

**LOWER SIOUX INDIAN COMMUNITY  
ENROLLMENT AND MEMBERSHIP PRIVILEGE ORDINANCE**

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## CHAPTER 1: GENERAL PROVISIONS

### Section 1.1 Repeal of Earlier Ordinance and Treatment of Inconsistent Legislation

This Ordinance governs the enrollment of members into the Lower Sioux Community, and the acquisition, loss, and reacquisition of membership privileges of enrolled members. The Enrollment Ordinance adopted by Resolution No. 12-53, Transfer of Membership Ordinance adopted by Resolution No. 39-00, and Paternity Ordinance adopted by Resolution No. 11-A-96 are repealed and replaced with this Ordinance. In there is a conflict between this Ordinance and any other Code or Ordinance of the Community, this Ordinance controls.

### Section 1.2 General Findings

The Lower Sioux Community Council (“Community Council”) finds:

- A. The Constitution of the Lower Sioux Indian Community in Minnesota (“Community Constitution”) states at Article III, section 1 that “[m]embership in the Lower Sioux Indian Community in the State of Minnesota shall consist of the following: (a) The bona fide Indian residents of the Lower Sioux Reservation whose names appear on, or are entitled to appear on the official census roll of the Minnesota Mdewakanton Sioux Indians as of April 1, 1934, with the official supplement thereto of January 1, 1935[,] (b) The bona fide Indian residents of the Lower Sioux Reservation whose names appear on various other Sioux Indian rolls, provided that such persons transfer their enrollment to the Minnesota Sioux rolls, with the approval of the Secretary of the Interior[, and] (c) All children of any member who is a resident of the Lower Sioux Reservation at the time of the birth of said children.”
- B. The Community Constitution further states at Article III, section 3 that “[a]ny person who is a member of the Community, but has removed therefrom for a period of two (2) years, shall automatically forfeit all rights and privileges to the benefits of said community such as land assignments and sharing in community profits.”
- C. The Community Constitution further states at Article III, section 3(a) that “[a]ny member who does not have the rights and privileges of membership may acquire such rights and privileges by establishing residency in the Community for a period of five continuous years; provided that, if a member was a bona fide resident of the Community on the date this subsection (a) was approved by the required Community Vote, such member may acquire the rights and privileges of membership under such Community law as was in effect prior to the date of such vote.”
- D. The Community Constitution further states at Article III, section 4 that “[t]he Community Council may make ordinances governing the acquisition and loss of membership, subject to review by the Secretary of the Interior.”
- E. It is in the best long-term interest of the Community to formalize the process by which persons are enrolled as members of the Community, and the process by which enrolled members qualify for, lose, or reacquire Qualified Membership.

### **Section 1.3 Enrollment Committee and Enrollment Office**

- A. The Community Council must appoint an Enrollment Committee to assist in the administration of the provisions of this Ordinance. The Enrollment Committee consists of up to five enrolled adult members of the Community, plus one non-voting member who is a member of the Community Council. The members of the Committee do not have set terms but serve at the pleasure of the Community Council. The recommendations of the Enrollment Committee are advisory only, and final decisions regarding the recommendations may only be made by the Community Council.
- B. The Community Council must maintain an Enrollment Office with such staff as may be required to carry out the day-to-day requirements of this Ordinance, support the Enrollment Committee, and to provide information to Members and applicants for enrollment in the Community. The head of the Office is the “Enrollment Clerk.”

### **Section 1.4 Definitions**

- A. “Community Area” means the Lower Sioux Reservation and the ten-mile-radius service area of the Lower Sioux Reservation (including but not limited to the towns of Clements, Morton, Morgan, Redwood Falls, and Franklin, Minnesota) and identified in Resolution No. 72-27 and Enrollment Ordinance No. 1 adopted by Resolution 6-82.
- B. “Lower Sioux Reservation” means the lands held in trust for the Lower Sioux Indian Community.
- C. “Member” means a person who is enrolled as a member of the Lower Sioux Indian Community.
- D. “Minor Qualified Member” means a person under the age of 18 who is enrolled as a member of the Lower Sioux Indian Community and who has Qualified Status. Once a minor who is enrolled as a member of the Lower Sioux Indian Community achieves Qualified Status, the Community will treat that minor as a Minor Qualified Member until the age of 18, regardless of any change to the residency of that minor’s parent(s). Once a Minor Qualified Member reaches the age of 18, that person becomes a Qualified Member who is subject to the Residency Requirements.
- E. “Qualified Member” means a Member who is over the age of 18 and has Qualified Status.
- F. “Qualified Membership Privileges” means the rights and privileges afforded to Qualified Members under the Community’s ordinances and laws.
- G. “Qualified Status” means the condition of having fulfilled and continuing to meet all of the relevant Residency Requirements. Only Members with Qualified Status are entitled to Qualified Membership Privileges.
- H. “Residency” means the place where a person actually physically dwells or abides for any amount of time, so long as that person intends to dwell or abide there permanently, and dwells or abides at that place in such a manner that Community Members would

reasonably conclude, based on day-to-day observations and/or other credible evidence, that the person has made the place his or her permanent home. A person who merely visits a place, or stays there without intending to make the place a permanent home, does not establish residency there. A Member who is incarcerated in an institution pursuant to a conviction under any criminal law, or is committed involuntarily to an institution pursuant to a civil court order, does not reside in the Community Area within the meaning of this definition, regardless of the physical location of the incarceration or commitment facility. This definition of Residency applies to both the Residency Requirements in this Ordinance, and the words “resident,” “residence,” and “residency” as they appear in the Community Constitution.

- I. “Residency Requirements” means the requirements set forth in Article III, section 3(a) of the Community Constitution and the requirements set forth in Chapter 6 of this Ordinance.

### **Section 1.5 Tribal Membership Roll and Other Membership Information**

The Enrollment Committee and Enrollment Office must keep a current roll that contains the names of all enrolled Members. As to each Member, the Committee must maintain information regarding the Member’s address and Qualified Status, and may maintain such other information as may be necessary to carry out the requirements of this Ordinance.

### **Section 1.6 Confidentiality**

The Community Council considers enrollment applications, records, and proceedings confidential and directs all persons who receive enrollment records or participate in enrollment proceedings to treat this information with the appropriate discretion.

## **CHAPTER 2: ENROLLMENT**

### **Section 2.1 Application for Enrollment**

- A. A person who wishes to be enrolled in the Community, or the parent, legal guardian or Social Services Center on behalf of a minor applicant, must meet the two Constitutional requirements for Membership by proving that: (1) the applicant is the “child[] of any member”; and (2) the applicant’s Member parent was “a resident” of the Community Area at the time of the birth of the applicant. For an applicant to qualify for Membership, the applicant’s parent must have been an enrolled Member at the time of the birth of the applicant.
- B. An applicant must file a complete application for enrollment (including all required supporting evidence) with the Enrollment Office in order to be considered for enrollment. The Enrollment Office must maintain and provide Council-approved forms to applicants upon request.
- C. Every applicant must provide the following evidence with that applicant’s application forms:
  1. To establish that an applicant is the “child of a member,” the applicant must provide:

- a. if the applicant’s biological father is the Member through whom the applicant traces: a blood or genetic test completed in a laboratory accredited by the American Association of Blood Banks indicating that the likelihood of the alleged father’s paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater. A certified birth certificate or other document stating that a Member is the applicant’s legal or adjudicated father is not sufficient on its own to prove that an applicant is the biological child of a Member father. If the applicant makes a reasonable showing that his or her father cannot be tested, the Council may approve acceptance of an alternate form of proof of paternity, such as blood or genetic test results from other ancestors that constitute credible proof of paternal lineage.
  - b. if the applicant’s biological mother is the Member through whom the applicant traces: a certified copy of the applicant’s birth certificate listing the mother.
- 2. To establish that an applicant’s Member parent was “a resident of the Lower Sioux Reservation” at the time of the applicant’s birth, the applicant must provide:
  - a. credible evidence that the Member parent Resided within the Community Area at time of the applicant’s birth; or
  - b. credible evidence that the Member parent was away from the Community Area at the time of the applicant’s birth under an authorized “Special Situation” not affecting Residency (as provided in Sections 4.3 (“Special Situation: Students”), 4.4 (“Special Situation: Military Service”), and 4.5 (“Special Situation: Mental Illness or Disability”) of this Ordinance).
- D. The Enrollment Office will maintain a list of the forms of proof that the Council has determined constitute credible evidence.
- E. If at the time of the applicant’s birth the Member parent was incarcerated in an institution pursuant to a conviction under any criminal law, or was committed involuntarily to an institution pursuant to a civil court order, the Member parent did not Reside within the Community Area as of the time of the applicant’s birth, regardless of the physical location of the incarceration or commitment facility.
- F. In order to establish more complete enrollment records, the Council and/or Enrollment Committee may adopt policies that require that applicants provide additional documentation beyond that listed in Section 2.1(C) before they will consider an application complete, including, but not limited to, a birth certificate for every applicant, a completed family tree, a copy of the applicant’s Social Security card, or other personal information.

## **Section 2.2 Review of Applications**

- A. Once an application is complete, the Enrollment Committee must promptly review it and determine whether the applicant meets the criteria for enrollment set forth in the Community Constitution and in Section 2.1 (“Application for Enrollment”).
- B. The Enrollment Committee must then prepare and submit a written recommendation to the Council listing the reasons why, in the Committee’s view, an applicant either does or does not meet the criteria for enrollment. The recommendation must attach all evidence that the Committee considered.
- C. The Community Council must then review the Enrollment Committee’s recommendation and all the evidence. It is within the Council’s sole discretion whether to adopt or reject the Committee’s recommendation and to make the final decision regarding whether the applicant should be enrolled. The Community Council may:
  - 1. enroll the applicant;
  - 2. deny enrollment;
  - 3. determine that the application is incomplete or otherwise deficient and return the application to the Enrollment Committee for further review; or
  - 4. determine that the application is incomplete or otherwise deficient and undertake its own review to reach a final decision.
- D. If the Council sends the application back to the Enrollment Committee for further action, the Committee must promptly undertake the required review and provide a new written recommendation to the Council.
- E. Once the Council has reached a final decision, whether it approves or denies enrollment, it must issue the decision in a written resolution stating what evidence the Council considered, and then provide a copy to the Enrollment Committee and mail a copy to the applicant by certified mail. The Council must ensure that all documents upon which it relied are maintained in the enrollment file.
- F. If an applicant is approved for enrollment, the Enrollment Committee and the Enrollment Office must take all actions necessary to update the Community’s enrollment records.

## **Section 2.3 Relinquishment of Membership in Another Tribe**

The Lower Sioux Community does not allow dual enrollment. If an applicant would otherwise be eligible for enrollment in the Community but is a member of another federally recognized Indian tribe, then the Community may provisionally enroll the applicant. A provisionally enrolled applicant must receive the same treatment as an enrolled Member of the Community except that the applicant must relinquish membership in the other tribe and submit evidence of relinquishment to the Enrollment Committee within 30 days of being notified that he or she has been provisionally enrolled by the Community. If the applicant does not submit

evidence of relinquishment within the prescribed time period, then the Enrollment Committee must notify the Community Council of the failure, and the Council must rescind the provisional enrollment.

#### **Section 2.4 Relinquishment of Membership in the Community**

A Member of the Community may relinquish his or her membership by filing a written and signed notice of relinquishment to the Community Council clearly indicating the Member's intent. Any relinquishment takes effect immediately upon its submission unless the Member conditions the relinquishment upon being accepted for membership in another tribe. In the case of conditional relinquishment, the relinquishment becomes final on the day the enrollment in another tribe becomes final. After a Member relinquishes his or her membership in the Community, that Member may never reapply for membership in the Community; however, a minor whose membership was relinquished by a parent or legal guardian may apply for enrollment, so long as he or she does so within five years after attaining majority.

#### **Section 2.5 Appeal of a Decision to Enroll an Applicant**

- A. The applicant or any enrolled Member of the Community may appeal to the Community Court the decision of the Community Council to grant or deny enrollment to an applicant under this Chapter 2.
- B. By this Ordinance, the Community Council grants the Community Court the jurisdiction to consider appeals under this Section, and waives the Community's sovereign immunity for the limited purpose of the Court's review of the enrollment decision, except that the Court may not grant any monetary relief.
- C. To succeed in an appeal, the person making the appeal must demonstrate that the decision of the Community Council was clearly erroneous.
- D. Any appeal must be filed with the Community Court within 30 days of the date the Council mailed the applicant the final decision by certified mail. The appellant must serve a copy of his or her appeal upon the Community Council and the Community Council has 30 days after receiving the appeal within which to file a response. In reviewing the decision, the Court may only consider the record that was before the Community Council.
- E. When considering an appeal under this Ordinance, the Community Court must strictly apply the filing and documentation requirements of the Ordinance, and does not have any power or authority to ignore or to waive any requirement of the Ordinance, whether on equitable grounds or any other grounds.

### **CHAPTER 3: TRANSFERS OF MEMBERSHIP**

#### **Section 3.1 Findings Regarding Transfers**

- A. The provisions relating to transfer of membership under Article III, section 1(b) of the Community Constitution were meant to provide an opportunity to correct errors and

inequities at the time of the formal establishment of the Community, by providing a mechanism for persons not listed on the relevant Minnesota Mdewakanton Sioux Indian rolls in 1934 and 1935, but who were residents of the reservation at that time, to become enrolled in the Community by transfer.

- B. Over 70 years have passed since the Community was formally established, and there has been ample time for persons to correct errors and inequities that may have existed at or shortly after establishment of the Community.
- C. The Community has enacted an Adoption Ordinance that allows persons enrolled in other Sioux tribes or other nonmember Indians to be adopted into the Community and be given enrollment numbers.
- D. The circumstances surrounding, and reasons for, the transfer provision of Article III, section 1(b) no longer exist.
- E. The fact that the Secretary of the Interior has not adopted rules for reviewing transfer requests under Article III, section 1(b) is evidence that the Secretary also has concluded that the section has limited relevance to current circumstances.
- F. Therefore, the Community Council finds that the following procedure is appropriate for any remaining transfers.

### **Section 3.2 Procedure**

A person who desires to transfer enrollment to the Lower Sioux Community under Article III, section 1(b) of the Community Constitution must submit a written request for transfer to the Enrollment Committee. The request must be signed by the applicant and must include the following:

- A. the name of the applicant;
- B. the Sioux census roll on which the applicant's name originally appeared;
- C. proof that the applicant was an actual, full-time resident of the Lower Sioux Reservation at the time the Lower Sioux Constitution was approved by the Secretary of the Interior June 11, 1936;
- D. proof that the applicant has submitted a final or conditional relinquishment of membership from the tribe with which the applicant currently is enrolled; and
- E. the reasons why the applicant is seeking to transfer enrollment at this time, and did not seek to transfer enrollment immediately after the Community Constitution was approved by the Secretary of the Interior June 11, 1936.

### **Section 3.3 Consideration by the Enrollment Committee and the Community Council**

The Enrollment Committee may ask for such additional information, and may perform such additional investigations relating to the application as it deems desirable. After

investigating the request, the Enrollment Committee must make a recommendation to the Community Council with respect to the application. The Council may only approve a request for transfer of enrollment under Article III, section 1(b) if it finds all of the following:

- A. the applicant was listed on a Sioux Indian census roll within five years before or after the Community Constitution was approved by the Secretary of the Interior June 11, 1936;
- B. the applicant was an actual, full-time resident of the Lower Sioux Reservation at the time the Community Constitution was approved by the Secretary of the Interior June 11, 1936;
- C. the applicant has submitted a final or conditional relinquishment of membership from the tribe with which the applicant currently is enrolled;
- D. the applicant has significant current ties to the Lower Sioux Community; and
- E. there are extraordinary reasons for the failure of the applicant to seek transfer of enrollment at or shortly after the time the Community Constitution was approved by the Secretary of the Interior June 11, 1936.

### **Section 3.4 Decision of the Community Council**

After reviewing the application and supporting evidence, the Community Council must decide by formal resolution whether to approve or disapprove the request for transfer, must forward the decision to the Secretary of the Interior or his or her authorized representative, and must mail a copy to the applicant by certified mail.

### **Section 3.5 Appeal of Decision to Grant or Deny a Transfer of Membership**

- A. The applicant or any enrolled Member of the Community may appeal to the Community Court the decision of the Community Council to grant or deny a transfer of membership under this Chapter 3.
- B. By this Ordinance, the Community Council grants the Community Court the jurisdiction to consider appeals under this Section, and waives the Community's sovereign immunity for the limited purpose of the Court's review of the transfer decision, except that the Court may not grant any monetary relief.
- C. To succeed in an appeal, the person making the appeal must demonstrate that the decision of the Community Council was clearly erroneous.
- D. Any appeal must be filed with the Community Court within 30 days of the date the Council mailed the applicant the final decision by certified mail. The appellant must serve a copy of his or her appeal upon the Community Council and the Community Council has 30 days after receiving the appeal within which to file a response. In reviewing the decision, the Court may only consider the record that was before the Community Council.
- E. When considering an appeal under this Ordinance, the Community Court must strictly apply the filing and documentation requirements of the Ordinance, and does not have any

power or authority to ignore or to waive any requirement of the Ordinance, whether on equitable grounds or any other grounds.

## **CHAPTER 4: LOSS OF QUALIFIED STATUS**

### **Section 4.1 Loss of Qualified Status**

A Qualified Member loses his or her Qualified Status if that member ceases to maintain Residency within the Community Area for a period of two consecutive years, and if the Community Council, following the procedures of this Section, makes a formal finding to that effect. Determinations regarding a Member's Residency may only affect that member's Qualified Status prospectively.

### **Section 4.2 Procedure for Challenging Qualified Status**

Challenges to the Qualified Status of a Qualified Member must follow this procedure:

- A. If the Enrollment Committee receives a challenge to the Qualified Status of a Qualified Member, it must conduct an investigation to determine whether the Qualified Member has maintained residency for the two-year period preceding the challenge.
- B. If after reviewing the challenge, the Committee determines that there is not credible evidence that a Qualified Member has ceased to maintain Residency within the Community Area for the preceding two years, then the Committee must end its inquiry and does not need to provide notice to the Qualified Member whose Residency was challenged.
- C. If after reviewing the challenge, the Committee determines that there is credible evidence that a Qualified Member has ceased to maintain Residency within the Community Area for the two-year period preceding the challenge, then the Enrollment Committee must:
  1. provide written notice to the Member whose Qualified Status is being challenged, summarizing the evidence that has prompted the Enrollment Committee's inquiry, and setting a hearing date at least 30 days after the date of the notice;
  2. hold a hearing at which the Enrollment Committee must demonstrate by a preponderance of the evidence that the Qualified Member has failed to maintain Residency for the two-year period preceding the challenge. The challenged Member may provide the Enrollment Committee with any evidence or testimony that the challenged Member deems relevant, and the Enrollment Committee may also receive any other testimony or evidence it deems relevant; and
  3. following the hearing, the Enrollment Committee must make a prompt written recommendation to the Community Council as to whether, in the Committee's opinion, the challenged Member has lost his or her Qualified Status, and must summarize the evidence that the Committee finds relevant and credible.
- D. The Community Council must consider the Enrollment Committee's recommendation, and must make a formal determination as to whether the challenged Member has lost his

or her Qualified Status by failing to maintain Residency within the Community Area for the two-year period preceding the challenge.

#### **Section 4.3 Special Situation: Students**

- A. If a Qualified Member leaves the Community Area in order to attend, and actually does attend, an accredited post-high-school educational institution as a full-time student, then the Community will treat that Member as having maintained Residency in the Community Area during the time that Member was a full-time student attending school outside the Community Area.
- B. A Qualified Member under this Special Situation will lose the attribution of Residency under this Section if the Member:
  - 1. has been gone from the Community Area for more than two years; and
  - 2. either graduates from the educational institution or otherwise stops attending the institution as a full-time student; and
  - 3. does not return to the Community Area and re-establish Residence within 60 days thereafter.
- C. If a member loses the attribution of Residency under Section 4.3(B), then the Community must treat that Member as having removed his or her Residence from the Community Area during the entire time that Member was gone. If the Member has been gone for two or more years, then that Member will be subject to loss of Qualified Status as provided in Sections 4.1 and 4.2.

#### **Section 4.4 Special Situation: Military Service**

- A. If a Qualified Member who is a member of the United States military (including the National Guard) leaves the Community Area because he or she is required to do so because of military orders, then the Community will treat that Member as having maintained Residency in the Community Area during the time that Member was gone due to those orders.
- B. A Qualified Member under this Special Situation will lose the attribution of Residency under this Section if the Member:
  - 1. has been gone from the Community Area for more than two years; and
  - 2. is discharged or otherwise ceases to be a member of the United States military, or if the military orders are fulfilled or otherwise end; and
  - 3. does not return to the Community Area and re-establish Residence within 60 days thereafter.

- C. If a member loses the attribution of Residency under Section 4.4(B), then the Community must treat that Member as having removed his or her Residence from the Community Area during the entire time that Member was gone. If the Member has been gone for two or more years, then that Member will be subject to loss of Qualified Status as provided in Sections 4.1 and 4.2.

**Section 4.5 Special Situation: Mental Illness or Disability**

- A. If a Qualified Member is absent from the Community Area in order to be treated primarily for a mental illness or mental disability (other than being committed involuntarily to an institution pursuant to a criminal conviction or civil court order), and if appropriate treatment is not available within the Community Area, the Community will treat that Member as having maintained Residency in the Community Area during the time that Member was gone for that treatment.
- B. A Qualified Member under this Special Situation will lose the attribution of Residency under this Section if the Member:
  - 1. has been gone from the Community Area for more than two years; and
  - 2. is discharged from the place where he or she is receiving treatment, or if the Member's absence from the Community Area ceases to be necessary for continuation of treatment; and
  - 3. does not return to the Community Area and re-establish Residence within 60 days thereafter.
- C. If a member loses the attribution of Residency under Section 4.5(B), then the Community must treat that Member as having removed his or her Residence from the Community Area during the entire time that Member was gone. If the Member has been gone for two or more years, then that Member will be subject to loss of Qualified Status as provided in Sections 4.1 and 4.2.

**Section 4.6 Special Situation: Incarceration**

If a Qualified Member is incarcerated in an institution pursuant to a conviction under any criminal law, or is committed involuntarily to an institution pursuant to a civil court order, then the Community must treat the that Member as having removed his or her Residence from the Community Area during the time of the incarceration or commitment, regardless of the physical location of the incarceration or commitment facility.

**Section 4.7 Appeal of Decision that a Member Has Lost Qualified Status**

- A. Either the Member who is the subject of the decision or any enrolled Member of the Community may appeal to the Community Court the decision of the Community Council that a Member has lost Qualified Status under this Chapter 4.

- B. By this Ordinance, the Community Council grants the Community Court the jurisdiction to consider appeals under this Section, and waives the Community’s sovereign immunity for the limited purpose of the Court’s review of the Qualified Status decision, except that the Court may not grant any monetary relief.
- C. To succeed in an appeal, the person making the appeal must demonstrate that the decision of the Community Council was clearly erroneous.
- D. Any appeal must be filed within 30 days of the date the Council mailed the applicant the final decision by certified mail. The appellant must serve a copy of his or her appeal upon the Community Council and the Community Council has 30 days after receiving the appeal within which to file a response. In reviewing the decision, the Court may only consider the record that was before the Community Council.
- E. When considering an appeal under this Ordinance, the Community Court must strictly apply the filing and documentation requirements of the Ordinance, and does not have any power or authority to ignore or to waive any requirement of the Ordinance, whether on equitable grounds or any other grounds.

## **CHAPTER 5: ACQUISITION OF QUALIFIED STATUS**

### **Section 5.1 Newly Enrolled Adult Members**

An adult who becomes enrolled as a Member of the Community under the provisions of the Community Constitution, whether because he or she has applied and been enrolled under Article III, section 1 or has been adopted into the Community under the Adoption Ordinance, may become a Qualified Member if he or she follows the requirements of Section 6.1 (“Process for Reacquiring Qualified Status”). The Residency period required in Section 6.1 may begin any time after the newly enrolled Member receives an enrollment number. The Community may not count Residency that occurs before the adult receives an enrollment number as part of the required period.

### **Section 5.2 Newly Enrolled Minor Members**

- A. A minor child who becomes enrolled as a Member of the Community is entitled to Minor Qualified Member Status only if the minor’s parent is a Qualified Member. If a child is eligible for enrollment at birth, but the child’s parent is not a Qualified Member at that time, the child may be enrolled but is not entitled to receive Minor Qualified Member Benefits.
- B. If a minor child’s Member parent becomes a Qualified Member while the child is still a minor, the child becomes eligible to receive Minor Qualified Member Benefits at that time. If a minor child’s Member parent has begun the process of acquiring or reacquiring Qualified Status, but dies before finishing that process, the Community will treat the child as eligible to receive Minor Qualified Member Benefits as described in the Community’s Gaming Revenue Allocation Ordinance.
- C. If a minor Member legally resides in the Community Area, but the minor Member’s

parent does not or cannot submit Residency proofs, then the minor Member him or herself, the minor Member's parent or guardian on the minor Member's behalf, or the Social Services Center may submit Residency proofs under Section 6.1 in order to allow the minor Member to prove Residency.

- D. The Community recognizes that minors typically do not have decision-making authority over where they legally reside. Therefore, if the Member parent of a Minor Qualified Member loses Qualified Member Status for any reason, the parent's change in status does not affect the Minor Qualified Member's status.
- E. The first payment to a Minor Qualified Member's trust under the Community's Gaming Revenue Allocation Ordinance must be made on the date of the first regularly scheduled payment that occurs after the date that the minor becomes a Minor Qualified Member.

### **Section 5.3 Qualified Status for a Minor Qualified Member Who Reaches 18 Years of Age**

- A. Upon obtaining verified information that a Minor Qualified Member has turned 18 years of age, the Community Council will certify by resolution the date the Member turned 18 and will make a finding as to whether the Member Resided in the Community Area on his or her 18th birthday. To make this determination, the Community Council may consider the types of residency proof listed in Section 6.3 or such other proofs as it may require.
- B. If the Council finds that the Minor Qualified Member Resided in the Community Area on his or her 18th birthday, then the Minor Qualified Member becomes a Qualified Member of the Community as of the date of the Council resolution.
- C. If the Council finds that the Minor Qualified Member did not Reside in the Community Area on his or her 18th birthday, then the Member may become a Qualified Member of the Community if the Council makes a further finding by resolution that the Minor Qualified Member:
  - 1. established Residency in the Community Area within 60 days after his or her 18th birthday; or
  - 2. established Residency in the Community Area within 60 days after graduating from high school if the member is attending high school out of the Community Area as a full-time student on his or her 18th birthday.
- D. If, after a Member achieves Qualified Status under Section 5.3(B) or (C), the Council makes a further finding by resolution that the initial Residency finding was the result of fraud or mistake, then it must rescind its Residency finding and resolve that Qualified Status did not vest in that Member.
- E. If the Council does not make a finding that the Minor Qualified Member established Residency in the Community Area under Section 5.3(B) or (C), or rescinds a Residency finding under Section 5.3(D), then the Member may only acquire Qualified Status by proving Residency for five years under Section 6.1 ("Process for Reacquiring Qualified

Status”).

**Section 5.4 Qualified Status for a Minor Member Without Qualified Status Who Reaches 18 Years of Age**

- A. If a minor Member does not have Minor Qualified Status before he or she reaches the age of 18, then to attain Qualified Status, that Member must prove Residency for five years under Section 6.1 (“Process for Reacquiring Qualified Status”).

**Section 5.5 Appeal of Decision to Grant or Deny Qualified Status**

- A. Either the Member who is the subject of the decision or any enrolled Member of the Community may appeal to the Community Court the decision of the Community Council to grant or deny enrollment to an applicant under this Chapter 5.
- B. By this Ordinance, the Community Council grants the Community Court the jurisdiction to consider appeals under this Section, and waives the Community’s sovereign immunity for the limited purpose of the Court’s review of the enrollment decision, except that the Court may not grant any monetary relief.
- C. To succeed in an appeal, the person making the appeal must demonstrate that the decision of the Community Council was clearly erroneous.
- D. Any appeal must be filed with the Community Court within 30 days of the date the Council mailed the applicant the final decision by certified mail. The appellant must serve a copy of his or her appeal upon the Community Council and the Community Council has 30 days after receiving the appeal within which to file a response. In reviewing the decision, the Court may only consider the record that was before the Community Council.
- E. When considering an appeal under this Ordinance, the Community Court must strictly apply the filing and documentation requirements of the Ordinance, and does not have any power or authority to ignore or to waive any requirement of the Ordinance, whether on equitable grounds or any other grounds.

**CHAPTER 6: REACQUISITION OF QUALIFIED STATUS**

**Section 6.1 Process for Reacquiring Qualified Status**

- A. Members who have lost Qualified Status under the Community Constitution and this Ordinance may reacquire Qualified Status under this Section. Subject to the provisions of Section 6.7 (“Alternate Residency Period for Members Who Resided In the Community Area on November 17, 1998”), Members who lost Qualified Status because they did not maintain Residency within the Community Area for a period of two consecutive years may only reacquire Qualified Status under this Ordinance if they return and establish Residency in the Community Area for a period of five consecutive years.
- B. The day that the applicable Residency period begins may predate the effective date of this Ordinance.

- C. Any Member seeking to reacquire Qualified Status under this Chapter must establish by clear and convincing evidence in a proceeding before the Enrollment Committee that he or she has followed all the requirements of proof mandated by this Chapter and has been an actual, full-time resident of the Community Area for the entire Residency period in question.
- D. Any absence from the Community due to an intent to change Residency, regardless of the length of time, breaks the continuity of Residency.

## **Section 6.2 Community Residency Forms and Supporting Documents Required**

- A. The Council has determined that the following monthly requirements and submissions constitute credible proof that an applicant actually resides within the Community Area because they demonstrate at least a minimum personal and financial commitment to remain, and that an applicant is residing in the Community Area during each month of the Residency period. These safeguards are necessary to eliminate past abuses where applicants claimed to reside within the Community Area but did not, including but not limited to false claims of residence with family members and friends living the Community Area.
- B. The Enrollment Clerk must make monthly Community Residency Forms (“Forms”) available to interested Member applicants.
- C. To be eligible to reacquire Qualified Status under this Chapter, an applicant must verify Residency by submitting Forms (including all required support as discussed in Section 6.3), to the Community Enrollment Committee each month during the required Residency period by the last business day of the month to which the Form applies. If the last day of the month falls on a weekend day or holiday, then an applicant must submit a Form by the last business day before the last day of the month.
- D. Adult applicants may only submit Forms for themselves and their minor child(ren), provided that the minor child(ren) actually reside with them. Adult applicants cannot submit Forms on behalf of anyone besides a minor child who actually resides with the applicant.
- E. The Social Services Center or a Member child’s guardian may also submit Forms on behalf of a Member child.
- F. Tribal Notarization Requirement.
  - a. The applicant must also sign each Form in the presence of a notary of the Community (including but not limited to the Tribal Court Clerk, the Enrollment Clerk, or the Community Council Clerk), and the witnessing notary must notarize the Community Residency Form.
  - b. If an applicant can document an extraordinary circumstance (such as illness) that actually prevents notarization by a Tribal notary, and obtains the written approval of

the Enrollment Clerk for an exception, the applicant may submit a form notarized by a non-Tribal notary or that is not notarized.

- c. If the Form is not notarized and there is no written approval from the Enrollment Clerk recognizing an extraordinary circumstance that prevented the applicant from notarizing the Form, the Form is not valid.

### **Section 6.3 Supporting Document Requirements**

- A. Along with each month's signed and notarized Form, an applicant must submit supporting documents as required hereunder. If all the required supporting documents are not submitted with the Form, or if a supporting document does not meet all of the requirements under this Section, the Form will be rejected as required by Section 6.4(C) and (D).
- B. Monthly Requirements. An applicant must submit each of the two following types of supporting documents each month:
  - 1. Proof of Community Area Residency.
    - a. A rental receipt; receipt from person with whom applicant is living rent-free; mortgage statement; or if none of these is applicable (such as where an applicant owns a home within the Community Area outright), other written confirmation of residency for that month (which may be by written statement on the Form). The Proof of Residency must be in the name of the applicant or the applicant's spouse if residing together (and for a rented housing unit located in a jurisdiction that requires a rental license, the rental property must also be properly licensed).
    - b. For a rental receipt or receipt from person with whom applicant is living rent-free to be valid, it must contain at least the following information (and the Enrollment Department may provide blank receipt forms):
      - i. name of the applicant (or applicant's spouse);
      - ii. rental address in the Community Area;
      - iii. amount of rent paid (if any);
      - iv. month to which the receipt applies;
      - v. date receipt was issued (which must also be during the month for which the Form is being submitted); and
      - vi. name, company (if applicable), and signature of the person from whom the applicant is renting; and

2. Proof of Community Area Activity or Occupation. One or more of the following proofs of what applicant does each month as additional verification of Residency within the Community Area, including full- or part-time employment; full or partial disability; unemployment; retirement; student; or other occupation or activity:
  - a. verification of employment for that month (such as a payroll check or stub, letter on employer's letterhead and signed by boss, or similar employment record from a current employer(s)) which must include applicant's name; address where the applicant works in or near the Community Area; and confirmation of total weekly hours of employment;
  - b. documentation from a government agency of receipt of unemployment benefits for that month (such as a copy of a monthly statement of unemployment benefits) which must list applicant's name and home address in the Community Area;
  - c. documentation of full or partial disability (such as a copy of a statement of Social Security Disability benefits) which must list applicant's name and a home address in the Community Area;
  - d. documentation of receipt of retirement benefits for that month (such as a pension statement or receipt of Social Security benefits), to the extent available, which must include applicant's name and home address in the Community Area; or
  - e. if none of these circumstances apply, or if documentation shows the employment or other status or activity solely accounts for only part of applicant's time, or if the applicant cannot obtain documentation of his or her regular activities despite a good-faith effort, and where applicant obtains the express, prior permission of the Enrollment Department: a written explanation detailing applicant's occupation(s) or activities (such as primary childcare duties; independent contractor status; unemployed and not receiving benefits; or other). Such written explanation may be included on each Form.

### C. Yearly Requirements

1. As additional verification of Residency within the Community Area, (provided applicant files such returns), the applicant must also submit: (a) individual federal tax returns (limited to IRS Form 1040); and (b) either Minnesota income-tax returns (Minnesota Form M1 or similar) or property tax statements, listing the Community Area residence. The returns must be submitted no later than the last month of the year following the date of the return. For example, an applicant must submit his or her 2011 return with the Form submitted in December 2012 at the latest.
2. If an applicant does not file tax returns, the applicant must affirm in writing that he or she did not file such returns. This statement must be submitted no later than the last month of the year following the date of the return. For example, an applicant must submit his or her written statement that no tax returns were filed for 2011 with the Form submitted in December 2012 at the latest.

3. Where an applicant enters a written, periodic lease, rental, or other agreement for his or her residence within the Community Area, the applicant must also submit such agreements on at least a yearly basis.
- D. Additional Requirements for Minor Children of School Age who Reside with the Applicant. Where an applicant applies on behalf of a related minor child who is of school age, in addition to the other monthly and yearly requirements, the applicant must submit the child's school records for all months during the school year. The records must confirm the child's home address in the Community Area, enrollment, and attendance and must include the child's name on the Form. The school must also be within the district(s) associated with the applicant's Community Area residence unless a credible written explanation for attendance at another school, while the child still resides in the Community Area, is provided. The school records may be submitted on a quarterly or other periodic basis, depending upon when the school normally issues report cards or similar reports.
- E. Alternate Monthly Requirements for Special Situations. After beginning the process of demonstrating Residency, if an applicant must depart the Community Area, but is doing so under what would constitute a Special Situation under this Ordinance if the applicant were a Qualified Member, then the applicant may continue to establish Residency by the following alternative means:
1. The applicant must submit the following supporting documents:
    - a. if the applicant would qualify under Section 4.3 ("Special Situation: Students"), at least yearly, the applicant must provide a transcript, attendance record, or other official school document demonstrating that the applicant is a full-time student for the applicable months;
    - b. if the applicant would qualify under Section 4.4 ("Special Situation: Military Service"), at least yearly, the applicant must provide an enlistment, training, or deployment record, or other official military record demonstrating that the applicant was required to be away from the Community Area because of military orders; or
    - c. if the applicant would qualify under Section 4.5 ("Special Situation: Mental Illness or Disability"), at least yearly, the applicant must provide:
      - i. written confirmation, for which applicant may be required to execute a release of information to the Tribe, from the applicant's treating health-care provider confirming treatment primarily for a mental illness or mental disability (other than being committed involuntarily to an institution pursuant to a criminal conviction or civil court order), and; and
      - ii. evidence that appropriate treatment is not available within the Community Area.
  2. Each applicant proving Residency under this Section must also make yearly submissions under Section 6.3(D) and submissions for minor children of school age as required under Section 6.3(D).

- a. Before an applicant departs under a Special Situation, he or she must contact the Enrollment Department to make appropriate arrangements and the Enrollment Department must confirm in writing that the Special Situation applies.
- b. The permission to continue to do residency while under a Special Situation is a privilege, not a right. Therefore, if an applicant who is away from the Community Area under a Special Situation fails to return to reside in the Community Area upon the expiration of the Special Situation as required within the time periods set forth in Sections 4.3, 4.4, or 4.5, the applicant loses any accumulated residency time. If the applicant failed to return after acquiring Qualified Member status, then he or she is subject to loss of Qualified Status, and the notice and hearing provisions of Section 4.2 apply (except that there need be no showing that the applicant has been gone for at least two years, only that the applicant failed to timely return).

**Section 6.4 Review of Forms and Notice of Defects; Late Forms; Incomplete, Incorrect or Fraudulent Forms**

- A. Review of Forms and Notice of Defects. The Enrollment Clerk will promptly review every Form and its supporting documentation. Applicants are strongly encouraged to contact the Clerk with questions regarding Forms and supporting documentation before the due date, as the timelines for submission are strict and there are very narrow exceptions.
- B. Late Forms. If the Enrollment Clerk has not received a Form by the due date from an applicant known to be doing Residency, the Clerk will notify the applicant of the deficiency. If the applicant then submits a valid Form before the last day of the month after the Form was due, the following consequences apply:
  1. if an applicant submits one valid Form late, but before the last business day of the month after the Form was due, the Clerk will accept the Form, but the applicant must provide proof of Residency under this Chapter for a period of five years and one month (or two years and one month if Section 6.6 applies);
  2. if an applicant submits a second valid Form late, but before the last day of the month after the Form was due, the Clerk will accept the Form, but the applicant must provide proof of Residency under this Chapter for a period of five years and two months (or two years and two months if Section 6.6 applies); and
  3. if an applicant submits a third valid Form late, then the applicant must begin a new five-year period for proof of Residency under this Chapter (or a new two-year period if Section 6.6 applies).
- C. Incomplete or Incorrect Forms.
  1. An incomplete or incorrect form does not provide credible proof of Residency and therefore cannot be accepted, but an applicant may have an opportunity to correct mistakes.

2. If an applicant submits an incomplete or incorrect Form (including where the Form is not fully filled out, is filled out incorrectly, is missing supporting documents, or supporting documents are not compliant with this Chapter, among other errors), the Enrollment Clerk will reject the Form.
3. Any Form discovered to be incomplete or incorrect may be rejected at any time during the period during which the applicant is doing Residency, but the Enrollment Clerk must exercise appropriate due diligence to evaluate all Forms as soon as they are submitted.
4. The Clerk will then promptly inform the applicant in writing that the Form has been rejected, including the reasons why and enclosing any relevant documents, and will give the applicant five business days from the date of receipt of the notice to submit any additional proof, explanation, or corrections.
5. The Clerk and the Enrollment Committee will perform a final review of any additional submissions from the applicant and the Clerk will promptly inform the applicant in writing of the Committee's decision whether to accept the Form.
6. If the Form is valid, but it was not submitted in valid form until after the due date, it will still be treated as late under Section 6.4(B).

D. Fraudulent Forms.

1. A fraudulent Form is invalid and will not be accepted (including but not limited to a misrepresentation of residence within the Community Area or any other knowing or intentional misrepresentation on the Form or supporting documents).
2. Where the Enrollment Clerk has reason to believe that a Form is fraudulent, the notice process listed in Sections 6.4(C)(2)-(5) applies.
3. Where an applicant has submitted a fraudulent Form in the past, breaking Residency, and later restarts Residency, the Enrollment Department may request additional forms of proof beyond those listed in this Chapter..

E. An applicant may not miss or "skip" a Form even once without causing the Residency period to restart. Where an applicant fails to submit even one valid Form (whether because it is late for the third time, or is determined to be incomplete or incorrect, fraudulent, or entirely missed), that applicant must begin a new five-year period for proof of Residency (or a new two-year period if Section 6.6 applies).

F. The decision of the Enrollment Department to reject a Form or to require an applicant to restart his or her Residency period hereunder is not appealable to the Community Council or the Community Court except upon an applicant's petition at the time when the applicant claims to have completed Residency and pursuant to the other provisions of Sections 6.7 and 6.8.

**Section 6.5 Exceptions to Community Residency Form and Supporting Documents Requirements**

A. Mental Incompetence of Applicant. If a physician or court of competent jurisdiction has determined that a Community member is mentally incompetent, and if the Community Council determines that:

1. the non-competent member has been an actual, full-time resident of the Community for the period specified in Article III, Section 3(a) of the Constitution of the Lower Sioux Indian Community; and
2. the Member is, and has been, unable to comply with the requirements of Sections 6.1 through 6.3 of this Ordinance because of his or her condition,

then the Community Council may waive the requirements of Sections 6.1 through 6.4 of this Ordinance, and may declare the non-competent Member to be a Qualified Member of the Community.

B. No Other Exceptions. If an applicant is unable to provide all the supporting documents, but the Enrollment Committee and Clerk reasonably believe that the applicant resides within the Community Area, the Committee must refer the matter to Council for a written resolution regarding whether an exception is justified. Neither the Enrollment Clerk nor the Enrollment Committee have authority to waive any of the requirements herein.

**Section 6.6 Alternate Residency Period for Members Who Resided In the Community Area on November 17, 1998**

In accordance with an amendment to the Community Constitution approved by the United States Secretary of the Interior November 23, 1998, an applicant who was an actual, full-time resident of the Community on November 17, 1998 may reacquire Qualified Status under this section by establishing Residency in the Community Area for a period of two consecutive years instead of five consecutive years, provided that the applicant meets the other requirements of this Section. For purposes of the constitutional amendment and this section, the Community may only consider an applicant to have been an actual, full-time resident of the Community on November 17, 1998 in the following three circumstances:

- A. the Member was eligible to receive per capita payments on November 17, 1998;
- B. the Member had timely signed and submitted a valid Community Residency Form for October 1998, and had signed and submitted a valid Community Residency Form for November 1998 before 5:00 p.m. on November 30, 1998; or
- C. the Member signed and submitted a valid Community Residency Form for November 1998 before 5:00 p.m. on November 17, 1998.

**Section 6.7 Process for Acquisition of Qualified Member Status Upon Completing Residency Period**

A. If the Enrollment Committee reasonably believes that an applicant has satisfied all the

requirements of this Chapter and has completed the Residency period, without a petition, the Committee may simply set an informal hearing with the applicant or take such other action as it determines appropriate to issue a recommendation to the Council.

- B. Alternatively, if an applicant reasonably believes he or she has satisfied all the requirements of this Chapter and has completed the Residency period, but the Enrollment Committee has not acted or disagrees that the applicant has completed the Residency period, the applicant may file a petition with the Enrollment Committee to become a Qualified Member. The Enrollment Committee must promptly review the petition. If the applicant requests a hearing, the Enrollment Committee must hold a hearing before making a recommendation on the petition.
- C. Whether upon its own review or upon receipt of a petition, the Enrollment Committee must consider all Forms that have been submitted by the Petitioner and the attached proofs. The Enrollment Committee cannot consider any evidence other than the Community Residency Forms and the attached proofs. Supplementary affidavits from any person in support of a petition are not permitted.
- D. If the Enrollment Committee determines that the applicant has met all the requirements to establish Residency (including submission of correct and valid Forms at the correct times for the correct period with the correct and valid verifications, etc.), the Committee will make a finding that the applicant has established Residency in the Community, and will recommend to the Community Council that the applicant should become a Qualified Member of the Community.
- E. If the Enrollment Committee determines that the applicant has not met all the requirements to establish Residency, the Enrollment Committee must recommend to the Community Council that the applicant not be accepted for Qualified Membership and state the reasons why, attaching all relevant evidence. The Enrollment Committee may consider the credibility of the Forms and accompanying documentary proofs in making its determination. The Enrollment Committee will forward its findings and recommendation to the Community Council.
- F. The Community Council must consider the recommendations of the Enrollment Committee, and must by resolution either accept or reject the Committee's recommendation. The Community Council cannot consider any evidence other than the Community Residency Forms and the attached proofs.
- G. The Community Council may only recognize an applicant as having Qualified Member Status as of the date it passed a resolution confirming the petitioner has met all the requirements. No applicant is entitled to any of the benefits of Qualified Member Status prior to the date of the Council's resolution recognizing Qualified Member Status under any circumstance.

#### **Section 6.8 Appeal of Decision to Grant or Deny a Petition Under this Section**

- A. Either the Member who is the subject of the decision or any enrolled Member of the Community may appeal to the Community Court the decision of the Community Council

to grant or deny reacquisition of Qualified Member status to an applicant under this Chapter 6.

- B. By this Ordinance, the Community Council grants the Community Court the jurisdiction to consider appeals under this Section, and waives the Community's sovereign immunity for the limited purpose of the Court's review of the decision, except that the Court may not grant any monetary relief.
- C. To succeed in an appeal, the person making the appeal must demonstrate that the decision of the Community Council was clearly erroneous.
- D. Any appeal must be filed with the Community Court within 30 days of the date the Council mailed the applicant the final decision by certified mail. The appellant must serve a copy of his or her appeal upon the Community Council and the Community Council has 30 days after receiving the appeal within which to file a response. In reviewing the decision, the Court may only consider the record that was before the Community Council.
- E. When considering an appeal under this Ordinance, the Community Court must strictly apply the filing and documentation requirements of the Ordinance, and does not have any power or authority to ignore or to waive any requirement of the Ordinance, whether on equitable grounds or any other grounds.

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### **Legislative History**

- Enacted March 10, 2010, Effective March 10, 2010, Resolution 10-51;
- Amended July 8, 2010, Effective July 8, 2010, Resolution 10-110;
- Amended July 28, 2010, Effective July 28, 2010, Resolution 10-116;
- Amended September 8, 2010, Effective September 8, 2010, Resolution 10-143;
- Amended April 17, 2012, Effective April 17, 2012, Resolution 12-15;
- Amended July 31, 2012, Effective July 31, 2012, Resolution 12-53;
- Restated January 18, 2013, Effective January 18, 2013, Resolution 13-05;
- Amended November 19, 2013, Effective November 19, 2013, Resolution 13-115.