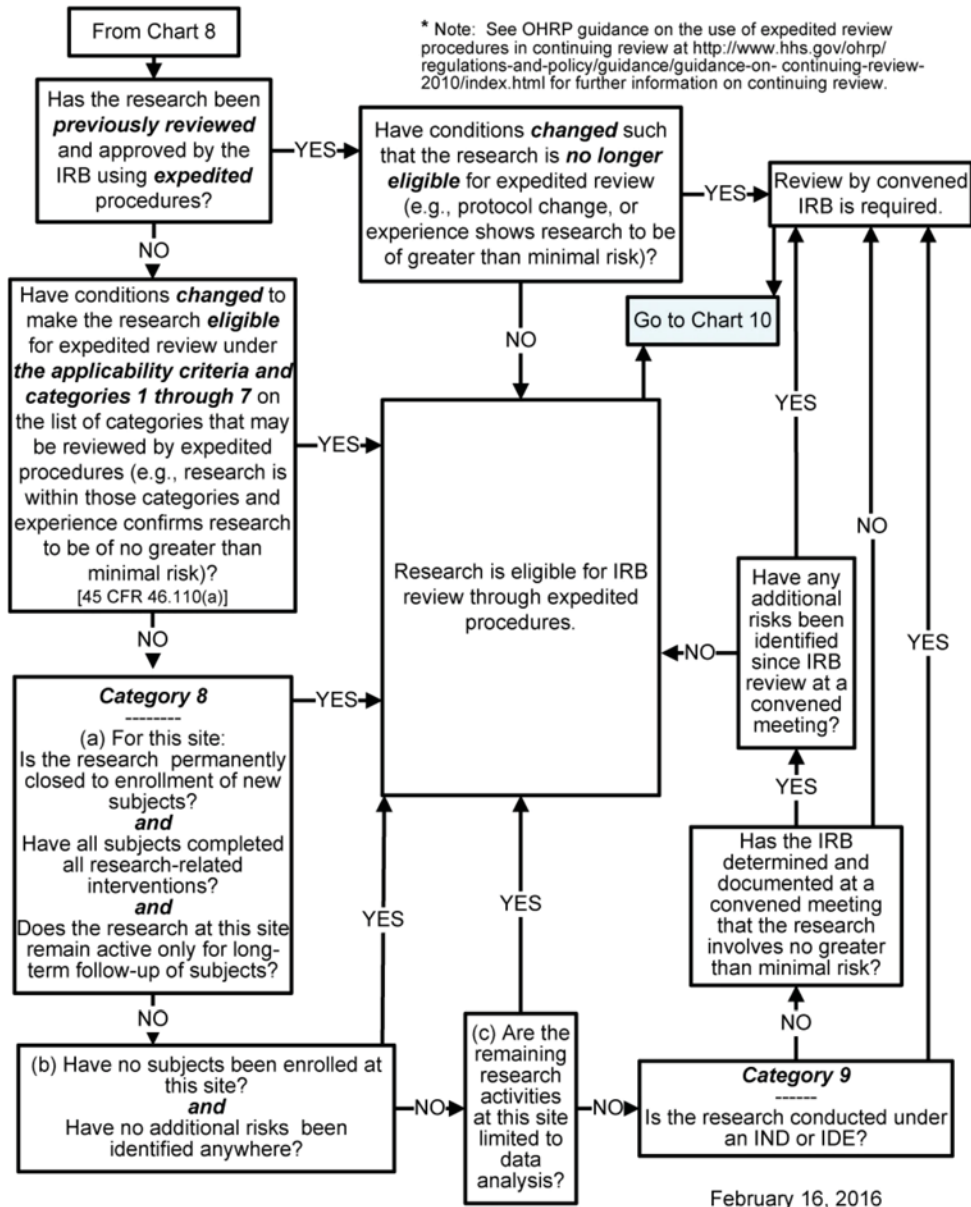
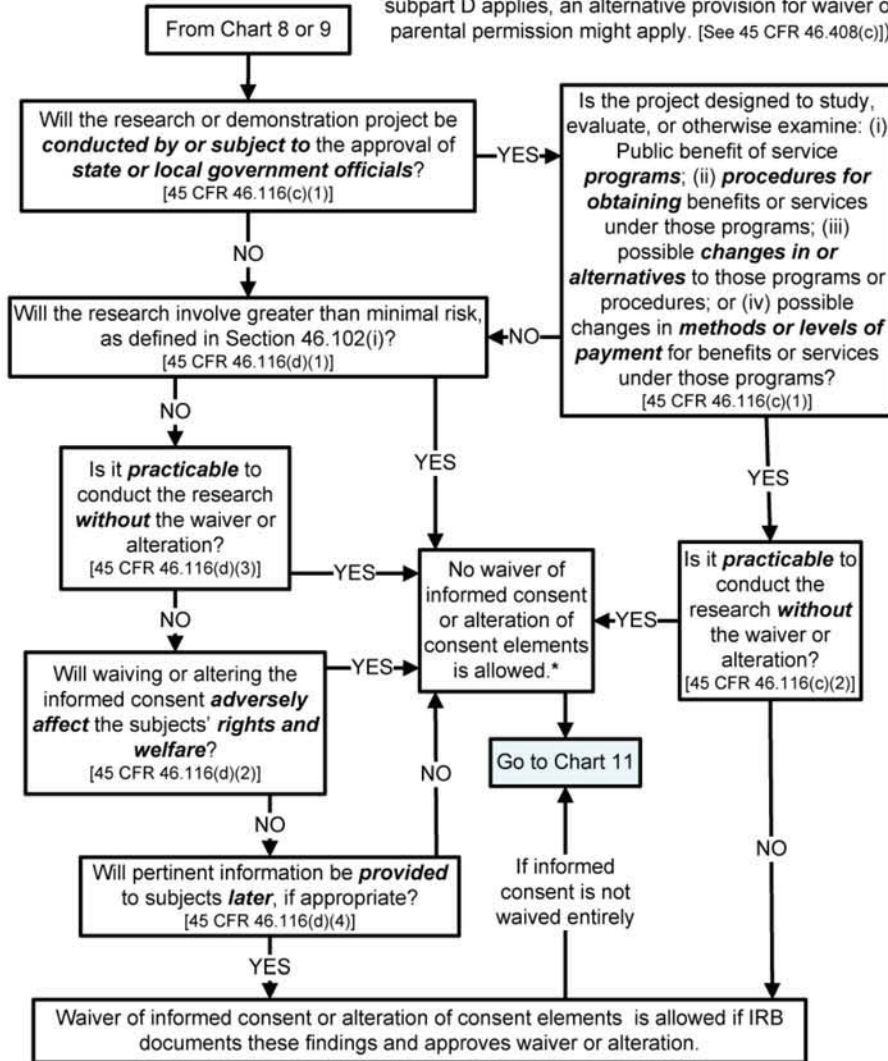


Chart 10: May Informed Consent Be Waived or Consent Elements Be Altered under 45 CFR 46.116(d)?

[View text version of Chart 10](#)

******(Note: If subjects include children to whom 45 CFR part 46, subpart D applies, an alternative provision for waiver of parental permission might apply. [See 45 CFR 46.408(c)])

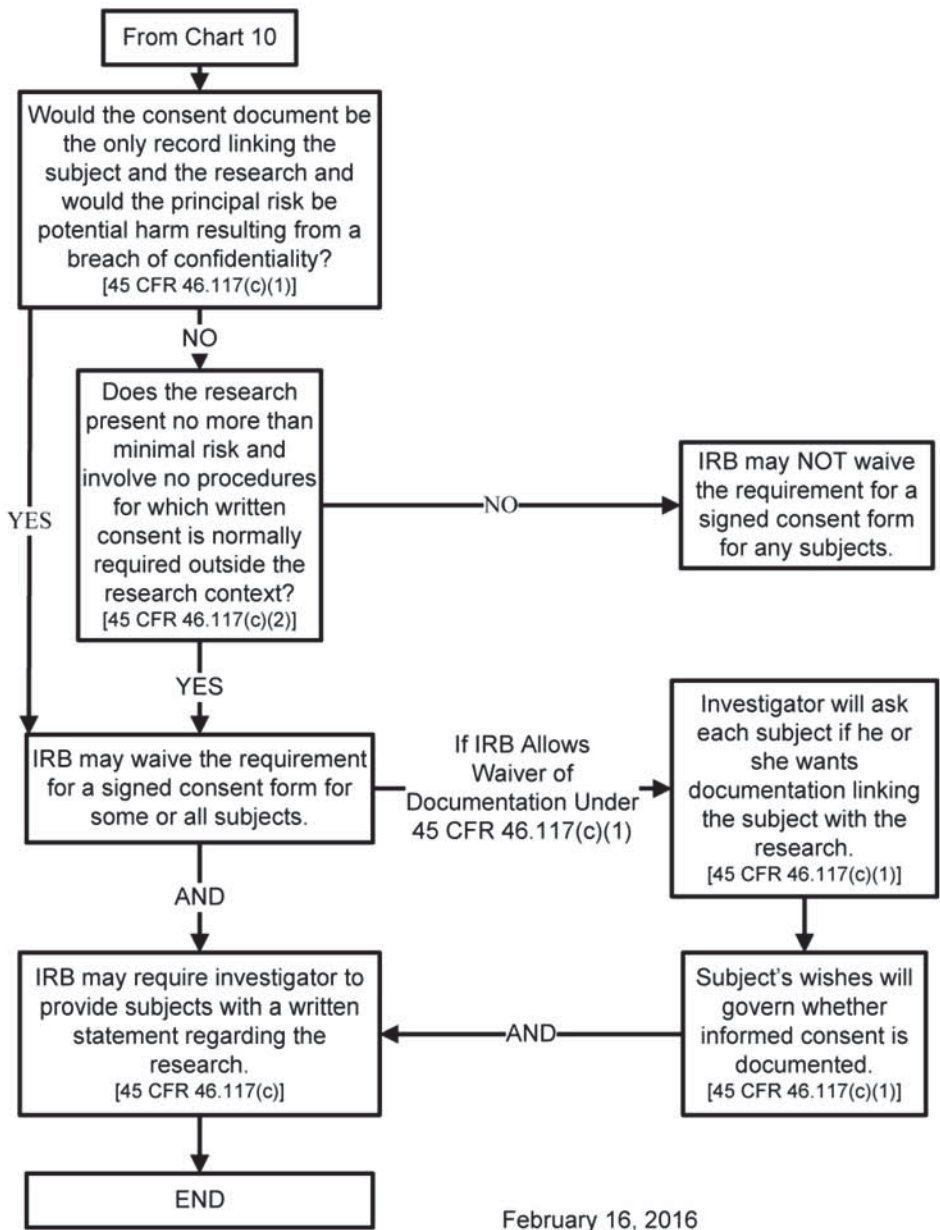


* Note: See OHRP guidance on informed consent requirements in emergency research at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/emergency-research-informed-consent-requirements/index.html> for further information on emergency research informed consent waiver.

February 16, 2016

Chart 11: May Documentation of Informed Consent Be Waived Under 45 CFR 46.117(c)?

[View text version of Chart 11](#)



February 16, 2016

Title: Oneida Nation Human Research Code¹

Purpose.²

The purpose of this Code shall be to set forth the conditions under which investigators, physicians, researchers, and others may perform research activities on living human subjects within the territorial jurisdiction of the Oneida Nation.

Policy.

1. All persons within the territorial jurisdiction of the Oneida Nation are free from unreasonable, harmful, intrusive, ill-conceived or otherwise offensive research and investigation procedures.
2. Research conducted is beneficial, community-based, and consistent with Oneida Nation priority and concerns.
3. Research information and data generated by and about Oneida Nation individuals, communities, culture represent inalienable intellectual properties of the Oneida Nation people and over which the Oneida Nation will provide oversight.

Authority to Make Rules.

The [IRB] is authorized to promulgate rules consistent with and necessary to implement this Code.

Definitions.

1. “Subject(s)” means a living individual about whom a researcher (whether professional or student) conducting research obtains private information of data through intervention or interaction with the individual, involving physical procedures by which data are gathered (for example, venipuncture) and/or manipulations of the subject or the subject’s environment.
2. “[IRB]” means the entity created under this Code and delegated the authority to oversee research.
3. “Research” is the use of systematic methods (including but not limited to note taking, interviewing, video and audio taping) to gather and analyze information for the purpose of proving or disproving a hypothesis, concepts or practices, or otherwise adding to knowledge and insight in a particular medical or psychological discipline, social science discipline, or other scientific discipline. Generally, proposed studies are defined as “research” if their goal is to produce generalizable descriptive knowledge through the use of human subjects or volunteers whose protection must be assured in accordance with the ethical principles of respect for persons; the duty to help others or beneficence; and justice or fairness. This may include, at the discretion of the [IRB], quality assurance activities, chart reviews, program evaluations, restriction on access or requirement to have third party present or subjecting final study to review prior to publication. All data

¹ Taken primarily from Navajo Nation Human Research Code, Chapter 25, 13 N.N.C. section 3251, et seq. For a more detailed model code, see *Model Tribal Research Code 3rd ed.* (1999). American Indian Law Center. Located at <https://ccph.memberclicks.net/assets/Documents/CBPRCurriculum/AppendixF/mdl-code.pdf>.

² This code is set up as an IRB within the Oneida Nation, supplemental to IRB’s the researcher must obtain from his or her institution. It is set up so that it can be expanded to a federally recognized IRB. See generally <https://www.hhs.gov/ohrp/>.

and research subject to this Code are the property of the Oneida Nation, although a researcher may be given a permit.

4. “Publication” includes all proposed professional and program papers and reports concerning the Oneida Nation and members of the Oneida Nation. Also requiring advance approval are papers based on research conducted within the territorial jurisdiction of the Oneida Nation, prepared for presentation at national or international professional society meetings by researchers. Papers or reports for technical and lay audiences prepared and approved by the Oneida Nation for compliance with a contract or grant requirements are specifically excluded from this definition.
5. “Researcher” means any person, organization, business or other entity which conducts research within the territorial jurisdiction of the Oneida Nation.

Creation of [IRB].

There is hereby created the [IRB] whose purpose is to review all proposals (notwithstanding other IRB approvals) for human research which will occur within the territorial jurisdiction of the Oneida Nation or which otherwise concerns Oneida Nation individuals as an identifiable group, issue permits for those projects which are consistent with the terms and intent of this Code, and, as appropriate, review and approve the results of such studies before publication. However, this [IRB] is to coordinate with the [THPO] to avoid jurisdiction conflicts. The [IRB] is administratively assigned to the [Division] for support services.

Composition and Term of the [IRB].³

1. The [IRB] shall be composed of [#] individuals selected by the Oneida Business Committee:⁴
 - a. [#] employees from the Comprehensive Health Division;
 - b. [#] employees from the Governmental Services Division;
 - c. [#] employee from the Oneida Law Office
 - d. [#] members from the Health Board, Anna John Nursing Home Board, Commission on Aging; and

³ Summary of 45 CFR 46.107 –

- a) At least 5 members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB should be sufficiently qualified through the experience and expertise of its members, the diversity of its members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel. The IRB should be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, and applicable law.
- b) Will not consist entirely of men or entirely of women; will not consist of individuals entirely of one profession.
- c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.
- d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.
- e) No member may have a member participate in the initial or continuing review of any project in which the member has conflicting interest.
- f) If the IRB invites an external consultant to assist with the review of a particular research study, that individual may not vote with the IRB.

From Angal, J. and Andalcio, T. (2015). *Collaborative Research Center for American Indian Health: Tribal IRB Toolkit*. Located at <https://www.crcaih.org/irb-toolkit.html>.

⁴ These groups were selected as likely to be impacted by most research being conducted.

- e. [#] individuals appointed by the Oneida Business Committee.
2. The term of an:
 - a. Employee assigned to the [IRB] shall be consistent with employment with the Oneida Nation in the position the employee occupied when assigned;
 - b. Member of the Health Board, Anna John Nursing Home Board, and the Commission on Aging appointment to the [IRB] shall be consistent with the term of office of the appointed member;
 - c. Individual appointed by the Oneida Business Committee shall be three years.

Meetings, Quorum.

The [IRB] shall meet at least quarterly, but as often as necessary. [#] members, one of whom must be an appointment of the Oneida Business Committee, shall constitute a quorum.

Purposes of the [IRB]

The purposes of the [IRB] are to assure that research and publication activities:

1. Are consistent with the health and education goals and objective of the Oneida Nation.
2. Do not detract from, nor interfere with, the provision of human services to the Oneida Nation members.
3. Do not endanger the well-being of individuals or communities.
4. Require informed consent of all affected individuals or their legal representatives.
5. Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.
6. Present only reasonable risks to subjects in relation to anticipated benefits, if any, to those subjects, and the importance of knowledge that reasonably may be expected to result.
7. Select subjects equitably. In making this assessment the [IRB] shall take into account the purposes of the research, the setting in which the research will be conducted, and the population from which subjects will be recruited.

Powers of [IRB].

Consistent with the requirements of this Code, the powers of the [IRB] shall include:

1. The review and approval or disapproval of research proposals.
2. The review and approval or presentation of materials and manuscripts, including thesis, dissertations and abstracts, prior to publication.
3. The negotiation of additional and/or revised procedures, methodologies, and approaches to research and publication with researchers.
4. The [IRB] may request assistance from other persons with specialized knowledge in the review of any application, proposal or manuscript. When research is revised involving a category of vulnerable subjects (e.g., prisoners, children, and individuals who are mentally disabled), the [IRB] shall include in its reviewing body one or more individuals who have a particular concern for the welfare of these subjects.
5. Subject to approval in accordance with the Administrative Rulemaking law, the [IRB] shall adopt appropriate rules and procedures regarding, but not limited to: confidentiality of subjects; storage of specimens and other research materials; monitoring of research activities; amendments to any research proposals; financial disclosure regarding research; volunteer payments and fees; adverse reactions of any volunteers; applications and their

contents; fees for permits and other services; and other procedures to implement this Code.

6. The [IRB] will coordinate with other appropriate boards, committees and commissions, including, but not limited to, other departments and divisions of the Oneida Nation, and other entities or organizations regarding research requests or activities being conducted with the territory of the Oneida Nation.

Records Retention.

The [IRB] shall develop and maintain an up-to-date file on all research projects, past and ongoing, approved and disapproved. Records and research projects will be maintained at least ten (10) years after the [IRB] receives the proposal or five (5) years after publication of a paper derived from the research activity, whichever is longer. The [IRB] shall maintain a file of reprints of publications resulting from all research projects conducted within the territorial jurisdiction of the Oneida Nation.

Research Permit Required.

Prior to undertaking any human research within the territorial jurisdiction of the Oneida Nation, a researcher must apply for and receive from the [IRB] a Research Permit.

Administrative Fees.

The [IRB] may assess reasonable costs associated with the review of proposals and other materials; any monies generated are for the exclusive use of the administration of this Code.

Research Application.

The Research Application shall be in a form developed by the [IRB] which shall, at a minimum, include research goals, methodology, and anticipated results. The application shall also include a separate section addressing specific anticipated benefit to the study's subjects, Oneida Nation members or groups of Oneida Nation members, the Oneida Nation, and all other readily identifiable potential beneficiaries. The Research Application must be signed by the Researcher and include a provision that the Researcher agrees to the civil jurisdiction of the Oneida Nation with respect to the research to be undertaken and any publications arising from such research.

Confidentiality and Security.

There must be adequate assurance, as determined by the [IRB], that the data and information generated during the conduct of research is protected from unauthorized access and misuse consistent with informed consent provisions.

Informed Consent.

Before any research may be conducted on any subject, the researcher must obtain the active informed consent of that prospective subject, or their parent, legal custodian or guardian, as appropriate. At a minimum, this informed consent must be in writing, acknowledged by the subject, which informs the subject of the purpose of the research, any potential risks, and alternative treatments or procedures. The Informed Consent shall not include any exculpatory language or disclaimer of liabilities.

Progress Reports on Research.

1. Researchers shall report to the [IRB] the progress of their research as often and in the manner prescribed by the [IRB] in the research permit.
2. Researchers shall promptly report any injuries or adverse impacts (including violations of an individual's privacy) to human subjects to the [IRB].
3. Researchers shall promptly report any unanticipated problems which involve risks to the human research subjects or other to the [IRB].

Continuing Review of Research Activities.

The [IRB] shall regularly review all research activities conducted within the territorial jurisdiction of the Oneida Nation. If, during the course of a research activity, the research conditions change, the [IRB] may require the researcher to amend their application consistent with the changed conditions. If the [IRB] determines that a research project is no longer viable because of the changes in the scope or effect of the research, it may rescind any research permit or otherwise limit the scope of research activities which may be conducted under the permit.

Publication Review Procedures.

1. All individuals proposing publishing covered by the Code required submit a manuscript to the [IRB] for approval, in advance of publication.
2. The manuscript will be reviewed for technical content and validity, organization of content, readability, as well as assurance that they are consistent with the goals, intent and policies of this Code.

Permit Application Procedures.

1. Researchers who are denied a research permit may request reconsideration of their application upon a showing of good cause. A request for reconsideration shall be deemed to have shown good cause if it:
 - a. Presents significant relevant information not previously considered by the [IRB];
 - b. Demonstrates that significant changes have occurred in the factors or circumstances considered by the [IRB] in reaching its decision; or
 - c. Demonstrates that the [IRB] failed to follow its adopted procedures in reaching its decision.
2. A request for reconsideration must be received within thirty (30) days after the researcher is notified of the decision.
3. If deemed good cause, reconsideration shall be conducted within thirty (30) days after receipt of the appeal request.

Enforcement.

Whenever it appears that a researcher or other person or entity has violated the provisions of this Code, the [IRB] on its own initiative may petition the Oneida Nation Judiciary for injunction or other appropriate relief. If the Court, after a hearing, finds that this Code has been violated, it may assess penalties up to five thousand dollars (\$5000), in addition to any other damages resulting from the unpermitted research activity.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

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**BC Resolution #
Research Requests: Review and Approval to Conduct**

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
 - WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
 - WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
 - WHEREAS,** the General Tribal Council created the Oneida higher-education scholarship which provides funding for undergrad and graduate level degrees that has led to a significant increase in the number of Oneida members obtaining bachelor's degrees and then obtaining graduate level degrees; and
 - WHEREAS,** such graduate level programs generally require research papers to be completed as a thesis or dissertation; and
 - WHEREAS,** Oneida members in these programs frequently wish to conduct a research project that provides insight and awareness to an aspect of the Oneida Nation as a government, business, and/or community, and such research should be reviewed to ensure that Oneida members, the Nation, and the community are protected, the information developed is provided to the Nation, and the research accurately portrays the complex history and current activities of the Oneida Nation and its members; and
 - WHEREAS,** there is increased research of tribes and Native Americans by colleges and universities, and businesses conducting research on new products; and
 - WHEREAS,** research in medicine and science has taken steps to protect research subjects now recognize that tribes and Native Americans should be taken into consideration given their unique aspects and need for protection; and
 - WHEREAS,** the Oneida Business Committee has relied upon an informal process of review through the Oneida Law Office regarding research requests, including information access, to determine whether approve an authorization to conduct research or issuance of a community support letter; and
 - WHEREAS,** the Oneida Business Committee, through the Quarterly Reporting process by boards, committees and commissions and divisions of the Nation, has identified that a greater number of research projects regarding the Nation and its members is occurring than originally understood; and
- NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee sets forth the following requirements when conducting research involving the Oneida Nation and its members, including requests for community support letters regarding research.

49 **BE IT FURTHER RESOLVED**, that requests by students in bachelor's, master's or doctoral level studies
50 shall:

- 51 1. Be provided a copy of this resolution by the Education and Training Department when approved
52 for the Oneida higher-education scholarship and upon receiving the first scholarship payment;
53 then by memo or other notice annually thereafter.
- 54 2. Be submitted to the Chief Counsel of the Oneida Law Office for review and recommendation for
55 action to the Oneida Business Committee.
 - 56 a. The Chief Counsel shall call upon necessary expertise within the organization to review
57 research requests, specifically departments or entities affected, and provide a
58 recommendation to approve, disapprove, or amend research requests.
 - 59 b. The Chief Counsel shall submit the research request to the Oneida Business Committee
60 with a brief summary of the research, the name of the student, the degree and education
61 institution attending, and a recommendation to approve or disapprove the research
62 request.
- 63 3. Be required to submit a copy of the final draft of the research to the Chief Counsel of the Oneida
64 Law Office for review regarding accuracy of the information.
- 65 4. Be required to submit a copy of the published or approved research project to the Chief Counsel
66 of the Oneida Law Office to be presented to the Oneida Business Committee a final published or
67 approved research project. The Chief Counsel shall notify the student of the date of the Oneida
68 Business Committee meeting and invite the student to provide a brief overview of the research
69 and findings.
70

71 **BE IT FURTHER RESOLVED**, that any research request by an educational institution or business which
72 requires access to the Oneida Nation or members for research studies of human subjects shall be:

- 73 1. Presented to the Director of Comprehensive Health Operations for review and recommendation
74 for action to the Oneida Business Committee.
 - 75 a. The Director shall call upon necessary expertise within the organization to review
76 research requests, specifically departments or entities affected, and provide a
77 recommendation to approve, disapprove, or amend research requests.
 - 78 b. The Director shall submit the research request to the Oneida Business Committee with a
79 brief summary of the research, the name of the researcher, the university or business
80 being represented, and a recommendation to approve or disapprove the research
81 request.
- 82 2. Be required to submit a copy of the final draft of the research to the Director for review regarding
83 accuracy of the information.
- 84 3. Be required to submit a copy of the published or approved research project to the Director to be
85 presented to the Oneida Business Committee a final published or approved research project. The
86 Director shall notify the researcher of the date of the Oneida Business Committee meeting and
87 invite the researcher to provide a brief overview of the research and findings.
88

89 **BE IT FURTHER RESOLVED**, that no entity, employee or representative of the Oneida Nation is
90 authorized to approve research on behalf of the Oneida Nation unless in accordance with this resolution
91 or a law which supersedes this resolution.
92

93 **BE IT FINALLY RESOLVED**, no research project data or materials can be utilized for any other or for
94 extended research without written approval of the Oneida Nation.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: March 7, 2019
- 2) Contact Person(s): Michelle Gordon Dept: Law Office
Phone Number: 869-4327 Email: mgordon@oneidanation.org
- 3) Agenda Title: Work Meeting regarding Amendments to Children's Code
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
ICW would like to start off with a request with a work meeting with the LOC to discuss the extensive changes needed to the Children's Code. ICW and myself believe that it is best practice to work with a Code that is in it's best format. Many needed changes have been identified and we would like to discuss these with the LOC.

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

- 1) List of Code Changes needed 3) _____
- 2) _____ 4) _____
- 5) Please List any laws, ordinances or resolution that might be affected:
Children's Code
- 6) Please List all other departments or person(s) you have brought your concern to:
LRO, ICW, Governmental Services Division Director, Law Office
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why: Should be in place when the Code is effective October 1, 2019

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

Signature of Requester: Michelle L. Gordon

Digitally signed by Michelle L. Gordon
Date: 2019.03.07 10:34:37 -06'00'

Please send this form and all supporting materials to:

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



TO: Oneida Business Committee
FROM: David P. Jordan, Legislative Operating Committee Chairman
DATE: March 27, 2019
RE: Oneida Personnel Commission

On September 26, 2018, the Oneida Business Committee adopted resolution BC-09-26-18-F titled, *“Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in accordance with General Tribal Council’s August 27, 2018 Directive.”*

This resolution formally recognized General Tribal Council’s directive to rescind the actions of the Oneida Business Committee related to the dissolution of the Oneida Personnel Commission, and to rescind the related emergency amendments. As a result, resolution BC-04-11-18-A, which dissolved the Oneida Personnel Commission, was formally repealed and the Oneida Personnel Commission was formally reinstated.

Resolution BC-09-26-18-F provides details on how the Oneida Personnel Commission’s responsibilities will be addressed until such time that the Oneida Personnel Commission is prepared to once again exercise its authority.

Additionally, this resolution directs the Legislative Operating Committee to provide updates on the progress of the Oneida Personnel Commission to the Oneida Business Committee on a bimonthly basis, at the second Oneida Business Committee meeting of the month.

The Oneida Business Committee amended resolution BC-09-26-18-F on March 13, 2019, through the adoption of resolution BC-03-13-19-C in an effort to provide clarification on which entity of the Nation is providing administrative support to the Oneida Personnel Commission in regards to the grievance hearing process.

This memorandum serves as the third update on the progress of the Oneida Personnel Commission.

ONEIDA PERSONNEL COMMISSION BYLAWS

On January 2, 2019, the Legislative Operating Committee adopted a motion to accept the Oneida Personnel Commission bylaw amendments and forward to the Oneida Business Committee for consideration. On January 9, 2019, the Oneida Business Committee adopted the proposed amendments to the Oneida Personnel Commission Bylaws.

Since then, the Secretary and the Business Committee Support Office (BCSO) have been planning for the Oneida Personnel Commissioners to start their work. The newly adopted bylaws set out training requirements for the Commissioners, and the BCSO has been planning those trainings and getting those tasks organized.

POSTING AND APPOINTMENTS

The BSCO posted for the five (5) member positions, three (3) applications were received and each applicant was appointed at the BC Meeting on February 27, 2019. The appointees took their oaths of office on Wednesday, March 13, 2019. The commissioners are;

Barbara Cornelius – term end 3/31/2024

Carole Liggins– term end 3/31/2023

Nancy Skenandore – term end 3/31/2022

The BSCO posted two (2) additional vacancies and the application deadline is March 29, 2019. Five (5) Pro Tem positions were also posted. Pro Tems must meet the same qualifications as the regular members for a five (5) year term.

SOP's AND AMENDMENTS TO BYLAWS

The BCSO has drafted SOPs for e-polls and stipends. There will be a meeting with the previous Oneida Personnel Commission personnel to discuss the Oneida Personnel Commission's past procedures.

On March 1, 2019, the Nation's Secretary came to the Legislative Operating Committee with a concern about a conflict existing between the newly approved Oneida Personnel Commission bylaws and Resolution BC-09-26-18-F titled, "*Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in accordance with General Tribal Council's August 27, 2018 Directive.*"

The Legislative Operating Committee added the Oneida Personnel Commission Bylaws Amendments to the Active Files List on March 4, 2019. The Legislative Operating Committee addressed the conflict in cooperation with the Human Resources Department, and then approved amendments to the bylaws by e-poll on March 7, 2019. The proposed amendments to the bylaws were presented to the Oneida Business Committee for consideration on March 13, 2019. The Oneida Business Committee deferred the bylaws back to the Legislative Operating Committee for additional changes. The LOC hopes to have draft amendments to the Oneida Business Committee for the March 27, 2019, Oneida Business Committee meeting.

NEXT STEPS


1. The BCSO has reached out to HRD's Training and Development Department to discuss training for the commissioners. A meeting time has not been set up yet.
2. Continue to work on filling the two remaining vacant positions.
3. Oneida Business Committee will consider the adoption of amended bylaws.

Requested Action

Accept this memorandum as an update on the progress of the Oneida Personnel Commission.



HANDOUT

TO: Oneida Business Committee
FROM: David P. Jordan, Legislative Operating Committee Chairman 
DATE: March 20, 2019
RE: Boards, Committees and Commissions – Bylaws Amendments Update

On September 26, 2018, the Oneida Business Committee (“OBC”) adopted amendments to the Comprehensive Policy Governing Boards, Committees and Commissions. One of the amendments was the changing of the law’s name to the Boards, Committees and Commissions law (“Law”). Others made changes to the section of the Law governing the bylaws of the Nation’s boards, committees and commissions. This included that the Nation’s boards, committees and commissions amend their bylaws to appear in the format and contain the minimal amount of information now required under the Law. [1 O.C. 105.10-1.] And, further included that the boards, committees and commissions “present” their amended bylaws for adoption within a reasonable time after the Law’s adoption [1 O.C. 105.10-1(a)], which, in resolution BC-09-26-18-C, the OBC decided meant six (6) months or March 26, 2019. Based on this, seventeen (17) of the Nation’s boards, committees and commissions were now required to amend their bylaws to comply with the Law and to “present” those amendments to the OBC for adoption on or before March 26, 2019.

Of those seventeen (17) bylaws, six (6) have since come before the OBC for possible adoption; two (2) have been reviewed by the Legislative Operating Committee (“LOC”) during a work session in anticipation of inclusion on an upcoming LOC agenda; and, but for two (2), the remaining bylaws have been submitted to the Legislative Reference Office (“LRO”) for review, revision, and analysis of their proposed amendments.

With respect to the bylaws that went before the OBC for adoption, two (2) were deferred back to an OBC work session for further discussion on various policy related items that were flagged for the OBC to consider and possibly act upon before formal adoption. The other four (4), though adopted, now need to be brought back for further amendment to account for several issues that arose and were addressed by the OBC post-adoption.

At a recent OBC work session, the LRO provided the OBC with a status update on the remainder of the bylaws that, though submitted to the LRO to begin processing for eventual inclusion on an OBC agenda, will not be presented to the OBC for possible adoption by the date referenced within resolution BC-09-26-18-C.

During that work session, the OBC recognized that sixteen (16) of the Nation’s seventeen (17) boards, committees and commissions have, to some degree, begun the process of amending their bylaws to comply with the Law within the six (6) month window set by resolution. The OBC further recognized that, with respect to those six (6) of the sixteen (16) bylaws that were actually “presented” for adoption within that window, further amendment and/or discussion is needed, and thus, they too will not be formally adopted in final form before March 26, 2019. Based on this, the

OBC has expressed a willingness to grant those sixteen (16) entities an exception to the March 26, 2019 “presentation” deadline. In other words, so long as they continue to diligently work, the OBC will consider submissions from those sixteen (16) boards, committees and commissions to be timely.

Requested Action

To grant the sixteen (16) entities that have begun the process of amending their bylaws to conform to the Boards, Committees and Commissions law and exception to the March 26, 2019 deadline set forth in resolution BC-09-26-18-C for presenting bylaws amendments to the OBC for adoption.

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



March 2019

March 2019						April 2019							
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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						31							

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Feb 24	25	26	27	28	Mar 1 9:30am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	2
3	4 2:30pm LOC MEETING (BC_Conf_Room) - Clorissa N. Santiago	5	6	7	8	9
10	11 12:15pm PUBLIC MEETING: Domestic Animals Law Amendments (BC_Conf_Room) - Clorissa	12	13	14 1:30pm FW: LOC Work Meeting (BC_Exec_Conf_Room) - Maureen S. Perkins	15 10:00am LOC Work Session (BC_Conf_Room) - Clorissa N. Santiago	16
17 10:00am GTC meeting - Special (Radisson Hotel & Conf. Center) - TribalSecretar	18	19	20 9:00am LOC Meeting (BCCR) - LOC	21 5:00pm COMMUNITY MEETING: Proposed Curfew Law (Norbert Hill Center	22 10:30am FW: LOC Work Meeting (BC_Conf_Room) - Maureen S. Perkins	23
24	25 6:00pm GTC (Radisson)	26	27	28 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	29	30
31	Apr 1	2	3	4	5	6

April 2019

April 2019

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May 2019

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 31	Apr 1	2	3 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) 9:00am LOC Meeting	4	5	6
7	8	9	10	11 2:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	12	13
14	15	16	17 9:00am LOC Meeting (BCCR) - LOC	18	19	20
21	22	23	24	25 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	26	27
28	29	30	May 1	2	3	4