



**HO-CHUNK NATION LEGISLATURE**  
*Governing Body of the Ho-Chunk Nation*

**45-Day Public Review**

**HO-CHUNK NATION LEGISLATURE  
AUTHORIZATION TO PLACE THE  
GENERAL WELFARE EXCLUSION ORDINANCE  
OUT FOR FORTY-FIVE DAY PUBLIC COMMENT**

**RESOLUTION 09-18-18 H**

- WHEREAS,** on November 1, 1994, the Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation ("Constitution"), formerly known as the Wisconsin Winnebago Nation; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget; and
- WHEREAS,** Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals; and
- WHEREAS,** Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and
- WHEREAS,** the Ho-Chunk Nation Legislature passed the *Legislative Organization Act* (2 HCC § 11), which was last amended on June 23, 2015; and
- WHEREAS,** the *Legislative Organization Act* provides the procedures for enacting or amending a Ho-Chunk Nation law; and

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**WHEREAS,** Section 44, subparagraph d (1) (a) of the *Legislative Organization Act* provides that the Public Review period for consideration of proposed laws or amendments will typically be forty-five (45) days; and

**WHEREAS,** the Legislature has discussed at Legislative Sessions and Housing Committee meetings the need for the Nation to adopt a *General Welfare Exclusion Ordinance* in order to be in compliance with the Federal Tribal General Welfare Exclusion Act of 2014; and

**WHEREAS,** the Department of Justice has drafted and submitted to the Legislature a proposed *General Welfare Exclusion Ordinance* for the Nation to be placed out for public comment; and

**WHEREAS,** the Legislature previously placed the proposed *General Welfare Exclusion Ordinance* out for 45 day public comment through Resolution 10-21-16D and 11-07-17I and now wishes to place it out for 45 day public comment due to the passage of time and to seek additional public comment;

**NOW, THEREFORE, BE IT RESOLVED,** that the Legislature, pursuant to its Constitutional authority, hereby places the attached proposed *General Welfare Exclusion Ordinance* out for forty-five (45) day public comment, to run from the date the proposed ordinance is posted on the Nation's website.

#### CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **9** constituting a quorum were present at a meeting duly called and convened and held that on the **18<sup>th</sup> day of September, 2018**, adopted the foregoing resolution at said meeting by an affirmative vote of **9 members, 0 opposed, and 0 abstaining**, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.

  
\_\_\_\_\_  
Andrea Estebo, Tribal Secretary

09.18.2018  
Date



## **1. Authority.**

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

d. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

## **2. Findings.** The Legislature of the Ho-Chunk Nation states the following findings:

a. Overcrowding, homelessness, home affordability, homeowner’s maintenance/responsibility, credit/fiscal responsibility and access to financing continue to be critical problems faced by Tribal Members.

b. It is a high priority of the Nation and its government to address the housing needs all tribal members who have acted as the principal keepers of traditions and culture, which the Nation generously recognizes and appreciates.

c. Federal housing programs have generally proven inadequate and poorly designed from the perspective of the material, cultural, and social needs of the Nation and its Tribal members. The needs of the Nation require the expenditure of resources to provide housing programs thus allowing Tribal members the opportunity to realize a safe, and affordable, and pleasant home environment.

d. The use of gaming revenues to provide adequate housing is deemed a priority.

**3. Purpose.** This Act establishes the Ho-Chunk Nation's *Housing for the General Welfare of Veterans, Elders and Non-Elders* to be administered by the Department of Housing. The Act sets forth the regulatory scope and authority of home ownership terms which the Nation provides for

the benefit of Ho-Chunk Nation members, and the necessary organizational policies which are administered under the Department of Housing.

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**4. Goals.** The goals of the Housing for the General Welfare of Veterans, Elders and Non-Elders are as follows:

a. Establish a system to ensure Ho-Chunk Nation Veterans, Elders and Non-Elders who are proved to be financially responsible are served the earliest.

b. Ensure fair administrative guidelines, educational and counseling assistance to assist Ho-Chunk Nation members with achieving home ownership.

c. Establish a fair and consistent enforcement policy to cooperatively resolve issues with regard to payment delinquencies and other defaults in order to avoid legal remedies if possible, yet protect the Nation's financial interests.

**5. General.** This Ordinance shall be known as the Ho-Chunk Nation General Welfare Ordinance.

a. Purpose – The first purpose of this Ordinance is to memorialize the procedures used by the Nation to determine what services or programs are needed to promote public health, safety and other basic need services for the promotion of the general welfare of the Nation such as sewer, water, electrical service / power, infrastructure, housing, public sanitation services, public education and other such functions that support the long historical and cultural general welfare of the Nation. The second purpose of this Ordinance is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare doctrine and Internal Revenue Code Section 139E.

b. Intent - The Ho-Chunk Nation ("Nation"), a federally recognized Indian Nation, exercises its inherent rights of sovereignty to promote the general welfare of the Nation, its self-determination, culture, and tradition, by providing general welfare assistance, including Indian general welfare benefits within the meaning of Internal Revenue Code Section 139E. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis. This Ordinance is intended to affirm the Nation's inherent sovereign rights to promote the general welfare of the Nation and provide qualifying assistance and program benefits on a tax free basis. In this regard, the Constitution of the Nation confirms the sovereign duty and responsibility of the Ho-Chunk Nation to maintain the culture and independence of its members, to encourage the economic well-being of its members, and to promote the rights of its members and their common welfare. The Assistance authorized by this Ordinance is intended to qualify for tax free treatment to the fullest extent permitted at law. Without limitation, the following benefits shall be treated as non-taxable hereunder:

(1) Benefits that satisfy the requirements for exemption under Code Section 139E;

(2) Benefits that are provided under an IRS Safe Harbor Program;

(3) Benefits that qualify for exclusion under the IRS General Test; or

(4) Benefits that meet another express exemption under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for, example, resource or land-based exemptions under 25 U.S.C. Sections 117a-b, 1407 and 1408.

**6. Definitions.** In construing the provisions of this Ordinance, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or the context provides otherwise.

a. "Assistance" Any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.

b. "Beneficiary" Any person or persons entitled to receive Assistance in accordance with specific Program guidelines. Programs designed to qualify for exemption under Code Section 139E may benefit Members, spouses of a Member, and/or Dependents of a Member. Programs designed to meet the Safe Harbor may benefit any Member or Qualified Nonmember.

c. "Code" means the Internal Revenue Code of 1986, as amended.

d. "Compensation" for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Nation from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion. For example, Programs similar to the Workforce Investment Act may include tax free Assistance.

e. "Constitution" means the Constitution of the Ho-Chunk Nation.

f. "General Welfare Exclusion" Assistance shall be treated as non-taxable so long as it satisfies the requirements for exclusion under Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.

g. "General Test" – Assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are: (1) paid by or on behalf of an Indian Nation (2) under a social benefit program, (3) based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature), and (4) are not Compensation for services or per capita payments.

h. "Lavish" or "Extravagant" Except as otherwise required for compliance with final guidance issued under Code Section 139E following consultation, lavish and extravagant shall be determined by the Tribal Legislature in its sole discretion based on all facts and circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular Assistance at hand.

i. "Ordinance" means the General Welfare Ordinance.

- j. "Pay" or "paid" or "payment" means pay or reimburse in whole or in part.
- k. "Program" or "Approved Program" means any program established by or under authority of the Tribal Legislature, including any program authorized through the annual budget process, to provide Assistance hereunder. A program shall not fail to be treated as an Indian tribal government Program solely by reason of the Program being established by tribal custom or government practice.
- l. "Promotion of the general welfare" or "Social benefit" should reflect a goal or goals established by and in the sole discretion of the Tribal Legislature for the promotion of the general welfare of the Nation, for example, in furtherance of tribal self-determination, culture and tradition.
- m. "Qualified Nonmember" means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or Dependent of a member of the Nation. Individual Tribal Programs may, but are not required to, cover Qualified nonmembers.
- n. "Reservation" means the reservation of the Ho-Chunk Nation or, if the context so permits, any other Indian reservation as defined in Internal Revenue Code Section 162(j).
- o. "Safe Harbor Program" shall refer to a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.
- p. "Service area" has the same meaning as in 25 C.F.R. Section 20.100.
- q. "Service unit area" means an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. Section 136.21(l).
- r. "Self-determination" should be construed broadly to reflect traditional health, education and welfare programs as well as unique cultural and traditional based programs and economic development. See, e.g., P.L.R. 199924026 (tax free business grants in part to promote on reservation employment).
- s. "Spouse" shall be determined in accordance with Tribal laws, customs and traditions.
- t. "Tribal Legislature" or "Legislature" means the Ho-Chunk Nation Tribal Legislature.

**7. Ratification of Prior Acts; Intent of Legislation.** This Ordinance does not establish a new program or programs. This Ordinance is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist. Assistance provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare doctrine



compliance. Programs and services referred to herein must be authorized by independent action of the Legislature or its designees.

**8. General Welfare Doctrine; Rules of Construction.** The Internal Revenue Service has historically recognized that payments by a Tribal government to Tribal Members under a legislatively provided social benefit program for the promotion of the general welfare of the Nation are excludable from the gross income of those Tribal Members who receive said payments. On December 5, 2011, the United States Treasury Department and IRS published Notice 2011-94 as part of an initiative to conduct consultation on ways to improve guidance on tribal general welfare matters. Notice 2011-94 invited comments from tribal governments concerning the application of the general welfare exclusion to Indian tribal government programs. The Nation participated in that process through comments and supported similar efforts by the National Congress of American Indians, the United South and Eastern Nations, Inc., the California Association of Tribal Governments and the Affiliated Nations of the Northwest Indians, all seeking clarity with regard to the sovereign right of Nations to provide tax free assistance based on non-financial need criteria including the preservation of culture and tradition. On December 5, 2012, the IRS and Treasury Department issued Notice 2012-75 proposing new guidance and providing interim relief under the general welfare exclusion for Programs that meet designated safe harbor rules. The Nation asserted all protections provided under the proposed rule and made certain operational changes to Programs where possible to secure additional Member protections under the interim relief. On June 3, 2014, the Treasury Department issued final guidance in the form of Revenue Procedure 2014-35 confirming that IRS will not tax Member Assistance that meets designated IRS safe harbor requirements. In September of 2014, Nations and tribal organizations worked with the United States Congress to clarify that Bills then pending in the House (H.R. 3043) and in the Senate (S.B. 1507) were in fact intended to expand tribal general welfare exclusion rights and build upon the safe harbor and general test relief previously recognized by the IRS. On September 17, 2014, Senators Moran and Heitkamp, co-sponsors of S.B. 1507, engaged in a colloquy with the Chairman of the Senate Finance Committee, Senator Wyden, on the Congressional Record of the Senate confirming their understanding and intent that:

a. IRS would apply S.B. 1507 “no less favorable than the safe harbor approach provided for in Revenue Procedure 2014-35, and that in no event will IRS require an individualized determination of financial need where a tribal Program meets all other requirements of new section 139E as added by the bill.”

b. The bill requires that “any ambiguities in new Code section 139E shall resolved by the IRS in favor of Indian Tribal governments and deference shall be given to Indian Tribal governments for programs administered and authorized by the Nation to benefit the general welfare of the Tribal community.”

c. It “would be contrary to the intent of Congress” if IRS were to “take the occasion of passage of H.R. 3043 or S. 1507 to retrench, narrow or possibly withdraw the administrative guidance provided in Rev. Prc. 2014-35 after enactment of the bill.”

d. The Congressional intent “is to expand rather than restrict the safe harbor provisions in Rev. Proc. 2014-35.”

e. “The purpose of this legislation is to further empower Tribal self-determination.”

f. “Tribal governments have a long history of providing critical benefits to Tribal Members, and these programs are fundamental to the sovereignty and cultural integrity of Nations. Nations, and not the IRS, are in the best position to determine the needs of their members and provide for the general welfare of their tribal citizens and communities.”

On September 18, 2014, the Tribal General Welfare Exclusion Act of 2014 passed both houses of Congress, and was signed into law on September 29, 2014. The Tribal Legislature now expressly embraces the forgoing principles as an integral part of this Ordinance and as guiding principles in construing the Nation’s compliance with Code Section 139E, the Safe Harbor Rules, and the General Test. The assistance payments and services authorized by this Ordinance are intended to qualify for favorable tax treatment under the general welfare doctrine to the fullest extent permitted by law and shall be construed accordingly.

**9. Non-Resource Designation.** General welfare services and payments hereunder are paid from assets of Tribal government; all payments are based on budget availability of the Tribal government, and the Tribal government does not guarantee any payments hereunder. Benefits paid hereunder on the basis of need shall not be treated as a resource of the Member for any purpose. The Legislature reserves the right to cancel, adjust, modify or revoke any benefits that are treated as a resource of the Tribal Member.

**10. Federal Trust Obligations; Executive Orders.** The Nation reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal Members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation’s adoption of Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation’s right to seek funding shortfalls or to enforce the trust rights of the Nation and its members. The Nation shall be entitled to government-to-government consultation and coordination rights in regard to this Ordinance.

**11. Indian General Welfare Benefits (Code Section 139E).** Programs that meet the following criteria for exemption under Code Section 139E shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need.

a. General Criteria for Qualification under Code Section 139E: Each payment made or service provided to or on behalf of a Member (or any Spouse or Dependent of the Member) pursuant to a Program under this Ordinance shall be treated as non-taxable Assistance under the General Welfare Exclusion so long as the following criteria are met:

(1) The Program is administered under specified guidelines and does not discriminate in favor of the members of the governing body of the Nation;

(2) Program benefits are available to any Tribal Member who meets such guidelines;

(3) Program benefits are for the “promotion of the general welfare”;

(4) Program benefits are not Lavish or Extravagant; and

(5) Program benefits are not Compensation for services.

b. **Ceremonial Activities:** Any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as Compensation for services.

c. **Special Effective Dates:** Code Section 139E is effective for Assistance in taxable years for which the period of limitations on a refund or credit under Code Section 6511 has not expired. If the period of limitation on a refund or credit resulting from the application of Code Section 139E (a) would otherwise expire before the one-year period beginning on the date of the enactment of Code Section 139E, a refund or credit (to the extent attributed thereto) may be made or allowed if a claim is filed before the close of such one-year period.

**12. Safe Harbor Programs.** Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:

a. **General Criteria for Safe Harbor Treatment:** Each Safe Harbor Program shall satisfy the following general criteria:

(1) The benefit is provided under a specific Approved Program of the Nation;

(2) The Program has written guidelines specifying how individuals may qualify for the benefit;

(3) The benefit is available to any tribal member, Qualified Nonmember, or identified group of Tribal Members or Qualified Nonmembers who satisfy the Program guidelines, subject to budgetary restraints;

(4) The distribution of benefits from the Program does not discriminate in favor of the governing body of the Nation;

(5) The benefit is not Compensation for services; and

(6) The benefit is not Lavish or Extravagant under the facts and circumstances.

b. **Qualifying Safe Harbor Benefits:** The following benefits may be provided under a Safe Harbor Program. The benefits listed in the parenthetical language herein are illustrative only,

rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of Article VI and Revenue Procedure 2014-35 (as may be amended):

(1) Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:

(a) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences.

(b) Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including but not limited to mold remediation), or heating or cooling issues.

(c) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement).

(d) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

(e) Pay property taxes or make payments in lieu of taxes (PILOTs).

(2) Educational programs. Programs that:

(a) Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities.

(b) Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and Dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education.

(c) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education.

(d) Provide job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job

interview or training (including but not limited to an interview suit or a uniform required during a period of training).

(3) Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes or laws) that provide:

(a) Meals through home-delivered meal programs or at a community center or similar facility.

(b) Home care such as assistance with preparing meals or doing chores, or day care outside the home.

(c) Local transportation assistance.

(d) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(4) Cultural and religious programs. Programs that:

(a) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian Nation's cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances.

(b) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Nation, including but not limited to other Indian reservations.

(c) Pay the costs of receiving instruction about an Indian Nation's culture, history, and traditions (including but not limited to traditional language, music, and dances).

(d) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events.

(e) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Nation or another Nation.

(5) Other qualifying assistance programs. Programs that:

(a) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores).

(b) Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member or Qualified Nonmember while the individual is receiving medical care away from home.

(c) Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses.

(d) Pay costs for temporary relocation and shelter for individuals displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster).

(e) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals.

(f) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

c. **Compensation Safe Harbor:** For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Nation will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances or nominal cash honoraria provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

d. **Safe Harbor Effective Dates:** Safe harbor treatment shall be afforded to any Program or benefit that otherwise satisfies the safe harbor rule as of, or after, December 6, 2012, or for any earlier taxable period for which the period of limitation on refund or credit under Internal Revenue Code Section 6511 has not expired.

e. **Non-Safe Harbor Programs:** Nothing in this Ordinance or the IRS safe harbor guidance shall limit the Nation's right to provide Assistance outside of the safe harbor rules.

**13. Programs Meeting the General Test.** Programs that do not qualify for non-taxable treatment under Code Section 139E or under an IRS Safe Harbor, will nonetheless be treated as non-taxable if Program benefits meet the General Test for treatment under the General Welfare Exclusion. For purposes of the General Test only, needs must be shown in one of the following manners:

a. Individual Needs. Certain Programs may be based on individual need, rather than an overall need of the Nation. For those Programs, the Tribal Legislature may establish income guidelines unique to the Nation or may use readily available income guidelines used by state or federal programs to demonstrate individual or family need. When individual or family need must be shown, the Program may take into account individual circumstances or extraordinary need to overcome presumptions based on income alone.

b. Community Needs. Certain Programs may be based on community needs, which are so important to the self-determination, culture and traditions of the Nation that Assistance may be deemed necessary regardless of individual income or wealth. For example, states provide public education to all citizens regardless of individual income or wealth. Some Programs may address both individual and community-based needs. The Legislature reserves the right to require any applicant applying for consideration based on non-financial or community-based needs to demonstrate how the Program benefits will benefit the tribal community as a whole, including preservation of culture, tradition and self-determination. Approval based on non-financial need criteria is made on a facts and circumstances basis and will be guided by traditional values and culture. A Program will be deemed to be based on community or non-financial needs if so designated by the Legislature.

**14. Purpose.** All Assistance disbursed pursuant to this Ordinance shall be designed to promote the general welfare, self-determination, culture and tradition of the Nation. The Tribal Legislature shall establish objectives for the furtherance of the general welfare, self-determination, culture and tradition of the Nation and assess progress on said objectives in connection with its budgeting and/or strategic planning process. Approved Programs shall be renewed, established, modified, or terminated based upon the needs of the Nation as compared to the objectives set by the Legislature from time to time hereunder. All Programs hereunder shall provide a social benefit for the promotion of the general welfare of the Nation and be limited to purposes consistent with treatment under this Ordinance. Such purposes may include, for example, and not by way of limitation, assistance for medical care, food, shelter, health, education, subsistence, housing, elder and disabled care, assistance to meet cultural, traditional and religious needs of the Nation and its membership, and assistance to promote self-sufficiency, self-determination, Tribal image, entrepreneurship, and the employment of Tribal Members. Designation by the Tribal Legislature of a Program as falling under this Ordinance shall be conclusive evidence that the Tribal Legislature, following a good faith review of Tribal needs and goals, has determined that said Program is established to achieve a social benefit and to promote the general welfare of the Nation.

**15. Eligibility and Application Procedures.** Each approved Program shall set forth the specific eligibility rules and limitations applied to that Program. Each designated department shall present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, for approval by the Tribal Legislature or its designee. Only those descriptions, application forms and procedures which are approved by the Tribal Legislature or its designee shall be in force and effect. Program guidelines may limit benefits to an identified group of Members or Qualified Nonmembers, as applicable. All Programs may be limited by budget availability. In the absence of specific Program guidelines to the contrary, all

Programs shall be deemed to incorporate eligibility criteria necessary for compliance with Code Section 139E.

**16. Limited Use of Assistance; Substantiation.** All Assistance disbursed or provided pursuant to this Ordinance must be used for the purpose stated in the approved Program description, and any application for the applicable Assistance. The Nation or its designee shall keep books or records deemed appropriate to demonstrate compliance with the Ordinance. Recipients of benefits hereunder are responsible for maintaining books or records as may be required for substantiation to the IRS for individual income tax purposes. In the event that Assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable approved Program or the Member's application, the Tribal Legislature or designee may require the repayment of the welfare assistance payment. The Tribal Legislature or designee is authorized to offset any other payments owed to a Tribal member if such an offset is necessary to secure repayment of a welfare assistance payment in accordance with this Section.

**17. Limitation on Payments; Annual Budgeting.**

a. **Limitations on Welfare Assistance Payments.** The Tribal Legislature, within its annual budgets, by resolution or by motion, may adopt guidelines establishing the maximum Assistance payments to be made to Tribal Members for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments charged with administering particular programs may be delegated authority to adopt program guidelines to the extent not contrary to the overall guidelines and limitations established by the Tribal Legislature hereunder. In no event shall Assistance be lavish or extravagant.

b. **Annual Budgeting: Unfunded Program.** The Tribal Legislature, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of Assistance benefits. Notwithstanding anything to the contrary, the Assistance payments authorized hereunder shall be "unfunded" for tax purposes and no Beneficiary shall have an interest in or right to any funds budgeted for or set aside for Assistance payments until actually paid. Assistance benefits shall remain assets of the Nation until distributed, and the Approved Programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and/or economic benefit.

**18. Forfeiture of General Welfare Assistance.**

a. **Forfeiture.** Notwithstanding anything herein to the contrary, Assistance benefits may be revoked or forfeited for any Beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process. Assistance may also be forfeited should said benefits be treated as a resource to the detriment of the Nation or a Beneficiary. The Nation shall have a right of recovery with regard to any excess or improper payments hereunder.



b. **Due Process.** Each program shall offer procedures that afford a Beneficiary an opportunity to address forfeiture issues or concerns with the program director or designee.

c. **Anti Alienation.** A Tribal member's rights to apply for General Welfare assistance payments and/or services under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors.

**19. Programs not Limited to Means Testing.** Programs that qualify under Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare Exclusion. The Nation also reserves the right to provide community-based Programs and Programs based on non-financial need under the General Test that are not individually means tested. The Nation recognizes that means testing can distort certain tribal cultural and community values. The Nation has participated in consultation with the United States Treasury Department and IRS and will evaluate Programs periodically as guidance is further developed through consultation with the Nation.

**20. Privacy; Information Sharing.** The Nation will maintain records regarding sensitive tribal and tribal Member matters, including tribal customs, religion and traditions, confidential from third party disclosures to the fullest extent permitted at law. If information is requested by IRS or other government agencies or third parties during a compliance review or examination, disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis. Confidential Tribal information shall not be shared in a manner that would open up additional disclosure, for example, under information sharing agreements the recipient may be subject to or under the Freedom of Information Act.

**21. Government-to-Government Relationship; Executive Order 13175.** Coordination with IRS and the United States Treasury Department on General Welfare matters shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the Tribal government. The federal government, as a result of its treaty obligations and trust responsibility, has committed to providing education, housing, clean water, and many other basic needs for Indian people. Through a conscientious shift in policy in recent decades, the federal government has encouraged the Nation itself to provide for such needs in partnership with the federal government and, increasingly in recent years, instead of the federal government. Essential to the government-to-government relationship is mutual respect and deference to Tribal governance decisions. Future consultations on General Welfare matters should reflect these concerns and the fact that the Tribal government, through its own policy setting process, is best situated to determine the needs of the Nation and its Members and the appropriate policy solutions. All references to Executive Order 13175 shall include any future amendments thereto.

**22. Other Tax Exemptions.** Notwithstanding anything herein to the contrary, the Nation reserves the right to waive income limits or needs basis criteria, to the extent otherwise applicable, for expenditures that otherwise qualify for tax exemptions including tax exemptions under Titles 25 or 26 of the United States Code so long as the conditions for exemption are met.

Without limitation, this includes Member medical benefits exempt under Section 9021 of the Patient Protection and Affordable Care Act of 2010 (Code Section 139D) and per capita expenses exempt under 25 U.S.C. Sections 1407 and 1408.

**23. Governing Law.** All rights and liabilities associated with the enactment of this Ordinance, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Ho-Chunk Nation.

**24. Severability.** If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.

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**Legislative History:**

45 Day Comment  
Adopted by Resolution