



**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**

**LAST AMENDED: JANUARY 7, 2025**

**CITE AS: 7 HCC § 1**

<b>I. GENERAL PROVISIONS</b>		<b>Pg.</b>
Section 1.01	Title	2
Section 1.02	Definitions	2
Section 1.03	Applicability	4
Section 1.04	Purpose	4
<b>II. BURIAL/MOUNDS</b>		
Section 2.01	Authorization - Establishment	4
Section 2.02	Purpose	4
Section 2.03	Duties Generally	4
Section 2.04	Powers Generally	5
Section 2.05	Adoption of Rules, Regulations, Policies and Guidelines	6
<b>III. HEARINGS</b>		
Section 3.01	Notice of Hearings	6
Section 3.02	Parties' Rights	6
Section 3.03	Rules	6
Section 3.04	Burden of Proof as to Compliance with Requirements of Ordinance	7
Section 3.05	Action	7
Section 3.06	Board Decision - Notification	7
<b>IV. ENFORCEMENT AND REMEDIES</b>		
Section 4.01	Application – Penalties	7
Section 4.02	Appeals	7
Section 4.03	Reports	7
Section 4.04	Inspections	7
Section 4.05	Reservation of Rights	7
<b>V. SEVERABILITY</b>		
Section 5.01	Severability	8

## I. GENERAL PROVISIONS

### Section 1.01 Title.

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

### Section 1.02 Definition.

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.

(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.

(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.

(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.

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

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

(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.

(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.

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

(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.

(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.

(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.

(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).

(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.

(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.

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

(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.

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

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

(y) "Uncatalogued 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.).

### **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.

## **II. TRIBAL HISTORIC PRESERVATION OFFICER**

### **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.

### **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.

### **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 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:

(a) 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.

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

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

### **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.

## **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.

### **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.

### **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.

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

(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.

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

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

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.

**Section 3.05 Action.**

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

**Section 3.06 Board Decision – Notification.**

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

**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.

**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.

**Section 4.03 Reports.**

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

**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.

**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.

## 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.

---

#### Legislative History:

- 11.04.89 WWBC adopts resolution 11.04.89A Winnebago Nation Burial/Mounds Ordinance.
- 09.14.95 Motion by Rep. T. Thundercloud from the Legislature to refer the Burial Mounds Ordinance to the Veterans, Cultural and Public Affairs Committee.
- 09.25.96 Motion by Rep. WhiteWing from the Veterans, Cultural. . . Committee to have Mr. Dennis Funmaker set up a special meeting for November 1, 1996 along with the Historic Preservation, Language and Culture, Traditional Elders and the Veterans, Cultural, Public Affairs Committee to review the Burial Mounds Ordinance.
- 11.01.96 Motion by Vice President Pettibone from the Veterans, Cultural. . . Committee to recommend Historic Preservation-Dennis Funmaker and Legislative Counsel-John Espinosa coordinate together on the Burial Mounds Ordinance.
- 11.01.96 Motion by Vice-President Pettibone from the Veterans, Cultural. . . Committee to pay those elders in attendance \$100.00 for their expertise and knowledge into the Ho-Chunk Nation Burial/ Mounds and Repatriation Law to come out of the Historic Preservation Budget.
- 12.26.96 Motion by Rep. T. Thundercloud from the Veterans, Cultural. . . Committee to table the Burial Mounds Ordinance.
- 01.22.97 Motion by Rep. T. Thundercloud from the Veterans, Cultural. . . . Committee to table the Ho-Chunk Nation Burial, Mounds and Repatriation Law, and to have Mr. John Espinosa, Legislative Counsel, Historic Preservation Staff coordinate with the Traditional Court on this ordinance.
- 07.23.97 Motion by Rep. Mudd that Mr. Jeff Delarosa contacts Ms. Nettie Kingsley, Historic Preservation Department and to coordinate a work group to review and comment on the Ho-Chunk Nation Burial and Repatriation Ordinance.
- 10.23.97 Motion by Rep. Greengrass from the Veterans, Cultural. . . Committee to table the Burial Mounds Ordinance and Fireworks Ordinance until the next meeting.
- 11.25.97 Motion by Vice-President Byron Thundercloud from the Veterans, Cultural. . . Committee to adopt resolution 11/25/97B Adoption of the Ho-Chunk Nation Burial and Repatriation Law.
- 11.19.24 Legislature places the Ho-Chunk Nation Burial Mounds Ordinance out for 45 day public comment through Resolution 11/19/24I.
- 01.07.25 Legislature adopts amendments to the Ho-Chunk Nation Burial Mounds Ordinance through resolution 01/07/25B.