

# Local Land Use Regulation Reimbursement Policy

Article I. Purpose and Policy

Article II. Adoption, Amendment, Conflicts

Article III. Definitions

Article IV. Eligible Individuals and Businesses

Article V. Reimbursement and Denials

Article VI. Appeals

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## Article I. Purpose and Policy

1-1. *Purpose.* It is the purpose of this policy to preserve and protect the inherent right of the Oneida Tribe of Indians of Wisconsin to create and enforce Tribal land use regulations on the Reservation. Certain local governments refuse to recognize the preemption of state and local land use regulations with respect to the activities of Tribal members and Tribal member-owned businesses on the Reservation, and with respect to non-members and non-Tribal member owned businesses utilizing Tribal land, and refuse to recognize the authority of the Tribe to regulate such activities. This situation causes hardships for such Tribal members, non-members and businesses who are inappropriately threatened with enforcement of local land use regulations. The purpose of this policy is to alleviate such hardship.

1-2. *Policy.* It is the policy of the Tribe to reimburse Tribal members, non-members and businesses subject to Tribal land use regulations for fees and/or fines associated with compliance under written protest with local land use regulations. This policy neither condones the acts of local governments nor concedes that such local governments have jurisdiction to regulate the land use of Tribal members, non-members and businesses otherwise subject to Tribal law.

## Article II. Adoption, Amendment, Conflicts

2-1. This policy was adopted by the Oneida Business Committee by resolution BC-09-08-10-B.

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

2-3. Should a provision of this policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this policy and a provision of another policy, the provisions of this policy shall control. Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

2-5. This policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

2-6. This policy shall not be construed to repeal, abrogate, annul or impair any intergovernmental agreements between the Tribe and local governments.

## Article III. Definitions

3-1. This article shall govern the definitions of words and phrases used within this policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Appropriate Tribal department" means the Tribal department(s) that approved an individual's or business's use of the land in accordance with the applicable Tribal land use regulations.

(b) "Business" means a firm, association, organization, partnership, estate, trust, company, corporation or similar entity.

(c) "Local government" includes, but is not limited to towns, villages, cities and counties organized pursuant to the laws of the State of Wisconsin.

(d) "Local land use regulations" means local government's ordinances containing inspection and/or permit requirements which regulate private use of land.

- (e) "Reservation" means all lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (f) "Tribal fee land" means land to which the Tribe holds title in fee simple on the Reservation.
- (g) "Tribal land" means Tribal trust land and Tribal fee land.
- (h) "Tribal land use regulations" means the following regulations:
  - (1) Chapter 41, Non-Metallic Mine Reclamation
  - (2) Chapter 42, Wood Cutting Ordinance
  - (3) Chapter 43, Well Abandonment Law
  - (4) Chapter 46, On-Site Waste Disposal Ordinance
  - (5) Chapter 47, Sanitation Ordinance
  - (6) Chapter 48, Water Resources Ordinance
  - (7) Chapter 66, Building Code of the Oneida Reservation
  - (8) Chapter 69, Zoning and Shoreland Protection Law
  - (9) Any Tribal law which is hereafter adopted and/or designated as a Tribal land use regulation.
- (i) "Tribal member" means an enrolled member of the Oneida Tribe of Indians of Wisconsin.
- (j) "Tribal member owned business" means a business which is majority owned and managed by one (1) or more enrolled members of the Tribe.
- (k) "Tribal trust land" means land to which the United States holds title for the benefit of the Tribe pursuant to federal law.
- (l) "Tribe" means the Oneida Tribe of Indians of Wisconsin
- (m) "Under written protest" means written documentation demonstrating that the individual or business has protested the application of the local land use regulations to his or her activities and conveyed such protest to the local government.

**Article IV. Eligible Individuals and Businesses**

4-1. This policy extends only to the following:

- (a) All Tribal members or Tribal member owned businesses on the Reservation on land under the Tribal member's or Tribal member owned business's ownership or control;
- (b) All non-members or non-Tribal member owned businesses who, in accordance with Tribal law, lease, occupy or otherwise use Tribal fee lands or trust lands on the Reservation; and
- (c) All Tribal members, non-members, and businesses, whether Tribal member owned or non-Tribal member owned, who, in accordance with Tribal law, lease, occupy or otherwise use Tribal trust land outside the boundaries of the Reservation.

**Article V. Reimbursement and Denials**

5-1. Where the following conditions are met, the Tribe will reimburse the individuals or businesses identified in Section 4-1:

- (a) The individual or business first complies with all applicable Tribal land use regulations, including obtaining any required permits and/or inspections.
- (b) The individual or business receives written notification from a local government stating that the individual or business is in violation of local land use regulations, or the individual or business is otherwise threatened with enforcement of local land use regulations.

- (c) One of the following occurs:
  - (1) The individual or business complies with the local land use regulation after October 28, 2009 under written protest; or
  - (2) The individual or business complied with the local land use regulation from January 1, 2009 through October 28, 2009 without protesting in writing.
- (d) The individual or business submits the following to the appropriate Tribal department:
  - (1) receipts for the local government's fines and/or fees for compliance with the local land use regulation; and
  - (2) verification that the individual or business complied with the local land use regulation under written protest, if required to comply under written protest.

5-2. When an individual or business identified in Section 4-1 satisfies the requirements set forth in Section 5-1, the Tribe shall reimburse the individual or business for fees and/or fines actually paid by the individual or business to the local government; however, in no event shall the Tribe bear any responsibility for the following:

- (a) Additional costs the individual or business incurs as a result of his or her compliance under written protest with the local land use regulations, including, but not limited to, construction costs or engineering costs.
- (b) Enforcement actions mandated by a local government, including, but not limited to, building razing.
- (c) Fines in excess of \$1,000.

5-3. If an individual or business is denied reimbursement, the appropriate Tribal department shall inform the individual or business of the denial in writing within ten (10) business days after receiving the reimbursement request. The notice shall also inform the individual or business he or she has ten (10) business days after receiving the denial to file an appeal and where he or she can file an appeal.

5-4. In no case shall an individual or business purport to allow a local government to rezone Tribal fee land or Tribal trust land.

## **Article VI. Appeals**

6-1. Any individual or business denied reimbursement for fees and/or fines actually paid by the individual or business may file an appeal with the division director of the department which denied the reimbursement. The denial of reimbursement shall specify where the individual or business may appeal the decision. The appeal shall be filed within ten (10) business days after the individual or business is notified of the denial of reimbursement.

6-2. The division director, or a designee, shall determine whether the individual or business is eligible for reimbursement within five (5) business days of receipt of the appeal. The determination shall be sent by registered mail (return receipt requested) or delivered in person to the individual or business.

6-3. If reimbursement is denied by the division director, or designee, the individual or business may file an appeal of the decision with the Oneida Appeals Commission.

*End.*