

HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 7 – TRIBAL ENROLLMENT AND MEMBERSHIP CODE

ENACTED BY LEGISLATURE: October 16, 2007

CITE AS: 2 HCC § 7

This Code supersedes HCC 95-013, Tribal Enrollment and Membership Act of 1995 as enacted by Ho-Chunk Nation Legislative Resolution 11/28/95B and amended by Resolution 2/2/99C and as further amended by Resolution 10-16-07 – L and as further amended on 02-17-08.

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1. Authority.

a. Article II of the Constitution of the Ho-Chunk Nation ("Constitution") defines the Requirements for Membership in the Ho-Chunk Nation ("Nation") as follows:

Section 1. Requirements. The following persons shall be eligible for membership in the Ho-Chunk Nation, provided, that such persons are not enrolled members of any other Indian nation:

(a) All persons of Ho-Chunk blood whose names appear or are entitled to appear on the official census roll prepared pursuant to the Act of January 18, 1881 (21 Stat. 315), or the Wisconsin Winnebago Annuity Payroll for the year one thousand nine hundred and one (1901), or the Act of January 20, 1910 (36 Stat. 873), or the Act of July 1, 1912 (37 Stat. 187); or

(b) All descendants of persons listed in Section 1(a), provided, that such persons are at least one-fourth (1/4) Ho-Chunk blood.

(c) Beginning the date this amendment is approved, the Ho-Chunk Nation shall no longer consider or accept for enrollment any person who has previously been enrolled as a member of another Tribe (including the Winnebago Tribe of Nebraska). [New section adopted by Amendment I on January 26, 2000 and approved by the Secretary on March 3, 2000.]

Section 2. Relinquishment of Membership and Re-enrollment. Enrollment in any other Indian Nation shall constitute voluntary relinquishment of membership. Adult members may relinquish their membership or the membership of their minor children. Relinquishment of membership shall be done in writing. Any adult member who has voluntarily requested to be removed from the Membership Roll shall not be eligible for re-enrollment. Any minor whose membership has been relinquished by a parent shall be eligible for re-enrollment upon reaching the age of eighteen (18).

Section 3. Re-enrollment by General Council. Any person at least one-fourth (1/4) Ho-Chunk blood who has relinquished membership under Section 2 of this Article may be re-enrolled into membership by a two-thirds (2/3) vote of the General Council, provided, that such individual is not an enrolled member of any other Indian Nation.

Section 4. Membership Roll. The Legislature shall maintain one official roll of all tribal members.

Section 5. Membership Code. The Legislature shall have the power to enact laws not inconsistent with this Article to govern membership. Removal of any person who is not eligible for membership from the Membership Roll shall be done in accordance

with the Membership Code, provided, that such removal is approved by at least a two-thirds (2/3) vote of the General Council.

Section 6. Appeals. Any person who has been rejected for enrollment or who has been removed from the Membership Roll shall have the right to appeal to the Judiciary for a remedy in equity consistent with this Constitution.

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

c. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments and to delegate legislative powers to the Executive Branch to be administered by such Departments.

d. Article V, Section 3 of the Constitution requires the Legislature to adopt a code governing Membership.

e. Article X, Section 1(a)(8) of the Constitution prohibits the Nation to deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

2. Purpose. To establish within the Department of Heritage Preservation, an Office of Tribal Enrollment, to maintain one official roll of all Members and to provide procedures for determining which persons meet the requirements for Membership in the Ho-Chunk Nation.

3. Definitions. For purposes of this Code, these words have the following definitions and will be identified throughout this document by capitalization:

a. "Absent Member" means a Member of the Ho-Chunk Nation who, for a period of at least one (1) year, has not cashed a per capita distribution check, whose per capita distribution check is returned undeliverable, or the Member has not completed an annual address verification form and whose absence is unexplained.

b. "Affected Member" means a Member who is subject to removal from the Membership Roll as an ineligible Member.

c. "Affiant" means a Member of the Ho-Chunk Nation who is at least eighteen (18) years old and who signs an Affidavit in accordance with this Code.

d. "Affidavit" means a written or printed declaration or statement of facts, made, voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as a Notary Public.

- e. “Applicant” means an individual whose name will be added, if determined to be eligible, to the Ho-Chunk Nation Membership Roll.
- f. “Application” means the Application for Membership.
- g. “Attorney General” means the Attorney General for the Ho-Chunk Nation.
- h. “Base Rolls” means the official census rolls prepared pursuant to the Act of January 18, 1881 (21 Stat. 315), or the Wisconsin Winnebago Annuity Payroll for the year one thousand nine hundred and one (1901), or the Act of January 20, 1910 (36 Stat. 873), or the Act of July 1, 1912 (37 Stat. 187).
- i. “Clear and Convincing Evidence” means evidence that tends to show, on its face, more likely than not, that fact which is trying to be proven.
- j. “By-Laws” means the rules and regulations that control the internal procedures of the Ho-Chunk Nation Committee on Tribal Enrollment. The By-Laws shall be approved by the Ho-Chunk Nation Legislature. By-Laws shall not be inconsistent with the Constitution, the Tribal Enrollment and Membership Code, or other laws of the Nation. If there is any inconsistency between the By-Laws and the Constitution; the Tribal Enrollment and Membership Code; or other laws of the Nation, the Constitution; the Tribal Enrollment and Membership Code; or other laws of the Nation shall supersede the By-Laws.
- k. "Committee" means the Ho-Chunk Nation Committee on Tribal Enrollment.
- l. “Constitution” means the Constitution of the Ho-Chunk.
- m. "Court" means the Ho-Chunk Nation Trial Court.
- n. “Day” means a Day of twenty-four (24) hours.
- o. “Discretionary Benefits” means any benefits, except for per capita payments and other benefits which are deemed mandatory as provided by the Charitable Request Act (4 HCC §8), provided by the Nation to Members of the Ho-Chunk Nation as a result of them being a Member of the Nation.
- p. “Disenrollment” means an official action done pursuant to provisions of this Code and the Ho-Chunk Nation Constitution which removes a Ho-Chunk Member from the Ho-Chunk rolls.
- q. “District” means one of the five (5) Districts of the Ho-Chunk Nation established pursuant to Article V, Section 1(b) of the Constitution.

r. "DNA" is the acronym for deoxyribonucleic acid, which is that nucleic acid that carries the genetic information in the cell and is capable of self-replication and synthesis of ribonucleic acid "RNA."

s. "Enrollment Rules and Regulation" means the internal governing procedures for the Office of Tribal Enrollment. Enrollment Rules and Regulations shall not be inconsistent with the Constitution, the Tribal Enrollment and Membership Code, or any other laws of the Nation. If there is any inconsistency between the Enrollment Rules and Regulations and the Constitution; the Tribal Enrollment and Membership Code; or other laws of the Nation, the Constitution; the Tribal Enrollment and Membership Code; or other laws of the Nation shall supersede the Enrollment Rules and Regulations.

t. "Frivolous" means a groundless claim to remove an enrolled Tribal Member.

u. "Ho-Chunk Blood" means the quantum of Ho-Chunk Blood in a person's lineage as it appears in Article II, Section 1 of the Constitution and includes Members of the Winnebago Tribe of Nebraska. If the Base Rolls provide no percentage of Ho-Chunk Blood, the Tribal Enrollment Officer will determine that the percentage of Ho-Chunk Blood is four-fourths (4/4), unless the Tribal Enrollment Officer determines by Clear and Convincing Evidence that the actual percentage is less than four-fourths (4/4).

v. "Indian Tribe" or "Tribe" means any Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaskan Native entity, which is federally recognized as a sovereign political entity by the United States.

w. "Legally Incompetent" means a Member who due to physical or mental condition, as determined by a Court of competent jurisdiction, is incapable of understanding the consequences of his or her actions. The pendency of a State Court guardianship, conservatorship, or receivership will be good and sufficient evidence establishing Legal Incompetence, unless the Trial Court upon the circumstances of the case determines otherwise.

x. "Malicious" means a claim to remove an enrolled Tribal Member that is wrongful and done intentionally without just cause or excuse or as a result of ill will without a factual basis to support the claim.

y. "Member" means any person listed on the Membership Roll of the Ho-Chunk Nation.

z. "Membership Roll" means a record of each and every duly enrolled Member of the Ho-Chunk Nation, which includes legal names, identification number, and date of birth.

aa. "Non-Member" means any person whose name is not listed on the Official Membership Roll of the Ho-Chunk Nation.

bb. "Office" means the Office of Tribal Enrollment.

cc. “Relinquishment” means voluntary withdrawal of Membership in a federally recognized Indian Tribe.

dd. “Sponsor” means a parent of a minor person under the age of eighteen (18) or legal guardian of a person who has a legal duty to file an Application for Membership or appeal on behalf of a person who is a minor, deceased, incompetent or otherwise lacks the capacity to file an Application or appeal. A grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship may be a Sponsor of a person who is a minor, deceased, incompetent or otherwise lacks the capacity to file an Application or appeal, but only if after six (6) months a parent of a minor person or legal guardian of a person refuses to make an Application. A grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship will include a statement with the Application that he or she has attempted for at least the past six (6) months to get the parent or legal guardian to file an Application for Membership and include the address of the parent or legal guardian. Immediately upon receiving an Application from a grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship, the Office of Tribal Enrollment will send a copy of the completed Application via certified mail to the parent(s) or legal guardian of the person who is a minor, deceased, incompetent or otherwise lacks the capacity to file an Application. If a person is deceased, an Application may be Sponsored on that person’s behalf by the executor or administrator of the deceased’s estate for the purpose of memorializing Membership only, without conferring any privileges, rights or immunities hereto.

ee. “Technical Correction” means a correction made by the Tribal Enrollment Officer to the Membership Roll that does not affect a Member’s eligibility for Membership.

ff. “Tribal Enrollment Officer” means that person who is the head of the Office of Tribal Enrollment delegated to administer the Membership Roll in accordance with the Constitution, this Code, and other applicable laws of the Nation.

4. Office of Tribal Enrollment. Within the Department of Heritage Preservation, there will be an Office of Tribal Enrollment ("Office") that will maintain the Membership Roll, including Enrollment and Disenrollment, and determine eligibility for Membership in accordance with the Constitution, this Code, and Enrollment Office Rules and Regulations.

a. The Office will adopt Enrollment Rules and Regulations consistent with the Constitution and laws of the Nation in furtherance of its statutory duty.

b. The Office will maintain confidentiality of all Membership information consistent with this Code and other applicable laws of the Nation.

c. The Tribal Enrollment Officer will make Technical Corrections.

d. The Office will prepare and promulgate Enrollment Rules and Regulations.

e. The Office will coordinate information and activities pertinent to the Committee on Tribal Enrollment.

5. Committee on Tribal Enrollment.

a. Committee Membership.

(1) Within the Department of Heritage Preservation, there will be a Committee on Tribal Enrollment that will serve the Office of Tribal Enrollment in an advisory capacity and hear appeals in accordance with this Code.

(2) The Committee will consist of, ten (10) Members, two (2) each from each District, appointed by the Legislature.

(3) Committee vacancies for each District will be posted in accordance with the *Legislative Organization Act* (2 HCC § 11). The District Legislators will consult with Tribal Members and recommend Member appointments to the full Legislature for approval.

(4) The Committee on Tribal Enrollment will adopt By-Laws consistent with the Constitution and laws of the Nation in furtherance of its statutory duty. The Committee will submit the By-Laws of the Committee on Tribal Enrollment to the Legislative Counsel Office and Department of Justice within thirty (30) days of passage of Resolution 10-16-07 - L. After the Committee consults with an Attorney from the Legislative Counsel Office and Department of Justice, the Committee then shall submit the By-Laws to the Legislature for its approval within sixty (60) Days of the passage of Resolution 10-16-07 - L.

b. Duties and Authority.

(1) The Committee will have the authority and responsibility to interpret this Code in proceedings before it.

(2) The Committee will be subject to the Nation's *Code of Ethics Act* (2 HCC § 1), *Open Meetings Act* (2 HCC § 2), *Finance Manual* (5 HCC § 5), and other applicable laws.

c. Meetings and Hearings. Committee Members will attend regular and special meetings of the Committee and those hearings required by this Code.

d. The Committee will maintain confidentiality of all Membership information consistent with this Code and other applicable laws of the Nation.

6. Application for Membership in the Ho-Chunk Nation.

a. The burden of applying for Membership will be upon:

(1) The Applicant who is the person seeking to become a Member, or the Sponsor of the Applicant; and

(2) Except for lab site collection fees, all fees required to be paid by the Applicant or Sponsor of the Applicant as part of the Application will initially be paid for by the Nation. If the Applicant does become a Member of the Nation he or she will have the amount paid for by the Nation taken out of his or her first and subsequent per capita payments until the Applicant has paid back the Nation the entire amount. Should the Applicant not meet the requirements to become a Member, the Adult Applicant or Sponsor will reimburse the Nation for these costs. The Applicant or Sponsor of the Applicant may elect to pay these fees initially.

b. The Applicant or Sponsor will request an Application for Membership from the Office of Tribal Enrollment. The Office of Tribal Enrollment will by certified mail send one envelope that: (i) acknowledges the receipt of the request, (ii) provides an Application for Membership Form with instructions, (iii) notifies the Applicant or Sponsor of the requirement for DNA testing, and (iv) provides a list of potential fines that the Applicant or Sponsor is subject to as provided in this Code.

c. The Applicant or Sponsor will submit an Application Packet consisting of the following:

(1) A completed Application for Membership Form, as prescribed by the Office of Tribal Enrollment.

(2) A signed form requiring that if the Applicant does become a Member he or she will pay back to the Nation all Applicable fees out of the Applicant's per capita payments. A second signed form requiring that if the Applicant does not become a Member, the Adult Applicant or Sponsor will pay back to the Nation all Applicable fees. Fees included in this will include the cost of DNA testing and an Application fee as prescribed by the Office of Tribal Enrollment.

(3) The following additional documents or information:

(a) certified copy of birth certificate;

(b) legible copy of Social Security Card;

- (c) applicable Court Orders concerning (i.e., marriage, divorce, etc): and
- (d) applicable adoption orders and information.

d. The Tribal Enrollment Officer upon finding that a submitted Application Packet is incomplete will notify the Applicant or Sponsor via certified mail.

e. Verification of Applicant Identity and Eligibility. Upon receipt of a complete Application Packet, the Office of Tribal Enrollment will process the Application. Initial processing includes, but is not limited to, verification of submitted documents, verification of the Applicant's identity, and whether the Applicant has been enrolled in another Tribe. Upon successful initial processing the Applicant or Sponsor will be notified of the requirement for a DNA test, used to determine parentage. Unless the Applicant or Sponsor elects to pay for the cost of the DNA test initially, the cost of the DNA Test is initially paid for by the Nation, but the Applicant or Sponsor must agree to reimburse the Nation for the cost of the DNA test. Processing is complete upon conclusive DNA test results, determination of the Applicant's blood quantum and family tree. In the case of adoptions, a DNA test is not required. DNA test results remain the property of the Ho-Chunk Nation and will be stored in accordance with Office of Tribal Enrollment procedures.

f. Any person or Tribal Member who falsifies or knowingly submits false information on an Application may be subject to a fine of not more than One Thousand Dollars (\$1,000) imposed by an Order of the Committee on Tribal Enrollment or the Tribal Court. Any Tribal Member abetting the preparation of false documents or conspiring to submit false information will be subject to the same One Thousand Dollar (\$1,000) fine. In addition to the monetary fine, the Applicant's Application for Enrollment will be declared inactive for one (1) year.

g. Grounds for Denial of Application for Membership. Grounds for denial of an Application will include, but not be limited to:

- (1) failure to prove descendency from Article II, Section 1(a) of the Constitution, which is determined by DNA Test results; or
- (2) the Applicant is less than one-fourth (1/4) Ho-Chunk Blood; or
- (3) the Applicant is a Member of another federally recognized Indian Tribe; or
- (4) the Applicant Relinquished Membership from another federally recognized Indian Tribe.

h. Committee Review of Exceptions. In the case of inconclusive DNA test results or if there are adoption questions, the Tribal Enrollment Officer will submit the Application file to the Committee for review and recommendation.

7. Determination on Eligibility.

a. The Tribal Enrollment Officer will review the Application file upon completion of processing in accordance with paragraph 6. c., above, and make an initial determination on eligibility. The Tribal Enrollment Officer will certify a Notice of Eligibility for Membership and will publish such Notice in the Nation's newsletter and on the Nation's website. Upon publication a sixty (60) Day notice period begins.

b. The Notice of Eligibility for Membership must include the Applicant's name, date of birth, Base Roll ancestry, Ho-Chunk Blood and parent. There will be an exemption for adoptions. Pursuant to Wisconsin and other States' Laws certain information will be neither published nor released.

c. Approval of Membership. All rights, privileges and benefits of Membership will take effect after the sixty (60) Day notice period if no appeal is filed with the Office of Tribal Enrollment.

8. Appeals to Committee on Tribal Enrollment and Trial Court.

a. Except for as provided in paragraph 10. b. (2) (b) (v) (cc) 1, any Member, Applicant, or Sponsor may appeal a determination made by the Office of Tribal Enrollment to the Committee on Tribal Enrollment. Matters which may be appealed include determinations regarding Eligibility for Membership, a fine imposed by the Committee, or a Blood Quantum change that adversely affects the Member. Such appeal must be filed within sixty (60) Days after the date on which the Office of Tribal Enrollment publishes Notice of Eligibility for Membership or notifies the Member, Applicant, or Sponsor of the decision by certified mail. The Committee will hold a hearing and issue a decision on such appeal in accordance with this Code.

b. The Committee on Tribal Enrollment's decision will be appealable to the Trial Court pursuant to Article II, Section 6 of the Constitution.

9. Voluntary Relinquishment.

a. Voluntary Relinquishment of Membership.

(1) A Member may voluntarily Relinquish Membership in accordance with Article II, Section 2 of the Constitution of the Ho-Chunk Nation.

(2) The Tribal Enrollment Officer will establish procedures for Voluntary Relinquishment in accordance with Article II, Section 2 of the Constitution.

(3) A Member who seeks Voluntary Relinquishment of Membership will notify the Office of Tribal Enrollment in writing with a notarized signature.

(a) The Office of Tribal Enrollment shall develop a Relinquishment Form to be handed to any Member who wishes to Voluntarily Relinquish Membership. This Relinquishment Form shall outline the consequences of Relinquishing Membership and the process to voluntarily Relinquish Membership.

(b) Upon receiving a written notification that a Member wishes to Relinquish Membership, the Office of Tribal Enrollment shall send via certified mail a copy of the Relinquishment Form to the Member who submitted the written notification to initiate the process of Relinquishing Membership.

(4) The Office of Tribal Enrollment will forward the Voluntary Relinquishment to the Trial Court for certification.

(5) Voluntary Relinquishment will become effective upon receipt of the Trial Court's certification by the Office of Tribal Enrollment, unless otherwise provided under the Code and will immediately terminate all rights, privileges, and benefits of Membership and the person's name will be removed from the Membership Roll.

b. Relinquishment of a Minor's Membership. Any parent or legal guardian wishing to Relinquish a Minor's Membership must petition the Trial Court. The Court will appoint a guardian ad litem for the minor for the purpose of representing the interests of that minor before the Court. Any minor whose Membership has been Relinquished by a parent will be eligible for re-enrollment upon reaching the age of eighteen (18).

c. Pursuant to Article II, Section 2, of the Ho-Chunk Constitution, enrollment in any other Indian Nation will constitute Voluntary Relinquishment of Membership with the Ho-Chunk Nation. Pursuant to Article II, Section 3, of the Ho-Chunk Constitution, a former Member who Voluntarily Relinquished Membership, as a result of becoming Enrolled in another Indian Tribe may only be re-enrolled if that individual satisfies the following conditions:

(1) The individual is no longer enrolled in any other Tribe;

(2) The individual is of at least one-fourth (1/4) Ho-Chunk Blood; and

(3) The individual obtains a two-thirds (2/3) vote of the General Council to be re-enrolled as a Member.

10. Ineligible Tribal Member Removal Procedures.

a. Grounds for Removal.

(1) The Member is less than one-fourth (1/4) Ho-Chunk Blood (Article II, Section 1(b) of the Constitution);

(2) insufficient proof of Ho-Chunk ancestry (Article II, Section 1(a) of the Constitution);

(3) the Member is enrolled in another Indian Nation (Article II, Section 1 of the Constitution); or

(4) the Member was previously enrolled in another Tribe (Article II, Section 1(c) of the Constitution); this provision took effect for Members enrolled on or after March 3, 2000.

b. Persons Authorized to Initiate Possible Removal.

(1) Initiation of Removal by Tribal Enrollment Officer. The Tribal Enrollment Officer will initiate a removal of a Member from the Membership Roll upon determining that, by Clear and Convincing Evidence, the Member fails to meet the eligibility requirements.

(2) Initiation of Removal by Members. Any three (3) enrolled Ho-Chunk adult Members who are not Legally Incompetent may initiate a removal of a Member from the Membership Roll only by filing Affidavits with the Office of Tribal Enrollment. The Affidavits must clearly state the grounds for removal. A non-refundable filing fee of Fifty Dollars (\$50.00) must accompany each Affidavit.

c. Penalties for Unlawful Retaliation.

(1) If an Affected Member unlawfully retaliates or causes someone else to unlawfully retaliate against the Tribal Enrollment Officer or the Member(s) who filed the Affidavit(s), the Affected Member may be fined up to One Thousand Dollars (\$1,000). The Tribal Enrollment Officer or the Member(s) who filed the Affidavit(s) may obtain a judgment up to One Thousand Dollars (\$1,000) by initiating a petition in the Ho-Chunk Nation Trial Court. Upon a vote of the Committee on Tribal Enrollment, the Tribal Enrollment Officer or the Member(s) who filed the Affidavit(s) may be represented by the Department of Justice at the Discretion of the Attorney General in proceedings before the Court, but any award granted by the Court will be given to the Tribal Enrollment Officer or the Member(s) who filed the Affidavit(s). The Tribal Enrollment Officer or the Member(s) who filed the Affidavit(s) may also represent themselves or through the assistance of outside legal counsel in this matter. This penalty will be in addition to any other penalty provided by Federal, State, Municipal, or Ho-Chunk Nation Law.

(2) If an Affiant unlawfully retaliates or causes someone else to unlawfully retaliate against the Tribal Enrollment Officer or the Affected Member, the Affiant may be fined up to One Thousand Dollars (\$1,000). The Tribal Enrollment Officer or the Affected Member may obtain a judgment up to One Thousand Dollars (\$1,000) by initiating a petition in the Ho-Chunk Nation Trial Court. Upon a vote of the Committee on Tribal Enrollment, the Tribal Enrollment Officer or the Affected Member may be represented by the Department of Justice at the Discretion of the Attorney General in

proceedings before the Court, but any award granted by the Court will be given to the Tribal Enrollment Officer or the Affected Member. The Tribal Enrollment Officer or the Affected Member may also represent themselves or through the assistance of outside legal counsel in this matter. This penalty will be in addition to any other penalty provided by Federal, State, Municipal, or Ho-Chunk Law.

d. Affected Member Benefits.

(1) Department Notification. The Tribal Enrollment Officer will notify the President, through the Executive Director of the Department of Heritage Preservation, in writing to suspend any Discretionary Benefits provided by the Ho-Chunk Nation to an Affected Member upon the Committee on Tribal Enrollment making a finding and recommendation that the Affected Member should be removed.

(2) Per Capita Distributions. An Affected Member will receive his or her per capita payment until there is a vote of the General Council, pursuant to the Ho-Chunk Constitution, removing him or her as a Member and upon all legal challenges to his or her removal being exhausted.

e. Commencement of Removal.

(1) Notice of Removal to Affected Member. To commence removal, the Office of Tribal Enrollment must provide a Notice of Removal to the Affected Member by certified mail return receipt requested. The Notice will inform the Affected Member of the withholding of Discretionary Benefits, which may result from this hearing. If the removal was initiated pursuant to paragraph 10. b. (2), copies of the Affidavits of the Tribal Members initiating the removal will also be provided as part of the Notice. The Notice will inform the Affected Member that he or she, if removed by the General Council, may be subject to repayment of services/benefits received from the Nation after the commencement of removal procedures.

(2) Scheduling of Hearing. A hearing before the Committee on Tribal Enrollment must be held within sixty (60) Days of the Notice of Removal by the Tribal Enrollment Officer or upon the certification of the receipt of three (3) properly executed Affidavits.

(3) Notice of Hearing. The Office of Tribal Enrollment will provide the notice of hearing to the Affected Member at least thirty (30) Days prior to the date set for the hearing. The notice will include the date, time and location of the hearing and state that the Affected Member has the right to be represented by counsel. The notice will be sent by certified mail return receipt requested.

f. Hearing.

(1) Role of Tribal Enrollment Officer in Tribal Member Challenge. The Tribal Enrollment Officer will assist only in the presentation of evidence and will not advocate for or against the Affiants.

(2) Discovery. Not less than fifteen (15) Days prior to a hearing, each party will share with the other(s) all documentary evidence which the party intends to present at the hearing.

(3) Postponement of Hearings. Once scheduled, hearings will not be postponed for more than thirty (30) Days.

(4) Chairperson to Preside. The Chairperson of the Committee will preside over the hearing and will be responsible for controlling the presentation and admissibility of evidence, appearance of witnesses, and the overall order of the hearing.

(5) Appearance of Affiants. If the removal hearing was initiated pursuant to paragraph 10. b. (2), all three (3) Affiants must appear at the hearing. Failure to appear may result in the dismissal of the removal. The Chair of the Committee may excuse a non-appearance for good cause and the hearing will be postponed for a period not to exceed thirty (30) Days.

(6) Closed Hearing. Due to confidential and private matters hearings will be closed to the public. Only Members of the Committee, the Tribal Enrollment Officer and his or her designated administrative/technical staff, the Affiants, the Affected Member, and the counsel of each party, the court reporter, and video photographer may be present at all times. Witnesses will be present only when giving testimony and shall be instructed to not discuss their testimony with any other individual during the hearing.

(7) Record. The record will include the Affidavits, all documentary evidence presented at the hearing and any stipulation or admission entered into at the hearing and all testimony taken during the hearing. The hearing will be recorded by transcript and video-taped. The transcript and tape will be kept on file by the Office of Tribal Enrollment for not less than one (1) year after the hearing. Transcripts and tapes will not be released to any person, including the Affected Member, other than as required by the discovery rules applicable to any appeal to the Nation's Trial Court.

(8) No Ex Parte Communication. The Office of Tribal Enrollment, Affected Member, Affiants, or any other parties related thereto will not communicate with any Member of the Committee regarding any matter pertaining to the merits of the hearing.

(9) Order of Hearing. The removal hearing will be conducted as follows below:

(a) The Presiding Chair's statement of the issue and notice of attendance for the record.

(b) If the removal hearing was initiated pursuant to paragraph 10. b. (2), the Affiants' opening statement.

(c) The Affected Member's opening statement.

(d) The Tribal Enrollment Officer and/or Tribal attorney will present evidence in documentary form or through witnesses.

(e) If the removal hearing was initiated pursuant to paragraph 10. b. (2), the Affiants will present evidence in documentary form or through witnesses unless previously presented by the Tribal Enrollment Officer or Tribal attorney.

(f) The Affected Member will present evidence in documentary form or through witnesses and address or confront the available Affiants.

(g) Each witness, upon completion of his or her direct testimony, may be cross-examined by the other party.

(h) If the removal hearing was initiated pursuant to paragraph 10. b. (2), the Affiants' closing statement.

(i) The Affected Member's closing statement.

(j) At the discretion of the Committee, Committee Members may ask additional questions of the parties at any time during the hearing.

(10) Evidence.

(a) Formal rules of evidence do not apply at the hearing but evidence which is irrelevant, cumulative or which would be unfair or prejudicial may be excluded by the Chair or admitted by the Chair under special conditions or stipulations. Basic rules of relevancy, materiality and probative force will be used by the Chair as a guide to admissibility. The Chair will rule on the admissibility of evidence.

(b) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, opportunity will be granted to compare the copy to the original. At the discretion of the Committee, a reasonable amount of time will be provided to review the evidence.

(c) Greater weight will be given to the following documents: verification of enrollment in another Indian Tribe, certified birth certificate, social security card, Court Orders, and DNA analysis.

(11) Witnesses. The Chair of the hearing or the court reporter will administer an oath to each witness. Testimony may be presented either in the form of questions and answers or by narrative statement of the witness.

(12) Official Notice. The Committee may take official notice of generally recognized facts or any established technical or scientific facts provided that it informs the Office of Tribal Enrollment, the Affected Member, and the Affiants of such matters and provides them with the opportunity to rebut any fact officially noticed.

g. Findings and Recommendations.

(1) Quorum. The Committee will only make findings and recommendations when it has quorum, which will require a majority of Committee members and that the majority include a minimum representation from three (3) different Districts.

(2) Voting. The Committee will render its findings and recommendations upon a majority vote, with the Chair casting the deciding vote in the instance of a tie.

(3) Timeline for Findings and Recommendations. The Committee will issue written findings and recommendations to the parties within ten (10) Days of the hearing.

(4) Committee Findings and Recommendations. The Committee on Tribal Enrollment may render any of the following findings and recommendations:

(a) Find that the removal by the Affiants is Frivolous and/or Malicious, and dismiss the removal.

(b) Find that the Affiants or Tribal Enrollment Officer failed to meet the evidentiary standard necessary to remove a Member and dismiss the removal.

(c) Find that an Affected Member, through admission, does not meet the Membership requirements and proceed with the removal.

(d) Find that the Affected Member is ineligible for Membership if documentary and/or testimonial evidence shows by Clear and Convincing Evidence that the Affected Member does not meet the qualifications for Membership outlined in Article II, Section 1 of the Ho-Chunk Constitution.

(e) If the Committee finds the Affected Member is ineligible for Tribal Membership, it may further recommend the forfeiture of any or all property or the repayment of money received from the Nation, pursuant to the laws of the Nation. This may only happen upon a determination by the Committee that the evidence establishes beyond a reasonable doubt that the Affected Member became a Member through fraud.

(f) Order that the Affected Member, and their relatives needed to establish Ho-Chunk lineage, submit to a DNA analysis to be conducted by an independent testing laboratory contracted by and paid by the Ho-Chunk Nation. The Affected Member must contact the Office of Tribal Enrollment in order to set testing times and locations for him or her and the selected relative(s).

(5) Failure to Cooperate. The Committee may find that an Affected Member's failure to cooperate with the Office of Tribal Enrollment or failure to submit to DNA analysis within sixty (60) Days of the Committee's findings and recommendations is equivalent to an admission of ineligibility for Membership.

h. Handling of DNA Analysis. If the Committee ordered DNA testing in accordance with paragraph g(4)(f), above, the Committee will render its findings and recommendations at the next regularly scheduled Committee meeting after receipt of the DNA analysis results. DNA test results remain the property of the Ho-Chunk Nation and will be stored in accordance with Office of Tribal Enrollment procedures.

i. Frivolous and/or Malicious Removal by Members. If the Committee on Tribal Enrollment finds that the removal initiated by the Affiants was Frivolous and/or Malicious, the Committee will, by written findings and recommendations, inform the Affected Member as to the Affected Member's right to file a petition with the Trial Court to seek a remedy of not more than Five Thousand Dollars (\$5,000), to be equally assessed against the Affiants, for defamation and hardship created for the Affected Member. In addition to the Five Thousand Dollar (\$5,000) remedy, the Trial Court may award that the Affiants will also pay any other fees associated with the removal hearing, incurred either by the Affected Member or the Nation, to include the cost of DNA analysis. The Court will include the Nation as a party to this lawsuit.

11. Procedures for the Missing Enrolled Ho-Chunk Members.

a. Pursuant to paragraph 11. b., the Office of Tribal Enrollment will engage and pay for the services of an independent firm to conduct a missing person investigation if the following requirements are satisfied:

(1) The request for the missing person investigation comes from an immediate family member; and

(2) Prior to making the requests:

(aa) The immediate family member has contacted local law enforcement where the Absent Member was last located or believed to be located and filed a Missing Person Report; and

1 The local law enforcement has followed its procedures to locate the Absent Member and has been unable to find him or her.

2 The immediate family member has received a letter from the local law enforcement official conducting the missing person investigation that states that the local law enforcement has been unable to find the Absent Member.

(bb) The immediate family member has contacted the Wisconsin Clearinghouse For Missing & Exploited Children & Adults or similar agency of the state where the Absent Member was last located or believed to be located and notified the agency that the Absent Member is missing.

b. If the requirements of paragraph 11. a. are satisfied, the immediate family of an Absent Member, may request that the Office of Tribal Enrollment take the following actions:

(1) Conduct a sufficiently thorough missing person's investigation. The Office of Tribal Enrollment will engage and pay for the services of an independent firm to conduct this missing person search.

(2) Upon learning the results of the missing person investigation, the Office of Tribal Enrollment will notify by certified mail the immediate family member who asked the Office of Tribal Enrollment to conduct the missing person search.

(3) For purposes of the paragraph 11. the words "immediate family" is defined as parent, grandparent, sibling, child, step relative, spouse, or cohabitant.

c. When the Nation's Legislature enacts a Probate Code, matters related to how to deal with Absent Members who are not found as a result of the missing person investigation will be addressed and controlled by the Probate Code.

12. Appeals to Trial Court.

a. An appeal of the findings and recommendations of the Committee on Tribal Enrollment must be filed in the Trial Court within thirty (30) Days of the date of the findings and recommendations.

b. Scope of Judicial Review. Decisions of the Trial Court will be based upon a review of the record of the Committee on Tribal Enrollment's proceedings, oral arguments, if any, and any written statements submitted. The Trial Court will not exercise de novo review of the Committee's findings and recommendations and will give proper deference to the expertise of the Committee and to its determinations of credibility. The Trial Court will not substitute its discretion for discretion legally vested in the Committee. The Trial Court will strictly construe the provisions of this Code.

c. The Trial Court will determine whether the findings and recommendations of the Committee:

(1) contains irregularities of procedure;

(2) is arbitrary, capricious or unreasonable;

(3) is unsupported by Clear and Convincing Evidence upon the whole record; or

(4) involves an abuse of discretion.

d. In reviewing a finding and recommendation of the Committee, the Trial Court will have two (2) options. These two (2) options are to either sustain or remand the Committee's findings and recommendations. The Court may not reverse a Committee's findings and recommendations. The Trial Court will only remand the Committee's findings and recommendations if the Court determines that the Committee's findings and recommendations contain irregularities of procedures or are arbitrary, capricious, or unreasonable, or unsupported by Clear and Convincing Evidence upon the whole record or involve an abuse of discretion. Upon remand, the Committee will reconsider its findings and determinations in light of the Trial Court's opinion and judgment.

e. The Trial Court must issue a decision within sixty (60) Days of the filing date.

13. Submission to General Council.

a. The Committee on Tribal Enrollment will submit its findings and recommendations for removal of Affected Members to the General Council for removal action pursuant to Article II, Section 5 of the Constitution.

b. The Chairperson of the Committee will present the findings and recommendations for removal at General Council.

14. Appeals of General Council Decision. Pursuant to Article II, Section 6, of the Ho-Chunk Constitution, a Member who has been removed by the General Council, may appeal his or her removal to the Trial Court.

a. The Member subject to removal may appeal to the Judiciary for a remedy in equity consistent with the Ho-Chunk Constitution.

b. The Member subject to removal will have thirty (30) Days to petition the Trial Court following a vote by the General Council removing him or her as a Member.

c. If the Court sustains the removal, it will also rule on any recommendations of the Committee on Tribal Enrollment on forfeiture of any or all property or the repayment of money gained from the pursuant to the laws of the Nation.

15. Recovery of Membership Benefits. After the Disenrollment of a Member and upon a determination by the Committee that the Member was enrolled as a result of fraud, the Nation may recover any or all property and repayment of money gained from the Nation by the Member.

16. Effect on Existing Law. This Code repeals and replaces any existing law or regulations governing Ho-Chunk Nation Enrollment and Membership and Ineligible Tribal Member Removal Procedures. All Applications, Voluntary Relinquishments,

Ineligible Tribal Member Removals, and Requests to Conduct a missing person investigation submitted to the Office of Tribal Enrollment or Committee on Tribal Enrollment prior to January 1, 2008 will be controlled by the law as it existed prior to the passage of Resolution 10-16-07 - L.

17. **Amendments.** Pursuant to the Legislative Organization Act (2 HCC §11), this Ordinance may be amended by the action of the Legislature, in a meeting at which quorum is present, but only upon the affirmative vote of a majority of the members present.

18. **Severability.** Except for paragraph 19, if any provision of this Code is determined by the Judiciary to be contrary to the Constitution, the invalid provision will be severed from this Code and the remaining provisions will be given full force and effect.

19. **Sovereign Immunity.** Nothing in this Code will be deemed to waive the sovereign immunity of the Ho-Chunk Nation or any of its enterprises, officers, agents, or employees.

Legislative History:

11/28/95 Tribal Enrollment and Membership Act of 1995 enacted by Legislative Resolution 11/28/95B.
3/3/00 BIA approves Amendment Number 1 to the Constitution by adding paragraph (c) to Section 1 of Article II.
12/2/04 Committee on Tribal Enrollment submits an amended Tribal Enrollment and Membership Act for consideration by the Legislature.
1/19/05 Legislature makes motion to place draft Tribal Enrollment and Membership Act (2 HCC § 7) out for 45-Day Public Review.
2/16/05 Draft Tribal Enrollment and Membership Act (2 HCC § 7) sent out for 45-Day Public Review.
4/20/05 Draft Tribal Enrollment and Membership Code is reviewed and edited by the Committee on Tribal Enrollment.
4/23/05 45-Day Public Review period ends.
8/12/05 Administration Committee recommends to the full Legislature for the Draft Tribal Enrollment and Membership Code be placed out for 45-Day Public Review. The Committee requested that footnotes be made to reflect changes made to the original Enrollment Code throughout the collaborative amending process.
12/31/05 45-Day Public Review period ends.
2/2/06 45-Day Public Review comments provided to Committee on Tribal Enrollment for review and amendment of final draft.
2/10/06 Administration Committee provided a copy of latest draft for information and review.
3/21/06 Tribal Enrollment and Membership Code submitted to the Legislature. Legislature tabled until next meeting for further review by the Committee on Tribal Enrollment and the Office of Tribal Enrollment.
3/30/06 Committee and Office meet to review draft Code.
4/3/06 Committee and Office meet for final review of draft Code. Draft Code submitted to Attorney General in accordance with paragraph 32c, 2 HCC § 11 (Legislative Organization Act).
7/25/06 Attorney General replied and had no objections.
8/10/06 Legislature placed Final Draft out for public hearings at District meetings.
11/21/06 Legislature makes motion to table Tribal Enrollment and Membership Code until after 1/1/07 for further public comment and review by Tribal Members and to place the Code out for 45-Day Public Review.
12/8/06 Legislature makes a motion for an updated opinion on Amnesty Challenge Resolution from Attorney General. Legislature makes a motion to have a Public Hearing on the Tribal

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- Enrollment Membership Code in conjunction with the Enrollment Conference in February 2007.
- 12/22/06 Draft Tribal Enrollment and Membership Code (2HCC§7) placed out for 45-Day Public Review.
- 1/4/07 Administration Committee requests language written to include Tribal Members that have been missing for years and how to handle those funds.
- 1/25/07 Enrollment Committee, Enrollment Office and Legislature review Draft Code.
- 2/5/07 45-Day Public Review period ends.
- 2/8/07 Legislature, Members of the Enrollment Committee, and Enrollment Office held Public Hearing at Ho-Chunk Casino to review Tribal Enrollment and Membership Code.
- 2/16/07 Administration Committee was provided a copy of the latest draft for information and review following the Public Hearing. Administration Committee recommends to the full Legislature for the Draft Tribal Enrollment and Membership Code be placed out for 45-Day Public Review.
- 2/20/07 Legislature makes a Motion to hold a second Public Hearing on Saturday, May, 5, 2007 at Ho-Chunk Casino.
- 3/6/07 Legislature makes a Motion to approve \$5,730.00 from Legislative Budget to hold May 5, 2007 Public Hearing.
- 3/16/07 Administration Committee Motion to approve moving forward on the updated Membership Code to the full Legislature so they can be apprised of new developments. Public Hearing Newspaper ad announcements appear in the *Hocak Worak* on 3/28/07, 4/11/07, 4/25/07 and a Special Edition of the draft Membership code runs on April 16, 2007.
- 4/10/07 Administration Committee Motions to refer the Memorandum on the update of the Membership Code to the next Legislative Meeting for clarification.
- 4/12/07 Public Review and Comment period ends.
- 4/17/07 Legislative discussion held regarding the Enrollment Code.
- 5/5/07 Legislature, Members of the Enrollment Committee, and Enrollment Office held Public Hearing at Ho-Chunk Casino to review Tribal Enrollment and Membership Code.
- 5/22/07 Legislative Motion made to continue receiving and reviewing comments about the Code and hold a Legislative Off-Site and place the Code out for forty-five day public comment period.
- 6/23/07 Meeting held between Legislature and Traditional Court to discuss Enrollment issues.
- 8/16/07 Enrollment Committee, personnel from the Enrollment Office, personnel from Legislature, and personnel from the Department of Justice review and incorporate suggested technical corrections from Legislative Counsel Office.
- 09/04/07 Legislature motions for a review of public comments, Legislative Counsel to provide a version of the Legislation that includes draft language to provide procedures for anonymous challenges, and to enact the proposed Amendments to the Ordinance after the review of the public comments.
- 09/24/07 Legislature holds informal public meeting to review comments on code and version of code containing anonymous challenge provisions drafted to conform to Attorney General Opinion.
- 09/24/07 Tribal Enrollment Committee motions for Legislature to pass Code with anonymous challenge provisions and other changes to Code.
- 10/16/07 Amendments to Tribal Enrollment and Membership Code enacted by Resolution 10-16-07 - L.
- 10/16/07 Resolution 10 – 16 – 07 – L refers issue of anonymous challenge provisions to the General Council for further clarification on the policy that the General Council wants within the requirements of the Ho-Chunk Nation Constitution.
- 2/17/09 Resolution 2-17-09 technical correction to Section 5, subparagraph a. (3) removing reference to *Open Meetings Act* (2 HCC § 2) which no longer contains procedures for posting vacancies on Committees and replacing with reference to *Legislative Organization Act* (2 HCC § 11) which contains procedures for posting vacancies on Committees.

