



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

45-Day Public Review

HO-CHUNK NATION LEGISLATURE AUTHORIZATION TO PLACE THE *HO-CHUNK NATION BURIAL MOUNDS ORDINANCE (7 HCC § 1)* OUT FOR FORTY-FIVE DAY PUBLIC COMMENT

RESOLUTION 11-19-24 I

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 Tribe; 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(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation; and

WHEREAS, Article V, Section 2(i) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets; and

Executive Offices

W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615
(715) 284-9343 (800) 294-9343

WHEREAS, Article V, Section 2(m) of the Constitution grants the Legislature the power to enact laws to prevent the sale, disposition, or encumbrance of Ho-Chunk lands or other Ho-Chunk assets; and

WHEREAS, Article V, Section 2(p) of the Constitution grants the Legislature the power to enact laws and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise; and

WHEREAS, Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions; and

WHEREAS, Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation; and

WHEREAS, the Ho-Chunk Nation Legislature enacted the *Legislative Organization Act* (2 HCC § 11), which was last amended on September 13, 2022; and

WHEREAS, the *Legislative Organization Act* provides the procedures for enacting or amending a Ho-Chunk Nation law; and

WHEREAS, Section 45, subparagraph d(1) 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 Department of Heritage Preservation wishes to amend the *Ho-Chunk Nation Burial Mounds Ordinance* (7 HCC § 1) in order to clarify the Act and provide necessary updated language; and

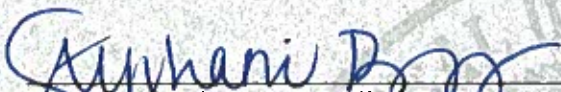
WHEREAS, the Executive Branch and the Legislature have drafted proposed amendments to the *Ho-Chunk Nation Burial Mounds Ordinance* (7 HCC § 1); and

WHEREAS, the Legislature wishes to place the proposed amendments to the *Ho-Chunk Nation Burial Mounds Ordinance* (7 HCC § 1) out for 45-day public comment;

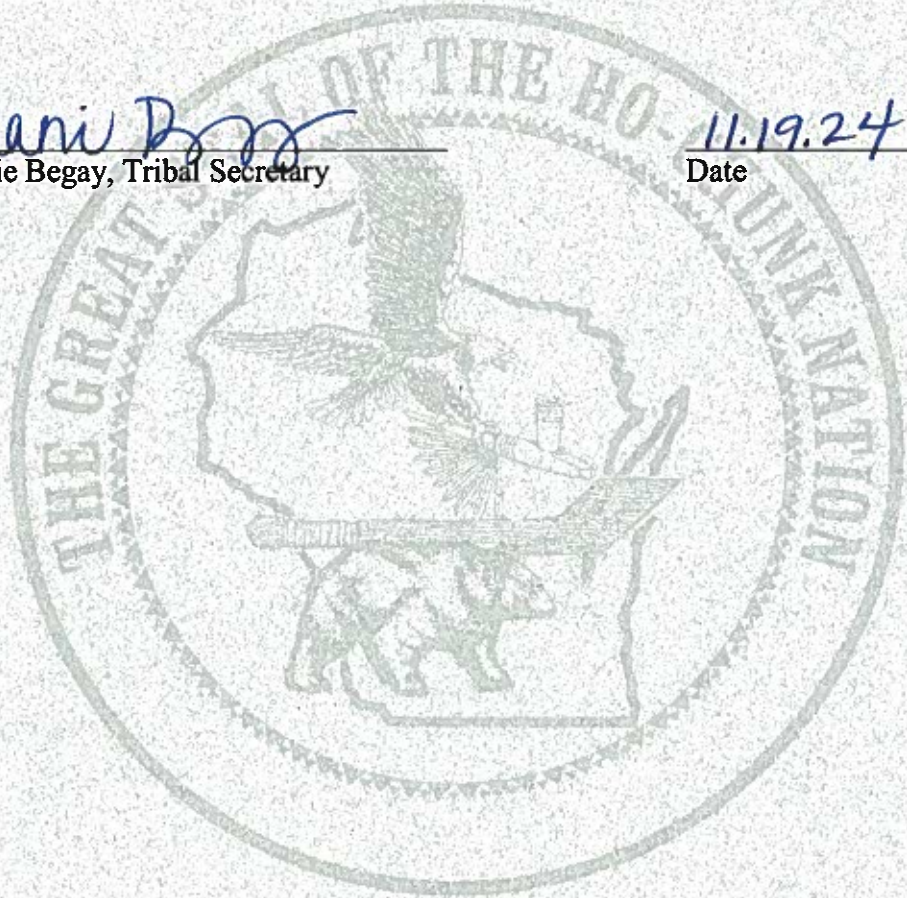
NOW, THEREFORE, BE IT RESOLVED, that the Legislature, pursuant to its Constitutional authority, hereby places the attached proposed amendments to the *Ho-Chunk Nation Burial Mounds Ordinance* (7 HCC § 1) out for forty-five (45) day public comment, to run from the date the proposed ordinance is posted 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 **10** constituting a quorum were present at a meeting duly called and convened and held that on the **19th day of November, 2024**, adopted the foregoing resolution at said meeting by an affirmative vote of **10 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.


Rep. Stephanie Begay, Tribal Secretary

11.19.24
Date



**HO-CHUNK NATION CODE (HCC)
TITLE 7 – CULTURAL AND NATURAL RESOURCES
CODE SECTION 1 – HO-CHUNK BURIAL MOUNDS ORDINANCE**

ENACTED BY LEGISLATURE: NOVEMBER 25, 1997

CITE AS: 7 HCC § 1

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I. GENERAL PROVISIONS

Section 1.01 Title.

This chapter shall be known as the "Ho-Chunk Nation Burial Mounds Ordinance".

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Section 1.02 Definition.

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As used in this ordinance;

(a) "Adequate historical documentation" is information verifiable through at least two of the following types of independent sources: church records, deeds, maps and other written and two (2) corresponding oral sources.

(b) "Agency" means agency as such term is defined in 5 USC §551.

(c) "Areas likely to contain burial sites" include mounds and places where current knowledge suggests burials are likely to be located.

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(d) "Artifact" means material contained in or derived from an archaeological resource or other historic property that was used by those who created or used such property during its period of historical significance, for example pottery, stone carvings, weapons, tools and articles of personal adornment, architectural remains and the remains of foodstuffs and the byproducts of tool manufacture.

(e) " Board" means the Ho-Chunk Department of Heritage Preservation Board of Directors.

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(f) "Burial sites/earthworks" means any place where human remains are buried, including any prehistoric mound that is known from archeological or other knowledge to be a mound of mortuary type.

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(g) "Cataloged burial site" is a piece of land that has a record of having buried human remains or any burial site that is already recorded with the county register of deeds. This shall be the case even if the recorded burial site is untended, abandoned, and has no surface indications of burials.

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(h) "Class of burial sites" means burial sites of a particular age, culture, or geographic region.

Deleted: (i) "Committee" means the Ho-Chunk Nation Burial Sites/Earthworks committee

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(i) "Director" means the Director of the State Historical Society of Wisconsin or formally

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appointed designee in relation to burial mounds located on Ho-Chunk Nation fee simple land.
Director means the Ho-Chunk Nation Tribal Historic Preservation Officer in relation to burial mounds located on Ho-Chunk Nation trust land.

(j) "Disturbance" means as defined in Wis. Stats. 157.70(1)(e) except when it is a result of the efforts by a qualified archeologist to identify a burial site.

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(k) "Historic property" or "historic resource" means a prehistoric or historic district, landscape, site, building, structure, or object listed on or eligible for listing on the National Register, including artifacts, records and material remains related to such a property or resource.

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(l) "Human remains" means any part of the body of a deceased person in any stage of decomposition in a context indicating substantial evidence for an intentional burial; or, an articulated skeleton.

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(m) "Inadvertent Discovery" means the unexpected discovery of human remains, funerary objects, archaeological and/or cultural items.

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(n) "Indian tribe" or "tribe" means any Indian tribe, band, nation or other organized group or community, including any Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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(o) "In situ" means in its original place.

(p) "Objects related to the burial" means items that were intentionally placed and directly associated with the burial.

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(q) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, study, interpretation, reconstruction, education and training regarding the foregoing activities, or any combination of the foregoing activities.

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(r) "Religious affiliation" means a membership in an organized religion recognized by federal internal revenue service tax exemption or a membership in a traditional Indian religion in Wisconsin, pursuant to federal regulations established under the American Indian Religious Freedom Act (Public Law 95-341, 1978).

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(s) "Skeletal analyst" means an individual who has a graduate degree in archeology, anthropology, or a closely related field and at least one year of full time professional experience or equivalent specialized training in human osteological research, at least four months of supervised analytic experience in the identification, analysis, and interpretation of human osteological remains, and a demonstrated ability to carry research to completion.

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(t) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau.

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(u) "Sufficient contiguous land" means the amount of land submerged or non-submerged, surrounding the burial site necessary to ensure its protection.

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(v) "Traditional cultural authority" means a person in a Native American group or other social or ethnic group who is recognized by members of the group as proficiently knowledgeable on the group's traditional history and cultural practices.

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(w) "THPO" means the Ho-Chunk Nation Tribal Historic Preservation Officer.

(x) "Tribal affiliation" means an association with federally recognized Indian tribes or bands.

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(y) "Uncataloged burial sites" means any burial site that was not previously known or recorded (i.e., a burial found during construction, exposed suddenly by natural forces, etc.).

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Section 1.03 Applicability.

The provisions of this ordinance shall apply to all burial sites/earthworks and areas likely to contain burial sites/earthworks until adequate historical documentation shows that said burial sites/earthworks are not of Ho-Chunk ancestry or cultural affiliation.

Section 1.04 Purpose.

The purpose of this Ordinance is to mandate tribal control of all Ho-Chunk Nation Burial Sites/Earthworks to identify these sites and areas likely to contain burial sites/earthworks and to protect said sites on behalf of all Ho-Chunk tribal members.

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II. TRIBAL HISTORIC PRESERVATION OFFICER

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Section 2.01 Authorization - Establishment.

The Tribal Historical Preservation Officer is authorized by the Ho-Chunk Legislature pursuant to Article X of the Constitution and Bylaws of the Ho-Chunk Nation is established for protecting ancestral remains, grave goods, burial, sacred, and historical sites, for example, but not limited to, ancient earthworks located on present, historic and pre-historic lands of Tribal occupation as determined by Tribal Laws, traditions and customs on behalf of the Ho-Chunk Nation.

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Section 2.02 Purpose.

Therefore, the THPO shall develop action plans establishing Tribal policy and legal procedures to protect ancient shrines and to create self-regulating methods to preserve cultural, religious and historical burial objects that have a unique tie to the Ho-Chunk Nation.

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Section 2.03 Duties Generally.

The THPO shall administer the duties necessary to identify recorded burial sites/earthworks and areas likely to contain burial sites/earthworks. The THPO shall also monitor as necessary to assure

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no disturbance of such sites or any objects related to the burial ~~through its certified tribal monitors.~~

Section 2.04 Powers Generally.

The THPO shall have the power:

~~to create and establish personnel positions suitable to assist the Nation in its burial mound preservation obligations in accordance with the Nation's Personnel policies and practices.~~

(b) ~~to establish rules and regulations governing all activities of the Cultural Preservation Office.~~

(c) ~~to expend funds appropriated by the Ho-Chunk Legislature for the Ho-Chunk THPO.~~

(d) ~~to obtain funding from federal, state, or other sources to supplement Ho-Chunk Legislature appropriations.~~

(e) ~~to establish procedures and timetable necessary to identify and protect all burial sites/earthworks of Ho-Chunk ancestors.~~

(f) ~~to require the states and delegated agencies to assist the Ho-Chunk Nation in protecting burial sites/earthworks from any disturbance.~~

(g) ~~to establish and administer a cataloging system of all burial sites/earthworks.~~

(h) ~~to monitor all agencies, state, county and local governments to assure compliance with the Indian Civil Rights Act, 25 USC § 1301- §1341, Religious Freedom Act, Pub. L. NO. 96-341, the Indian Reorganization Act as amended at 25 USC § 461- §479, and the National Historic Preservation Act, 36 CFR Section 800.~~

(i) ~~to require state, county and local governments and agencies to notify the THPO of all sites identified and cataloged as they are documented through their appropriate agency.~~

(j) ~~to develop workshops on the traditions and customs of the Ho-Chunk Nation to educate any interested persons on tribal beliefs.~~

(k) ~~to assist the Ho-Chunk Nation, Department of Justice to hold hearings and to subpoena witnesses and documents in accordance with this Ordinance.~~

(l) ~~to require state, county and local government and agencies to submit reports and take all action deemed necessary by the THPO for the fair and vigorous implementation of this Ordinance.~~

(m) ~~to facilitate cooperative agreements with federal, state, county and local governments, agencies, museums and institutions for the implementation of this Ordinance.~~

(n) ~~to develop land acquisition functions pursuant to existing procedures and future Tribal legislation to expand the Ho-Chunk jurisdictional responsibility to include sacred sites utilizing all elements of the National Trust for Historic Preservation in the United States.~~

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~~(o) to oversee the acquisition and or secure property locations to develop disposition sites for NAGPRA and other reburial related needs~~

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~~(n) to take such other actions necessary to achieve the purpose and objectives of the THPO, and this Ordinance.~~

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Section 2.05 Adoption of Rules, Regulations, Policies and Guidelines.

~~The THPO shall adopt detailed rules, regulations, policies and guidelines to fully implement this Ordinance with final approval developed through consultation with the HCN Executive, Legislative & Judicial branches of government.~~

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III. HEARINGS

Section 3.01 Notice of Hearings

If a hearing is requested by the THPO, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties, stating the nature of the hearing and the evidence to be presented.

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Section 3.02 Parties' Rights.

The notice shall advise such parties of their right to be present at the hearing, present testimony of witnesses and other evidence, and to be represented by counsel at their own expense.

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Section 3.03 Rules.

Hearings shall be governed by the following rules or procedures:

(a) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.

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(b) The THPO may have the advice and assistance at the hearing of counsel provided by the Tribe.

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(c) The chair, of the Department of Heritage Preservation Board of Directors, or the vice-chair, shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.

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(d) The hearing may be adjourned, postponed and continued at the discretion of the Board.

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Section 3.04 Burden of Proof as to Compliance with Requirements of Ordinance.

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In any hearing before the Department of Heritage Preservation Board of Directors where the issue is compliance by a government, agency, museum or institution with any of the requirements and provisions of this Ordinance, the burden of proof shall be on the respondent rather than the Ho-Chunk Nation or other complainant to show said compliance.

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Section 3.05 Action.

At the final close of the hearings, the Board may take immediate action or take the matter under advisement.

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Section 3.06 Boarrd Decision – Notification.

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The Board shall notify all parties 30 days after the last hearing of its decision in the matter.

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IV. ENFORCEMENT AND REMEDIES

Section 4.01 Application - Penalties.

Any government, agency or institution that violates this chapter or rules, regulations or orders of the Board shall be limited to, federal litigation.

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Section 4.02 Appeals.

Any party to a hearing shall have the right to appeal any decision of the Board to the Ho-Chunk Trial Court.

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Section 4.03 Reports.

Governments, agencies, museums and institutions shall submit reports, and other information requested by the Board.

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Section 4.04 Inspection.

The Board and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any government, agency, museum or institution's compliance with this chapter and rules, regulations and orders of the Board.

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Section 4.05 Reservation of Rights.

The Nation hereby fully reserves the right to alter, amend or repeal the provisions of this Ordinance in accordance with Ho-Chunk Nation Laws and the Constitution. All rights and privileges granted or extended hereunder, shall be subject to such reserved right. However, said reservation of rights shall not be applicable to existing licenses prior to any statutory amendment.

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V. SEVERABILITY

Section 5.01 Severability.

If any provision of this Ordinance, or the application thereof, to any person, business, corporation or state government or any political subdivision or circumstances is held invalid, the invalidity

shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions, or applications and to this end the provisions of this Ordinance are declared severable.

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I, the undersigned as Secretary of the Ho-Chunk Nation, hereby certify that the Ho-Chunk Legislature is composed of voting members, of whom members, constituting a quorum, were present at a session duly called and held on , 19 at Wisconsin; the foregoing Ordinance was therefore adopted by an affirmative vote of for and against that said Ordinance is in full force and effect unless by legal enactment of the Ho-Chunk Legislature it shall be amended or rescinded.

Secretary, Ho-Chunk Legislature

Attest:

Chairman, Ho-Chunk Legislature