

# ONEIDA INDIAN NATION

## LAND USE, ENVIRONMENTAL, HEALTH & SAFETY ORDINANCE

### Ordinance No.: O-14-03

The Oneida Indian Nation (the “Nation”) adopts and enacts this land use, environmental, health and safety to implement the terms of the intergovernmental Settlement Agreement entered by the Nation with the State of New York, the County of Madison and the County of Oneida, with an effective date of March 4, 2014 (the “Intergovernmental Agreement”). This Ordinance: (i) supersedes and replaces Ordinance No.: O-94-01-B (*Oneida Indian Nation Amended Health and Safety Ordinance*), Ordinance No.: O-98-03 (*Oneida Indian Nation Land Use Ordinance*) and Ordinance No.: O-98-07 (*Environmental Protection Ordinance*), each as amended, and their respective implementing rules, regulations, administrative guidelines and directives, in their entirety; and (ii) repeals Ordinance Nos.: O-94-01-B, O-98-03, and O-98-07.

### CHAPTER ONE: GENERAL PROVISIONS

#### Article I –Purpose

1. The purpose of this Ordinance is to establish, adopt and implement standards that protect the land, the environment and public health and safety within Reacquired Land, as defined in Article II, until such time as such Reacquired Land is transferred to the United States Department of Interior to be held in trust for the Nation. The standards established and adopted by this Ordinance shall apply to the activities of any person or organization conducted on Reacquired Land.
2. Pursuant to the Intergovernmental Agreement, and subject to the immediately preceding section, the Nation authorizes and adopts standards for the protection of the land, the environment and public health and safety that meet or exceed the standards promulgated by the State of New York, Madison County or Oneida County and the municipalities within those counties, as applicable, in their laws and regulations to the extent such regulations would otherwise be applicable if such property were not Reacquired Land.
3. In the event any standards authorized or adopted pursuant to this Ordinance, including Rules, conflict with the standards promulgated by the State of New York, and/or any County and municipality, as applicable, the Nation will meet or exceed the standards promulgated by the State of New York, and/or any County and municipality, as applicable. Further, to the extent the State of New York, and/or any County and municipality, as applicable, promulgate any amendments, modifications or updates, after the effective date of this Ordinance, to the standards contained in their laws and regulations as referenced above, and such standards would otherwise be applicable if such property were not Reacquired Land, the standards adopted pursuant to this Ordinance and/or any implementing Rules (defined below) shall be modified accordingly through regulation in accordance with Section 4 of Chapter 1, Article I.
4. The Nation Representative(s), or his/her designee shall interpret and implement this Ordinance and promulgate additional standards, rules and administrative guidelines as are necessary and appropriate in order to carry out the purposes of this Ordinance (the “Rules”).

## Article II - Definitions

“**Court**” means the Nation Court.

“**Employee**” means any person who works for wages or a salary within the Reacquired Lands of the Nation.

“**Public Facilities**” means a facility owned and operated by the Nation for the use and convenience of members, employees, guests, and patrons of the Nation. Public Facility shall include but not be limited to structures and also include facilities such as swimming pools, golf courses and sports areas.

“**Reacquired Land**” means all land possessed by the Nation within the exterior boundaries of the Nation’s Reservation (as defined in the Intergovernmental Agreement), but does not include (a) the 32 acres (more or less) of state tax-exempt land held to be tribal land retained by the Nation in *Boylan v. United States*, 256 F.165 (2d Cir. 1920), (b) the 104 acres (more or less) of state tax-exempt land retained by the Nation as Lots 2 and 3 in the June 25, 1842 Orchard Party treaty or (c) land that has been transferred to the United States Department of Interior to be held in trust for the Nation.

“**Structure**” means a building or combination of any materials, whether portable or fixed, having a roof to form a structure affording shelter for persons, animals or property and includes a factory manufactured home or a mobile home which is a moveable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed with or without a permanent foundation for year-round living and may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. “Structure” includes residential and non-residential buildings.

## CHAPTER TWO: LAND USE AND ZONING STANDARDS

### Article I – Adoption of Standards

1. The Nation has previously adopted standards to preserve its lands from the harmful effects of inappropriate land use or development and promote the orderly development of its lands in the Nation’s Land Use Ordinance (O-98-03) and Zoning Ordinance (O-94-05-A). The Amended Zoning Ordinance shall remain in full force and effect subject to Section 2 of this Chapter.
2. In accordance with this Ordinance, the Nation shall adopt land use and zoning standards. Land use and zoning standards may be established, amended, updated and/or modified accordingly through Rules in accordance with Chapter 1, Article I (4).

**CHAPTER THREE:  
ENVIRONMENTAL PROTECTION STANDARDS**

**Article I - Cooperation**

1. All programs and projects conducted on Reacquired Land shall:
  - A. Use a systematic, interdisciplinary approach to integrate the use of natural and social sciences and environmental design arts in planning and decision-making which may have an impact on the environment.
  - B. Identify and use methods and procedures, in consultation with the Nation's Environmental Manager (or other duly authorized appointee), which will insure that presently un-quantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.
  - C. Prior to making any recommendation or report on proposals for community or economic development or proposed projects on Reacquired lands, the responsible person shall consult with and obtain the findings and recommendations of the Environmental Manager with respect to any potential environmental impacts involved. The duty of consultation shall continue throughout the development, construction and operation of the project.
  - D. Develop, describe and analyze appropriate alternatives to recommended courses of action in any project or proposal. In the event any issues are raised by the responsible person as a result of the findings and recommendations of the Environmental Manager, the responsible person shall attempt to resolve those issues with the Environmental Manager. In the event an issue cannot be resolved between the responsible person and the Environmental Manager, the Nation Representative(s), upon recommendation from Environmental Manager, and responsible person, shall make the final determination on the issue.

**Article II – Adoption of Standards**

1. In furtherance of the stewardship of its land, air and water resources and in recognition of its obligation to be a good and reliable neighbor, with respect to all activities conducted on Reacquired Land, for the protection of the environment, in accordance with Section 4 of Chapter 1, Article I of this Ordinance, the Nation Representative(s), or a designee of the Nation Representative(s), shall promulgate Rules that are necessary and appropriate in order to fulfill the purposes of this Chapter III (the "Nation Environmental Standards"). All Nation Environmental Standards are subject to review and approval by the Nation Representative(s) and/or his designee.
2. In accordance with the Intergovernmental Agreement and this Ordinance, the Nation Environmental Standards shall meet or exceed those promulgated by the State of New York, and/or any County and municipality, as applicable, to the extent such standards would otherwise be applicable if such property were not Reacquired Land.

**CHAPTER FOUR:  
PUBLIC HEALTH AND SAFETY STANDARDS**

**Article I – Adoption of Standards**

1. In furtherance of the Nation's interests in protecting public health and safety the Nation adopts the standards set forth in the following codes and guidelines for land use, structures and public facilities, for building and for safety, health, sanitation and discharges located within Reacquired Land:

- A. The International Building Code, which includes the International Fire Code, the International Residential Code for One- and Two-Family Dwellings, the International Mechanical Code, the International Plumbing Code, the International Fuel Gas Code, the International Existing Building Code, the ICC International Performance Code for Buildings and Facilities, the International Property Maintenance Code and the International Zoning Code, 2012 Editions, each issued by the International Code Council;
- B. The Recommended Standards for Water Works, 2007 Edition and The Recommended Standards for Waste Water Facilities, 2004 Edition, each issued by the Great Lakes-Upper Mississippi River Board of State and Provisional Public Health and Environmental Managers;
- C. Recommended Standards for Swimming Pool Design and Operation, 1996 Edition, issued by the Great Lakes-Upper Mississippi River Board of State and Provisional Public Health and Environmental Managers;
- D. Recommended Standards for Bathing Beaches, 1990 Edition, issued by the Great Lakes-Upper Mississippi River Board of State and Provisional Public Health and Environmental Managers; and
- E. Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices, 2006 Edition, issued by the National Institute of Standards and Technology, Weights and Measures Division.

2. For the regulation of restaurants, retail food stores and food service operations located within the Reacquired Lands, the Nation adopts the standards set forth in the U.S. Food Code, 2012 Edition, issued jointly by the Food and Drug Administration, the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Food Safety and Inspection Service of the U.S. Department of Agriculture.

3. For the safety and health standards for the protection and safety of Employees, the Nation adopts the standards in the below-listed parts of the OSHA Standards:

- A. Part 1910 – General Industry Standards.
- B. Part 1926 – Construction Standards.

4. Only standards (i.e., substantive rules) relating to safety and/or health are adopted as a result of incorporation by reference of Standards contained in Sections 1, 2 and 3 of Article I, Chapter 4.

5. Manufactured homes which are in existence within the Reacquired Land at the time of the adoption of this Ordinance may not have their existing use or occupancy continued even if such use or occupancy was legal at the time of the adoption of this Ordinance unless such continued use does not constitute a violation of

this Ordinance.

6. In the event that any of the codes or standards adopted by, and incorporated into, this Article by reference is updated, supplemented or superseded, the most recent edition of the respective code or standard shall be automatically adopted and incorporated into this Ordinance in the place of the code or standard listed in this Ordinance without further action, unless the Nation Representative(s), or the designee of the Nation Representative(s) directs otherwise in writing.

7. The Nation Representative(s), or such other designee of the Nation Representative(s), may modify the standards contained in this Article I of Chapter 4 and/or adopt additional standards or codes through Rules in accordance with Section 4 of Article I, Chapter 1 of this Ordinance.

## **Article II – Exempt Buildings**

1. This Ordinance does not apply to Nation buildings used or built for traditional or ceremonial purposes or buildings intended to demonstrate historical activities or construction techniques.

## **CHAPTER FIVE: ENFORCEMENT AND VARIANCES Article I – Inspections and Enforcement**

1. The Nation Code Enforcement Officer, Environmental Manager and Fire Marshall, or such other enforcement officials as appointed by the Nation Representative(s) (each a “Nation Enforcement Officer”) shall administer and enforce this Ordinance. If the Nation Enforcement Officer(s) finds that any of the provisions of this Ordinance or its implementing Rules are being violated, he or she shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

2. No oversight or dereliction on the part of the Nation Enforcement Officer(s) or any official or employee of the Nation vested with the authority or duty to issue permits or licenses shall legalize, waive, or excuse the violation of any of the provisions of this Ordinance. No permit or license for any use, building, mobile home trailer, or other structure or use shall be issued if the same would conflict with any provision of this Ordinance or any other regulation or ordinance of the Nation. No permit or license shall legalize, authorize, waive and excuse the violation of any of the provisions of this Ordinance.

3. To the extent a Nation Enforcement Officer requires the support of personnel with specialized expertise in fulfilling his/her duties under this Ordinance, the Nation shall use qualified inspectors. Each inspector shall be familiar with the standards made applicable by this Ordinance.

4. The Nation Enforcement Officer(s) shall, by citation or otherwise, notify any party not in compliance with this Ordinance of its non-compliance. The Nation Enforcement Officer(s) shall take all actions necessary to bring the party into compliance with this Chapter in a timely manner.

5. Except as otherwise provided in this Chapter, if the Nation Enforcement Officer(s) finds that the violation has not been corrected, the Nation Enforcement Officer(s) shall order that corrective action be taken within ten (10) business days. If the owner or occupant refuses to take the corrective action, the occupant, in addition to any other penalty permitted by law, shall be fined one-hundred dollars (\$100.00) per day until the violation is corrected. These remedies shall not diminish any other remedies provided for under this Chapter or Ordinance.

6. If the appropriate Nation Enforcement Officer(s) finds that the Structure or Public Facility is dangerous and in violation of this Ordinance and that the violation cannot reasonably be remedied, the appropriate Nation Enforcement Officer(s) shall order the Structure or Public Facility condemned, demolished and removed in accordance with the Nation's demolition policy(s).

7. Decisions or orders of the Nation Enforcement Officer(s) may be appealed to the Variance Board or the Court in accordance with Article II of this Chapter and the Nation's Rules of Civil Procedure. The decision of the Court is final and no further appeal shall be allowed.

## **Article II - Variances**

1. The Nation Representative(s) shall appoint at least three individuals to serve on a Variance Board, which shall have the authority to vary or modify, in whole or in part, any provision or requirement of this Ordinance in cases where strict compliance with a provision or requirement of this Ordinance would entail practical difficulties or unnecessary hardship, or would otherwise be unwarranted; provided, however, that any such variance or modification shall not substantially adversely affect provisions for land use, environmental protection, health, safety, and security prescribed in this Ordinance. In addition, the Variance Board also shall have authority to hear and decide appeals from any order or determination by the Nation Enforcement Officer(s), or the Nation Enforcement Officer's failure to make an order or determination.

2. The Variance Board may issue a variance which excuses compliance with a provision or requirement of this Ordinance when the party or parties seeking the variance have shown by the weight of evidence that in a particular case before the Variance Board strict compliance with the particular provision or requirement:

- A. would create an excessive and unreasonable economic burden;
- B. would not achieve this Ordinance's intended objective;
- C. would inhibit achievement of some other important public policy;
- D. would be physically or legally impractical;
- E. would be unnecessary in light of alternatives which ensure the achievement of this Ordinance's intended objective or in light of alternatives which, without a loss in level of safety, health or security, achieve this Ordinance's intended objective more efficiently, effectively, or economically; or
- F. would result in a de minimus violation of this Ordinance.

3. In cases before the Variance Board, the Variance Board may fashion suitable remedies so as to do justice among the parties while fulfilling the objectives of this Ordinance to the fullest extent practicable including, but not limited to:

- A. when an order or determination has been made, sustaining, reversing, or modifying, in whole or in part such order or determination; and
- B. when an order or determination has not been made within a reasonable time, making any such order or determination or directing that any orders, determinations, permits or authorizations be issued.

4. The members of the Variance Board shall be appointed by the Nation Representative(s) to serve staggered three year terms. An appointment to fill a vacancy shall be made in the manner of the original appointment for the unexpired term. A member of the Variance Board may be re-appointed at the expiration of his or her term. The Nation Representative(s) shall designate a Chairperson. Any member of the Variance Board may be removed by, and at the discretion of, the Nation Representative(s). If a member of the Variance Board is temporarily unavailable to attend upon his or her duties, the Nation Representative(s) may designate a corresponding member to perform those duties during the period of unavailability.

5. The Variance Board shall secure the assistance of the Nation Legal Department for legal counsel and representation in carrying out powers, duties and responsibilities authorized by this Ordinance, and shall not retain or engage outside legal counsel without prior written approval from the Nation's General Counsel.

6. Any person may petition the Variance Board for relief under this part. The petition shall consist of an application on a form prescribed by the Nation's Legal Department and all information provided by the petitioner in support of it. The petition shall be delivered to the appropriate Nation Enforcement Officer together with four copies, and shall be accompanied by payment as specified by the Variance Board.

7. A petition shall be deemed received only after the Chairperson of the Variance Board has determined that the information contained within it is minimally sufficient to state matters within the jurisdiction of the Variance Board. The Chairperson of the Variance Board shall review the petition to determine that it is complete. To be complete, the petition shall state the nature of the grievance and the relief sought in sufficient detail as would permit the Variance Board to make a determination on the basis of the information contained within the petition. Such detail shall include as appropriate architectural drawings, site plans, descriptions of buildings and their histories, and an explanation of facts supporting the criteria upon which the petitioner relies as a basis for relief. If complete, the Chairperson of the Variance Board shall transmit the petition and any materials responsive to the petition to the members of the Variance Board for a decision on the written record or for a decision after a hearing. If incomplete, the Chairperson of the Variance Board shall notify the applicant of the information required for completeness. If, after notice that the petition is incomplete, no additional information is forthcoming and the file has remained inactive for a period exceeding ninety (90) days, the Chairperson of the Variance Board may dismiss the matter for Neglect to Proceed, but without prejudice to any subsequent petition.

8. A hearing shall be at the discretion of the Variance Board. If a hearing is to be held, the Variance Board shall provide notice thereof to the parties, such interested persons as the Variance Board shall have been able to determine, and any other persons who have requested the same. The Variance Board may regulate the course of the hearing, and require the presentation of evidence in such manner and order as may be most beneficial to the Variance Board.

9. Whether or not a hearing is held and regardless of the form of evidence and manner of its presentation, the burden of proof shall be on the Petitioner to show that Petitioner is entitled to any relief. The Petitioner shall provide the Variance Board with facts which demonstrate the burden imposed by strict compliance and with facts as to the safety and propriety to any alternative to strict compliance.

10. The decision of the Variance Board shall be reduced to writing, subscribed to by the Chairperson, and shall set forth the Variance Board's findings and conclusion and relief granted, if any. Petition shall be decided within sixty (60) days of completeness unless a longer period is needed for good cause showing. Copies of the written decision shall be provided to parties within a reasonable time after the determination. A copy shall be provided to the Nation's Legal Department.

11. A routine case is one determined by the Chairperson of the Variance Board to involve de minimus variance or modification that does not substantially affect this Ordinance's provision for land use, environmental protection, health, safety and security. If the Chairperson of the Variance Board determines to treat a case as a routine case under this Section, he or she, rather than the Variance Board, shall make the decision and shall consider the evidence offered, making findings of fact and conclusions of law and render its decision in writing. Unless objected to by the Petitioner or Respondent in a writing received by the Chairperson of the Variance Board, the decision shall become final after fifteen (15) days receipt of the decision by the parties. A decision shall be filed and distributed in the same manner as the decision of the Variance Board.

12. An appeal of the denial of a variance by the Variance Board or the Chairperson of the Variance Board, as the case may be, shall be filed with the Court within ten (10) business days of receipt of the decision from the Variance Board or Chairperson of the Variance Board, as the case may be, in accordance with the Nation Rules of Appellate Procedure. The decision of the Court is final and no further appeal shall be allowed.

## **CHAPTER SIX: MISCELLANEOUS**

### **Article I – Interpretation**

1. The Nation does not, by enacting this Ordinance, waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place.


2. This Ordinance is not subject to review or modification in any state or federal court or by an authority outside the Nation and is not subject to review or modification in any Nation court. Nothing in this Ordinance shall constitute, or be construed as, the Nation's consent to the extension of jurisdiction by the State of New York or by any municipality over matters coming within the purview of this Ordinance.

3. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agents, its officers or employees, or any other person.

### **Article II – Effective Date**

This Ordinance is effective upon enactment.

Enacted this 28<sup>th</sup> day of October, 2014.

  
Ray Halbritter  
Nation Representative(s)