

PART IV - MOHEGAN COUNCIL OF ELDERS CODE

Chapter 31 - GOVERNMENT^[1]

Footnotes:

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Editor's note— Joint Res. No. 2002-2-TC/COE, adopted by the Council of Elders on September 8, 2006, amended the Tribal Ethics Ordinance. The material is set out in §§ 1-251—1-265 of the Mohegan Tribe of Indians Code.

Cross reference— Government of Tribe, ch. 1; government of Gaming Authority, ch. 21.

ARTICLE I. - TRIBAL ENROLLMENT^[2]

Footnotes:

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Editor's note— Printed herein is the Mohegan Tribal Enrollment Ordinance, as revised by Resolution 2006-27-E, adopted November 30, 2006. In effect, these resolutions repealed former Art. I, §§ 31-1—31-7, which pertained to similar subject matter; and derived from Ord. No. 2003-1-E, adopted January 9, 2003; Res. No. 2004-5-E, adopted May 13, 2004; Res. No. 2004-10-E, adopted October 7, 2004; and Res. No. 2006-19-E, adopted July 27, 2006.

Sec. 31-1. - Definitions.

Whenever used in this Article, the Membership Ordinance or the Enrollment and Membership Office Rules and Procedures, the following terms shall have the following meanings:

Applicant means any person who has filed an application for enrollment in the Mohegan Tribe of Indians prior to approval or denial of the application.

Base Roll means the roll of tribal members identified in the Mohegan Constitution as establishing the right to membership.

Chair means the Chairman of the Council of Elders and the Vice-Chairman when acting in the capacity of Chairman.

Council means the Council of Elders.

Database means the enrollment records and data preserved in electronic format at the direction of the Council of Elders.

Disenrollment means the voluntary or involuntary loss of membership in the Mohegan Tribe.

Enrollment means the submission of documentation pursuant to this Article to reflect meeting the Constitutional requirements for membership in the Mohegan Tribe.

Enrollment and Membership Office means the office and personnel delegated authority by the Council of Elders for handling enrollment applications, membership records and services and tribal rolls pursuant to this Article, the Membership Ordinance, and any rules and procedures promulgated by the Council of Elders.

Enrollment and Membership Office Rules and Procedures means the rules and procedures promulgated by the Council of Elders.

Enrollment Officer means the Executive Assistant to the Council of Elders.

Lineal descendant means the biological child, grandchild, great-grandchild, etc. of a person listed on the May 11, 2002 tribal roll.

Long Form Birth Certificate means a certified document verifying the time, date, place of an individual's birth, including a traceable number and the parents' names and dates of birth or ages at the time of the individual's birth.

Maintain means to be provided with a copy.

Manage, administer and direct means to exercise executive, administrative, and supervisory direction of; to manage or supervise the execution, use, or conduct of; and to regulate the activities or course of; and to carry out the organizing, energizing, and supervising of.

Tribal Roll means the listing of all tribal members containing the names, addresses, telephone numbers, tribal identification numbers, names of Mohegan parent and grandparent, and membership status.

Tribe means the Mohegan Tribe of Indians of Connecticut.

Verified Written Statement means a notarized declaration in writing, signed by the declarant.

1994 Tribal Roll means the May 15, 1994 Tribal Roll of the Mohegan Tribe of Indians of Connecticut as of federal recognition, as approved on January 20, 1999.

May 11, 2002 Tribal Roll means the May 11, 2002 Tribal Roll of the Mohegan Tribe of Indians as certified by the Council of Elders and addenda as certified by the Council of Elders.

(Res. No. 2006-27-E, 11-30-2006; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-2. - General Provisions.

- (a) *Enrollment.* The Tribal Roll shall be the exclusive list of persons enrolled in the Mohegan Tribe. No person shall be entitled to membership in the Tribe unless he or she meets the requirements as set forth in the Mohegan Constitution. Every member of the Mohegan Tribe shall be entitled to all of the rights and privileges of membership, and subject to all the duties and obligations thereof, unless subject to penalties as set forth in Section 31-23 or subject to the suspension of tribal benefits and privileges as determined by the Council of Elders.
- (b) *Record of Membership.* All members of the Tribe shall be listed on the Tribal Roll, which shall be administered by the Council of Elders.
- (c) *Confidentiality.* Each application for enrollment and any information sought or obtained by the Enrollment Office or the Council of Elders that directly relates to the eligibility of any person(s) for enrollment in the Mohegan Tribe shall be confidential. All materials submitted by an applicant become the property of the Mohegan Tribe within the custody of the Council of Elders upon submission. All materials shall be made available by the Enrollment Office to the Council of Elders for review, provided that all original documents shall be copied for official use, and the originals returned to the applicant. Applicants and tribal members shall have access by appointment to their own enrollment records, and to all materials pertaining to their own right to membership. Parents and/or guardians shall have access by appointment to the enrollment and membership records of their children or wards. No application, or the substance of the information contained therein or accompanied therewith, or any memoranda or communications regarding the eligibility for enrollment of any person or the membership status of any person, shall be made available to any other person, except at the direction of the Council of Elders.
- (d) *Burden of Proof.* The burden of proof rests upon the applicant to establish all elements of the applicant's eligibility for enrollment. The Council of Elders shall prescribe the form of application.
- (e) *Penalties.*
 - (1) Any applicant who knowingly files false information regarding enrollment may be subject to a civil penalty not to exceed \$1,000.00 for each violation and/or suspension of tribal benefits and privileges.
 - (2) Any person who is wrongfully enrolled by virtue of false information shall be responsible for immediate repayment, with interest, of any benefits received from the Tribe, upon final action by the Council of Elders removing the person from the Tribal Roll based on the determination that such information is false.
 - (3)

(i) Applications for enrollment of tribal members' children shall be filed within one (1) year of the child's birth. Failure to do so will result in the imposition of a monetary penalty not to exceed \$500.00. This penalty shall be imposed by the Council of Elders upon the parent's quarterly revenue allocation distribution.

(ii) The enrollment application shall be completed as soon as possible upon filing and must be completed within one (1) year of the filing of the application, for children enrolled within one (1) year of birth. If the enrollment process is not completed within one (1) year, a fine of \$500 per quarter shall be withheld from the parent's quarterly revenue distribution for four (4) successive quarters. If the application remains incomplete and/or the enrollment process has not been completed, the parent's quarterly revenue allocation shall be withheld in its entirety until the process is completed.

(iii) If a child's enrollment application is not filed within one (1) year of their birth, a penalty of \$500 shall be assessed and withheld from the parent's quarterly revenue distribution. Additionally, an expedited enrollment process shall be completed within ninety (90) days of the filing of the application. The parent's quarterly revenue distribution shall be withheld in its entirety if the expedited enrollment process is not completed within ninety (90) days.

(iv) Fines and withholdings may be waived by the Council of Elders upon a showing of extenuating circumstances.

- (4) Any person who violates the confidentiality provisions of this Article may be subject to a civil penalty not to exceed \$1,000.00 for each violation and/or suspension of tribal benefits and privileges.
- (5) Any person who engages in conduct described in Section 31-24 of the Membership Ordinance may be determined not to be in good standing. Such a determination may result in the suspension of the benefits and privileges of membership, as set forth in the Membership Ordinance.

(Res. No. 2006-27-E, 11-30-2006; Res. No. 2017-10-E, 04-13-2017; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-3. - Establishment of Enrollment and Membership Office.

- (a) There is hereby established the Mohegan Tribal Enrollment and Membership Office, which shall be managed, administered and directed by the Council of Elders and implemented by the Enrollment Officer.
- (b) The Enrollment and Membership Office is hereby delegated the following authority and responsibility:
- (1) Numbering and dating all incoming applications for enrollment;
 - (2) Reviewing applications for adequacy of documentation;
 - (3) Informing applicants of any deficiencies in documentation;
 - (4) Submitting applications to the Council of Elders for review and recommendation;
 - (5) Maintaining the enrollment database in accordance with this Article, the Membership Ordinance and any rules, policies and procedures promulgated by the Council of Elders;
 - (6) Preparation of the annual Tribal Roll Report, consistent with the requirements of this Article, for review and certification by the Council of Elders;
 - (7) Any additional duties as assigned by the Council of Elders.

(Res. No. 2006-27-E, 11-30-2006; Res. No. 2014-16-E, 8-7-2014; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-4. - Qualifications for Enrollment.

(a) *Evidence in support of application.* Evidence of lineal descent shall be established by paternal or maternal DNA testing. In addition, an application for enrollment shall be supported by a notarized statement of biological children, a certified copy of an applicant's long form birth certificate, legal adoption papers, or other lawful documentation naming the applicant's parent(s) and date(s) of birth or age(s) of parent(s) at time of birth.

- (1) If a genetic-testing specimen is not available from the Mohegan parent of a child, for good cause and under circumstances the Council of Elders considers to be just, the Council of Elders may accept specimens from the following individuals for genetic testing:
 - a. The parents of the Mohegan parent;
 - b. The brothers and sisters of the Mohegan parent;
 - c. Other children of the Mohegan parent and their mother or father, whichever the case may be;
 - d. Other relatives of the Mohegan parent necessary to complete genetic testing.
- (2) The cost of a DNA test or tests undertaken for the purpose of determining an applicant's entitlement to enrollment in the Mohegan Tribe will be the sole responsibility of the person(s) whose membership is at issue unless directed otherwise by the Council of Elders.
- (3) In the event that paternal or maternal DNA testing indicates that the applicant does not descend from a Mohegan parent, the applicant or his/her parent/guardian may appeal. Processing of the appeal may involve further DNA testing to rule out the possibility of genetic anomaly, including, but not limited to, chimerism (defined herein as the composition of an individual from cells with more than one genetic background, resulting from a fusion of two or more zygotes) or incorrect results due to sample mishandling or loss.
- (4) DNA testing shall be performed by a laboratory accredited by the American Association of Blood Banks, the College of American Pathologists, and the State in which the laboratory is located. In addition, said laboratory shall comply with the standards for maintaining the privacy of health information as set forth in the Health Insurance Portability and Accountability Act of 1996 and related regulations.
- (5) The sale or attempted sale of Mohegan genetic material for enrollment purposes shall constitute a violation of Mohegan law and may result in a negative good standing determination.
- (6) Appeals shall be governed by the process set forth in the Enrollment Office Rules and Procedures.

(b) *Effect of Adoption.*

- (1) An applicant constitutionally eligible for enrollment shall continue to be eligible if adopted by person(s) other than members of the Mohegan Tribe.
- (2) Children adopted by tribal members are not considered to be members of the Mohegan Tribe of Indians of Connecticut, unless one biological parent is a Mohegan tribal member.

(Res. No. 2006-27-E, 11-30-2006; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-5. - Procedure for Determination of Enrollment.

The procedure for enrollment in the Mohegan Tribe shall be set forth in the Enrollment and Membership Office Rules and Procedures promulgated by the Council of Elders.

(Res. No. 2006-27-E, 11-30-2006)

Sec. 31-6. - Appeals.

The process for appeals regarding enrollment matters is set forth in the Enrollment Office Rules and Procedures. The actions of the full Council of Elders, with respect to final tribal enrollment and membership reconsiderations, including approval or denial of an application for tribal enrollment, removal of a person from the Tribal Roll, restoration of membership, additions or corrections to the Tribal Roll, good standing determinations and any other matter affecting tribal membership and enrollment, shall be considered final.

(Res. No. 2006-27-E, 11-30-2006)

Secs. 31-7—31-20. - Reserved.

ARTICLE II. - TRIBAL MEMBERSHIP

Sec. 31-21. - General provisions.

- (a) *Membership.* The Tribal Roll shall be the exclusive list of persons enrolled in the Mohegan Tribe. No person shall be entitled to membership in the Tribe unless he or she meets the requirements as set forth in the Mohegan Constitution. Every member of the Mohegan Tribe shall be entitled to all of the rights and privileges of membership, and subject to all the duties and obligations thereof, unless subject to penalties as set forth in Section 31-23 of the Enrollment Ordinance or subject to the suspension of tribal benefits and privileges as determined by the Council of Elders.
- (b) *Record of membership.* All members of the Tribe shall be listed on the Tribal Roll, which shall be administered by the Council of Elders. All membership files shall be kept by the Council of Elders and shall contain the following information as to each tribal member: name, address, birth certificate, tribal identification number, genealogy tracing to the 1861 Census of members of the Mohegan Tribe, statement of biological children, and any other documents which may be directed for inclusion in the file by the Council of Elders.
- (c) *Verification of membership.* The Enrollment and Membership Office shall may verify all enrolled member deaths prior to the preparation of the distribution list utilizing the Social Security Administration Death Master File. There shall be a census conducted every two years utilizing a verification form approved by the Council of Elders, beginning in 2021.
- (d) *Parent and/or Guardian Access to Information.* The parents and/or guardians of Mohegan children shall be entitled to obtain copies of all documents pertaining to the children's enrollment status, membership status, and all documents pertaining to the rights, benefits and privileges of membership, except where a Mohegan Tribal Court order prohibits the parent's and/or guardian's access to such information.
- (e) *Confidentiality.* Each application for enrollment and any information sought or obtained by the Enrollment Office or the Council of Elders that directly relates to the eligibility of any person(s) for enrollment in the Mohegan Tribe shall be confidential. All materials submitted by an applicant become the property of the Mohegan Tribe within the custody of the Council of Elders upon submission. All materials shall be made available by the Enrollment and Membership Office to the Council of Elders for review, provided that all original documents shall be copied for official use, and the originals returned to the applicant. Applicants and tribal members shall have access by appointment to their own enrollment records, and to all materials pertaining to their own right to membership. Parents and/or guardians shall have access by appointment to enrollment and membership records pertaining to their children or wards. No application, or the substance of the information contained therein or accompanied therewith, or any memoranda or communications regarding the eligibility for enrollment of any person or the membership status of any person, shall be made available to any other person, except at the direction of the Council of Elders.

(Ord. No. 2003-2-E, Part 1, 3-24-2003; Res. No. 2003-8-E, 3-24-2003; Res. No. 2004-5-E, Exh. B, Part 1, 5-13-2004; Res. No. 2005-13-E, 5-26-06; Res. No. 2006-26-E, 11-2-2006; Res. No. 2006-27-E, 11-30-2006; Res. No. 2007-15-E, 6-28-2007; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-22. - Establishment of Enrollment and Membership Office.

There is hereby established the Mohegan Tribal Enrollment and Membership Office, which shall be managed, administered and directed by the Council of Elders and implemented by the Enrollment Officer.

- (1) The Enrollment and Membership Office is hereby delegated authority and responsibility to perform the following tasks, in accordance with the Enrollment and Membership Office Policies and Procedures:
 - (a) Preparation of mailings to the tribal membership at the direction of the Tribal Council or Council of Elders;
 - (b) Maintenance of tribal information such as name changes, address changes, corrections to vital information, updates due to marriage, death or divorce;
 - (c) Preparation of letters for membership in good standing for approval by the Council of Elders and signature by the Secretary of the Council of Elders;
 - (d) Preparation of mailing labels for Tribal Government departments, such as Wuskuso and Youth Wuskuso;
 - (e) Preparation of mailing labels and voter tracking information for use during tribal elections;
 - (f) Preparation of report information for Tribal Government entities for tribal events from membership database;
 - (g) Preparation of tribal identification cards, including taking photographs;
 - (h) Preparation of distribution lists and associated reports for the Finance Department for per capita distributions;
 - (i) Verification of tribal membership or spouse status in response to inquiries;
 - (j) Provision or verification of tribal membership database information to tribal departments, i.e. Legal Department, Contract Health Services, Public Safety Department, etc.;
 - (k) Administering the membership database in accordance with this Article, the Enrollment Ordinance and any rules, policies and procedures promulgated by the Council of Elders;
 - (l) Preparation of the annual tribal roll report, consistent with the requirements of this Article, for presentation to and certification by the Council of Elders, as set forth in the Enrollment Ordinance;
 - (m) Any other duties as may be required to provide services to the tribal membership.

(Ord. No. 2003-2-E, Part 2, 3-24-2003; Res. No. 2003-8-E, 3-24-2003; Res. No. 2004-5-E, Exh. B, Part 2, 5-13-2004; Res. No. 2005-13-E, 5-26-2005; Res. No. 2006-26-E, 11-2-2006; Res. No. 2006-27-E, 11-30-2006; Res. No. 2007-15-E, 6-28-2007; Res. No. 2014-16-E, 8-7-2014; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-23. - Loss of Membership.

- (a) *Removal from Tribal Roll.* The Council of Elders may direct the removal of the name of any member from the Tribal Roll who has relinquished membership, abandoned membership, or on the basis of new or additional evidence indicating that the requirements for membership have not been met due to the submission of falsified documentation or incorrect information, as set forth in the Enrollment and Membership Office Rules and Procedures.
- (b) *Relinquishment of Membership.* Relinquishment of membership by adult members of the Mohegan Tribe may be effectuated pursuant to the Enrollment and Membership Office Rules and Procedures; however, no relinquishment shall be effective unless evidenced by a signed, notarized statement of the affected adult tribal member stating that he or she no longer wishes to be a member of the Mohegan Tribe and that he or she wishes to voluntarily relinquish his or her membership. No tribal member under the age of 18 shall be allowed to relinquish his or her membership in the Mohegan Tribe provided that all the other requirements for membership are met.

- (c) *Abandonment of Membership.* Any tribal member who is (or becomes) a member of another tribe shall be deemed to have consented to the deprivation of membership in the Mohegan Tribe and to have abandoned his or her membership in the Mohegan Tribe. The Enrollment Office shall prepare a report regarding the case, and the Council of Elders shall meet to hear the questionable membership issue and make a determination. The procedure set forth in the Enrollment and Membership Office Rules and Procedures shall be followed.
- (d) *Loss of Membership Due to Falsification or Incorrect Information.* Pursuant to Article V, Section 4 of the Constitution of the Mohegan Tribe of Indians of Connecticut, any person found to have committed fraud in attaining membership with the Mohegan Tribe, including, but not limited to the submission of falsified documents, shall have his or her membership deemed void and of no force and effect, as of the date that said status was previously conferred. If the Enrollment Office becomes aware of such falsification of records, the Office shall prepare a report regarding the case and the Council of Elders shall hear the questionable membership issue and make a determination. The procedure set forth in the Enrollment and Membership Office Rules and Procedures shall be followed. The Mohegan Tribal Police shall be notified of any potential claims of fraud for the necessary civil or criminal charges to be brought in the Mohegan Tribal Court.

(Ord. No. 2003-2-E, Part 3, 3-24-2003; Res. No. 2003-8-E, 3-24-2003; Res. No. 2004-5-E, Exh. B, Part 3, 5-13-2004; Res. No. 2005-13-E, 5-26-2005; Res. No. 2006-26-E, 11-2-2006; Res. No. 2006-27-E, 11-30-2006; Res. No. 2007-15-E, 6-28-2007)

Sec. 31-24. - Suspension of Tribal Rights, Benefits and Privileges.

- (a) *Suspension of Rights, Benefits and Privileges of Membership.* The Council of Elders may suspend the rights, benefits and privileges of any tribal member who is determined not to be in good standing. Although an individual may be recorded as an enrolled member of the tribe, receipt and exercise of tribal rights, benefits and privileges are incumbent on being a member in good standing. A member's good standing may be revoked for conduct including, but not limited to:
- (1) Conduct resulting in a felony conviction;
 - (2) Failure to complete mental health, substance abuse or alcoholism treatment as directed by the relevant health and/or social services agency(ies) of the Mohegan Tribe;
 - (3) Nonpayment of child support;
 - (4) Nonpayment of debt owed to the Mohegan Tribe or breach of a contractual agreement with the Mohegan Tribe, tribal program or tribal department;
 - (5) Fraudulently obtaining services from the Mohegan Tribe;
 - (6) Willful misconduct of an egregious or repetitious nature, which results in significant harm to any person, property, or financial interest of the Tribe, or which is seriously detrimental to the Mohegan Tribe;
 - (7) Deliberate violation of the confidentiality requirements of the Mohegan Tribe;
 - (8) Violation of any policies or ordinances of the Mohegan Tribal Council or Council of Elders;
 - (9) Using one's tribal status to attempt to access special benefits or privileges beyond those afforded to all tribal members at facilities operated by the Mohegan Tribe.
 - (10) The sale of biological material for the purpose of assisting in the conception of a child.

The procedure for obtaining good standing determinations is set forth in the Enrollment and Membership Office Rules and Procedures.

- (b) *Withholding of Quarterly Revenue Allocation Distribution following Non-Compliance with Collection of Enrollment Data.* From time to time, the Council of Elders will collect enrollment data to ensure the accuracy of the Tribal Roll and Distribution List of Qualified Tribal Members pursuant to the Mohegan Gaming Revenue Allocation Plan. The failure to submit a signed and notarized enrollment data

collection form by the deadline established by the Council of Elders for preparation and verification of the Distribution List shall constitute a "violation of Tribal law" pursuant to the Mohegan Revenue Allocation Plan. In such instances, the quarterly revenue allocation of the affected Tribal member shall be withheld until the signed and notarized enrollment data collection form has been submitted to the Council of Elders.

(Ord. No. 2003-2-E, Part 4, 3-24-2003; Res. No. 2003-8-E, 3-24-2003; Res. No. 2004-5-E, Exh. B, Part 4, 5-13-2004; Res. No. 2005-13-E, 5-26-2005; Res. No. 2006-26-E, 11-2-2006; Res. No. 2006-27-E, 11-30-2006; Res. No. 2007-15-E, 6-28-2007; Res. No. 2016-2-E, 01-21-2016; Res. No. 2019-25-E, 9-12-2019)

Sec. 31-25. - Appeals.

The final determinations of the full Council of Elders, with respect to tribal membership determinations, including approval or denial of an application for tribal enrollment, removal of a person from the Tribal Roll, restoration of membership, additions or corrections to the Tribal Roll, good standing determinations and any other matter affecting tribal membership and enrollment, shall be subject to reconsideration by the Council of Elders upon request of the aggrieved tribal member. Summaries of the final determinations of the Council of Elders, excluding the names of Respondents, shall be published in the Wuskuso on a periodic basis.

(Ord. No. 2003-2-E, Part 5, 3-24-2003; Res. No. 2003-8-E, 3-24-2003; Res. No. 2004-5-E, Exh. B, Part 5, 5-13-2004; Res. No. 2005-13-E, 5-26-2005; Res. No. 2006-26-E, 11-2-2006; Res. No. 2006-27-E, 11-30-2006; Res. No. 2007-15-E, 6-28-2007; Res. No. 2010-9-E, 6-11-2010)

Sec. 31-26. – Data Governance.

(a) *Title, Scope and Purpose*

- (1) This Section shall be known as the Mohegan Data Governance Code ("Code") of the Mohegan Membership Ordinance.
- (2) This Code shall apply to all those within the territorial jurisdiction of the Mohegan Tribe (including those found to be engaging in unpermitted research involving Tribal members, property or lands), to all members of the Mohegan Tribe who participate in research permitted pursuant to this Code, and to all persons who engage in research permitted pursuant to this Code.
- (3) This Code shall apply to all research conducted on the Mohegan Reservation, whether involving human subjects or not, and all research regarding materials wherever located as to which the Mohegan Tribe has a claim of intellectual, cultural, or other ownership or interest, legal or equitable.
- (4) The Purpose of this Code shall be to set forth the conditions under which researchers, investigators, physicians, academics and others may perform research activities, including, but not limited to, research and data collection regarding living human subjects, within the territorial jurisdiction of the Mohegan Tribe ("Tribe") and any research involving the Mohegan people whether within or outside of the Tribe's territorial jurisdiction. The Code provides:
 - (i) An application and permitting procedure with which applicant researchers must comply in order to obtain permission to conduct research of any kind on the Mohegan Reservation or involving Mohegan subjects;
 - (ii) Standards of conduct designed to protect individuals, communities, and the Tribe from improper research procedures;
 - (iii) Provisions to protect the rights of individuals and the Tribe in data;
 - (iv) Provisions to ensure appropriate Tribal and membership participation in the design and evaluation of research, and appropriate local opportunities in employment in all research projects permitted on the Mohegan Reservation or involving Mohegan subjects.

(b) *Policy*

- (1) There is a need to protect health and safety in the area of data governance consistent with Mohegan values. As an act of self-governance, the Council of Elders enacts this Code with the intent of balancing the interests of the Tribe and its membership and the interests of researchers and their affiliated institutions who enter into a consensual relationship with the Tribe for the purpose of conducting research in accordance with this Code.
- (2) The Council of Elders finds that research has been conducted in ways that do not respect the safety and dignity of human subjects and that do not recognize the interests of the Mohegan Tribe in the integrity and preservation of all aspects of its culture.
- (3) All persons within the territorial jurisdiction of the Tribe shall be free from unreasonable, harmful, intrusive, ill-conceived or otherwise offensive research and investigative processes.
- (4) Research conducted within the purview of this Code shall be beneficial to the Mohegan Tribe, community-based, and consistent with Mohegan Tribal priorities and concerns.
- (5) Research information and data generated by and about Mohegan individuals, communities, and culture represent inalienable intellectual property of the Mohegan people to be protected by the Tribe on behalf of the Tribal membership.

(c) *Rules and Regulations*

- (1) The Council of Elders shall promulgate rules and regulations consistent with and necessary to implement this Code, upon recommendation of the Mohegan Data Governance Board.
- (2) Revisions to the rules and recommendations may be recommended to the Council of Elders by the Mohegan Data Governance Board.

(d) *Definitions*

As used in this Code, the following definitions shall apply:

Academic Research means research carried out to obtain educational qualifications, to further an academic career at an institution of higher learning, or for scientific advancement.

Authorized Officials means the Mohegan Data Governance Board members, and Mohegan Tribal Law Enforcement when deemed necessary.

Conflict of Interest means any situation in which a Board member or Researcher is in position to exploit his/her professional or official capacity in some way for that individual's personal benefit through the receipt of financial gains, goods, or services.

Human Subject or Subject means an individual about whom a Researcher conducting research obtains data through intervention or interaction with the individual, or identifiable private information.

Information gathering means the collection of information that occurs generally within each Tribal Program in accordance with their respective program missions or delegated responsibilities.

Informed Consent means a prospective Subject's voluntary agreement, based upon full disclosure and adequate knowledge and understanding of relevant information, to participate in research or to undergo a diagnostic, therapeutic, or preventative procedure. In giving informed consent, the subject may not waive or appear to waive any legal rights to the applicant Researcher, the funding source, or agent. Additionally, the Subject may not release or appear to release the applicant Researcher, the funding source or agent from liability due to negligence.

Interactions means communication or interpersonal contact between the Researcher (or research team) and a Subject or individual. Examples include interviews, questionnaires, surveys, observations, manipulations of Subject behavior, diet, or environment, physical measurements, or specimen collection.

Intervention may be a physical procedure, educational curriculum or manipulations of the environment.

Mohegan Data Governance Board ("Board") means the Board created pursuant to this Code.

Mohegan Tribe means the Mohegan Tribe of Connecticut, its Tribal members, the Council of Elders, and the Tribal Council.

Permit means formal written permission from the Board to conduct research in response to an application filed pursuant to this Section.

Products of Research means publications (including, but not limited to reports, studies, articles, theses, books, manuscripts, sound recordings, photographs, film and video, media interviews, and

computer databases, field notes, illustrations, collected material artifacts, replicas, and specimens), including any derivative forms they may take such as translations, and communications through electronic media, including the internet and world wide web.

Publication means reports, studies, articles, theses, books, manuscripts, sound recordings, photographs, film and video, media interviews, and computer databases, field notes, illustrations, collected material artifacts, replicas and specimens and the dissemination thereof by any means and for any purpose.

Research means the use of systematic methods (including, but not limited to, note-taking, interviewing, testing, sample collection, video and audio recording) to gather and analyze information for the purpose of proving or disproving a hypothesis, concepts or practices, or otherwise adding to the knowledge and insight in a particular discipline. 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; and justice or fairness. This may include, at the discretion of the Board, quality assurance activities, chart reviews, and program evaluations. All data and research subject to this Code are the property of the Tribe, although a researcher may be given a permit.

Researcher means any person, organization, business, or other entity which conducts research pursuant to this Code.

Reservation means all lands within the exterior boundaries of the Mohegan Tribe which are under the jurisdiction of the Tribe, ancestral lands of concern to the Tribe, and such lands as may hereafter be obtained or added to the jurisdiction of the Tribe, regardless of whether such lands are in fee-status or trust-status.

Tribal Individuals includes the members of the Mohegan Tribe, their descendants and ancestors, and any other individuals within the jurisdiction of the Mohegan Tribe due to familial relationships and/or residence within the exterior boundaries of the Mohegan reservation.

(e) *Data Governance Office and Chair of Data Governance Board*

- (1) There is hereby created the Mohegan Data Governance Office that will be overseen by the Chair of the Data Governance Board to administer this Code.
- (2) The Executive Assistant to the Council of Elders shall serve as the Data Governance Specialist and shall be responsible for administrative duties in conjunction with and at the direction of the Chair of the Data Governance Board. The Office shall:
 - (i) Catalogue and monitor past and current research;
 - (ii) Assess the current state of data, develop a data storage plan and databases;
 - (iii) Develop and promulgate policies and procedures under which the Data Governance Office and Board shall operate, subject to review and approval by the Board and Council of Elders;
 - (iv) Negotiate with Researchers for additional and/or revised procedures, methodologies, and approaches to research and/or publications as needed or recommended by the Board;
 - (v) Monitor ongoing research and enforce this Code;
 - (vi) Establish, conduct, and administer day-to-day data governance activities;
 - (vii) Participate in the conduct of public hearings if any research proposal may involve subjects of particular concern, controversy, or sensitivity to the Mohegan Tribe in order to obtain feedback from the Tribal membership.
- (viii) Coordinate with other appropriate Mohegan governmental entities, and external entities as required or as directed by the Board;
- (ix) Provide audience-appropriate research information to the community via news articles, website updates and/or other publications as needed;
- (x) Meet with Tribal leaders, governmental administrators, and other stakeholders to ensure that Tribal representatives have a venue to provide information and gather input regarding research activities.

- (xi) Administer research software by developing policies and procedure for its use. Train and/or provide training manuals to Board members and Researchers on appropriate use of software.
 - (xii) Maintain monthly budget, performing invoicing and reporting as required.
 - (xiii) Respond to inquiries from prospective applicant Researchers.
- (f) *Creation and Composition of the Mohegan Data Governance Board; Meetings and Quorum*
- (1) There is hereby created the Mohegan Data Governance Board ("Board"), which shall review all proposals for research which will occur within the territorial jurisdiction of the Tribe or involving members of the Mohegan Tribe as an identifiable group, to issue permits for said research consistent with the terms and intent of this Code, to monitor the conduct of research pursuant to this Code, and to review and approve the results of research prior to publication.
 - (2) The Board shall be chaired by the Chief of the Mohegan Tribe and shall include a member of the Council of Elders, a member of the Tribal Council, the Tribe's Medicine Person or an alternate as designated by the Council of Elders, a representative of the Tribe's Health Department or an alternative as appointed by the Chief, and the Tribe's Historic Preservation Officer or his/her designee on an as-needed basis. The Board shall be assisted by the Legal Counsel to the Council of Elders.
 - (3) The Board shall meet at least quarterly, but as often as necessary. Four members of the Board shall constitute a quorum.
- (g) *Purposes and Powers of the Board*
- (1) The purposes of the Board to are assure that research and publication activities:
 - (i) Are consistent with the policy goals and objectives of the Tribe.
 - (ii) Do not detract from, nor interfere with, the provision of services to the Mohegan Tribal membership.
 - (iii) Do not endanger the well-being of individuals or communities.
 - (iv) Require informed consent of all affected individuals or their legal representatives.
 - (v) Are culturally relevant and appropriate to the extent possible and are appropriate clinically, technically, epidemiologically, and statistically.
 - (vi) 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.
 - (vii) Select subjects equitably, taking into consideration the purposes of the research, the setting in which the research will be conducted, and the population from which subjects will be recruited.
 - (2) Consistent with the requirements of this Code, the powers of the Board shall include:
 - (i) The review and approval or disapproval of research proposals.
 - (ii) The review and approval or disapproval of presentation materials and manuscripts, including theses, dissertations, abstracts, articles and/or any form of media in which research is published, prior to publication.
 - (iii) The negotiation of additional and/or revised procedures, methodologies, and approaches to research and publication.
 - (iv) Requesting assistance from other persons with specialized knowledge in the review of any application, proposal or manuscript. When research is proposed or reviewed involving a category of vulnerable subjects (e.g., children, elders, the incarcerated, the disabled), the Board shall include in its reviewing body one or more individuals who have a particular concern for the welfare of such individuals.
 - (v) Subject to the approval of the Council of Elders, and the requirements of this Code, the Board shall adopt appropriate rules and procedures regarding: the confidentiality of subjects; storage of specimens and other research materials; monitoring of research activities; amendments to any research proposals; financial disclosure regarding the 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.

- (vi) The Board will coordinate with other appropriate boards and committees including, but not limited to, other Institutional Review Boards, the Tribal Historical Preservation Department.

(h) *Board Conflict of Interest*

- (1) No Board member or staff associated with the Board shall participate directly or indirectly in the administration, review, and/or approval of a research project or the selection of a paid expert consultant if an actual or foreseeable conflict would be involved. Board members and associated staff are expected to self-regulate and disclose any relationships outlined herein, along with any informal relationships that may interfere with the individual's ability to objectively carry out their duties. Such conflict would arise when a financial or in-kind interest in the form of goods or services in the research project or the expert consultation is held by:
 - (i) The Board or associated staff member;
 - (ii) The Board or associated staff member's spouse, child, parent, sibling, grandparent, grandchild, including corresponding in-laws or step-relations;
 - (iii) The Board or associated staff member's business partner;
 - (iv) Any organization that employs, is negotiating to employ, or has any arrangement concerning prospective employment of any of the above persons.
- (2) When there is an actual or foreseeable conflict, the Board member or associated staff member must disclose the conflict in writing as soon as the fact is known to the affected individual.
- (3) When a conflict has been confirmed by the Board, the Board may do the following to resolve the conflict:
 - (i) The Board may waive the conflict for valid reasons; the waiver and the reason for granting the waiver must be set forth in writing and approved by majority vote of the Board; or
 - (ii) Request that the conflicted Board member or associated staff recuse himself/herself from the administration, review, and/or approval of the research project or the selection of a paid expert consultant.

(i) *Record Retention*

The Board shall develop and maintain a current file on all research projects, past and ongoing, approved and disapproved. Records of research projects will be maintained in perpetuity. The Board shall maintain a file of all publications resulting from all research projects conducted within the jurisdiction of the Tribe.

(j) *Research Permits and Administrative Fees*

- (1) Prior to undertaking any research with the jurisdiction of the Tribe, a researcher must apply for and receive from the Board a Research Permit as provided for in this Code.
- (2) The Board may assess reasonable fees for costs associated with the review of proposals and other materials; any monies generated are for the exclusive use of the administration of this Code.

(k) *Research Application*

The Research Application shall be in a form prescribed by the Board in accordance with this Code and such application shall include, at a minimum, research goals, methodology, and anticipated results. The application shall also include a separate section addressing specific anticipated benefit to the study's subjects, the Tribal membership, the Tribe, and all other readily identifiable potential beneficiaries. The Research Application must also include the Researcher's curriculum vitae, examples of prior publications, and a summary of any research in which the researcher has been a principal involving indigenous populations or Tribal nations. The Research Application shall be signed by the Researcher and shall include a provision stating that the

Researcher consents to the civil jurisdiction of the Tribe with respect to the research to be undertaken and any publication arising from such research.

(l) *Confidentiality and Security*

There shall be adequate assurance, as determined by the Board, that the data and information generated during the conduct of research is protected from unauthorized access and misuse consistent with informed consent provisions, and Mohegan law and policy.

(m) *Informed Consent*

Prior to the commencement of any permitted research, the Researcher must obtain the active informed consent of prospective subjects, or their parent, legal custodian or guardian, as appropriate. At a minimum, informed consent shall be in writing, acknowledged by the subject, and inform the subject of the purpose of the research, any potential risks, and alternative treatments or procedures. The informed consent shall not contain any exculpatory language or disclaimer of liabilities.

(n) *Research Progress Reports and Continuing Review*

- (1) Researchers shall report to the Board on the progress of their research as often and in the manner prescribed by the Board in the Research Permit.
- (2) Researchers shall promptly report any injuries or adverse impacts (including violations of an individual's privacy) to human subjects, others, or property within the Tribe's jurisdiction to the Board.
- (3) The Board shall regularly review all research activities conducted with the Tribe's jurisdiction. If, during the course of research activity, the research conditions change, the Board may require the Researcher to amend their application consistent with the changed conditions. If the Board determines that a research project is no longer viable due to 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.

(o) *Publication Review Procedures*

- (1) All individuals proposing publication covered by this Code are required to submit a manuscript to the Board for approval, prior to publication.
- (2) The manuscript shall be reviewed for technical content and validity, organization of content, cultural sensitivity, confidentiality, as well as consistency with the goals, intent, and policies of this Code.

(p) *Permit Appeal 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 good cause if it:
 - (i) Presents significant relevant information not previously considered by the Board;
 - (ii) Demonstrates that significant changes have occurred in the factors or circumstances considered by the Board in reaching its decision; or
 - (iii) Demonstrates that the Board 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 a decision.
- (3) If deemed in good cause, reconsideration shall be conducted within thirty (30) days after receipt of the appeal request.

(q) *Protection of Rights*

(1) *Ownership of Property*

- (i) The Mohegan Tribe shall retain all ownership, property, trademark, copyright, and other rights to cultural, linguistic, and historic information that is not the intellectual property of the Researcher.

- (ii) The Researcher shall credit the Mohegan Tribe, where applicable, as the appropriate source of all information used to develop the Researcher's intellectual property.
 - (iii) Individuals on whom research will be conducted shall have the right to their own individual information and intellectual property that is provided to the Researcher. The Researcher will provide the Tribe and each individual with a statement of the individual's rights as it pertains to information collected from the individual. Individuals retain the right to cease involvement in the research at any time.
 - (2) Copyrighted Works
 - (i) The use of the Mohegan Tribe's copyrighted works must be approved by the Board prior to use in any publication.
 - (ii) The Tribe may permit use of copyrighted works for purposes as determined by the Board.
 - (3) Trademark. Use of the Mohegan Tribe's trademark(s), such as words, phrases, symbols or designs, or a combination of words, phrases, symbols or designs, that identify the Mohegan Tribe as the source, may not be utilized absent express written permission of the Board and any other governmental entity which the Board deems necessary.
 - (4) Rights of Publicity and Rights of Privacy. All individuals retain Rights of Publicity and Rights of Privacy to the highest extent afforded by this Code or applicable tribal, state or federal law. Individuals on whom research will be conducted have the right to control their own image, including, but not limited to sketches, electronic imagery or film, voice recordings and/or video recordings, to extend to a period of ten (10) years after their death unless explicitly waived in writing.
- (r) *Enforcement*
- (1) Exigent Circumstances. Whenever it appears that a Researcher or other person or entity has violated the provisions of this Code and immediately harm is occurring or will occur to the Tribe or its Members, the Board may petition the Council of Elders, in exigent circumstances, in its capacity as Supreme Court of the Mohegan Tribe, for an injunction or other appropriate relief. If the Council of Elders, after a hearing, finds that this Code has been violated, it may assess civil penalties of up to five thousand dollars (\$5,000.00) per count, in addition to any other damages resulting from an unpermitted research activity or the violations of the provisions of any Research Permit.
 - (2) Unlawful Acts. It shall be unlawful for any person to conduct research on the Mohegan Reservation unless the Researcher has obtained a permit as specified in this Code. Failure to obtain a permit or to abide by its terms shall result in penalties and sanctions.
 - (3) Remedies. When it appears that the Researcher or other person or entity has violated the provisions of this Code or the terms of the permit, the Data Governance Office may, on its own initiative, petition the Board for the commencement of injunctive and equitable relief through the filing of a Complaint.
 - (4) Penalties. If the Board, after a hearing, finds that this Code has been violated, the following penalties shall apply:
 - (i) Persons conducting research in violation of any section of this Code, or any permit issued under this Code, may be assessed a civil penalty not to exceed \$5,000.00 per violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violations.
 - (ii) Researchers in violation of this Code, or any permit issued under this Code, may be banned from conducting research on the Mohegan Reservation.
 - (iii) Appeals from Board decisions in these matters may be filed in writing with the Council of Elders within thirty (30) days of the Board's decision. Determinations of the Council of Elders on appeal shall be final.
 - (5) Reporting. In addition to any other remedies and penalties considered, the Board may also report violations of this Code to the Researcher's relevant funding agencies, affiliated institutional and professional organizations, as well as public databases established for this

purpose, such as the United States Department of Health and Human Services Office of Research Integrity. If a judgment is entered against Researchers subject to this Code, notice of the judgment shall be given to the project's sponsoring organization and/or funding source as well as to the professional organization or licensing agency of the Researcher.

- (6) Damages
 - (i) Assessment of Actual Damages: any person who violates any section of this Code or any permit issued pursuant to this Code shall be liable for damages to be assessed by the Board after a hearing is conducted.
 - (ii) Damages shall be interpreted liberally by the Board to include, but not be limited to, the following:
 - a. Cost of restoration and repair;
 - b. Enforcement costs associated with the enforcement of this Code; and
 - c. Costs associated with the appropriate disposition of resources.
 - (iii) In addition to actual damages, the Board is authorized, in its discretion, to assess damages of up to three times the amount of actual damages in egregious circumstances.
- (7) Forfeiture
 - (i) All objects or property in the possession of any person and obtained in violation of this Code or in violation of a term or condition of any Permit, shall be seized by Mohegan Tribal Police and forfeited to the Tribe for disposition.
 - (ii) A person may recover all such property by paying the Tribe all costs incurred by the Tribe in carrying out legal proceedings and by paying all fines due for violations of Tribal law.
- (8) Seizure of Security
 - (i) The citing law enforcement agent shall seize such property in the possession of the alleged perpetrator, including vehicles or equipment involved in the violation, as the agent deems reasonably necessary to secure payment of any fine or civil damages which may be levied upon the perpetrator upon conviction for violation of this Code.
 - (ii) The property seized shall be released to the owner upon timely payment of any related civil assessments.
 - (iii) Any seized property shall be forfeited to the Tribe if the assessment has not been paid within sixty (60) days of the hearing at which the assessment was levied or sixty (60) days from the final determination of the Council of Elders in any appeal taken pursuant to this Code, whichever is later.
- (9) Personal Jurisdiction. Persons conducting unauthorized research involving Mohegan Tribal members or the physical or cultural properties of the Mohegan Tribe, as well as persons conducting research under a permit issued pursuant to this Code shall be deemed to have consented to the personal jurisdiction of the Mohegan Tribe.
- (s) *Immunity, Good Faith, and Severability*
 - (1) No Waiver of Immunity. Nothing in this Code shall be construed as a waiver, express or implied, of the sovereign immunity of the Mohegan Tribe.
 - (2) Severability. If any clause, sentence, paragraph, section, or part of this Code shall, for any reason, be adjudicated invalid or unconstitutional by the Council of Elders, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.
 - (3) Construction. This Code shall be interpreted and applied in a manner consistent with the laws and Constitution of the Mohegan Tribe.
 - (4) Amendment. This Code may be amended only upon an affirmative vote of the Council of Elders.