

HO-CHUNK NATION CODE (HCC)
TITLE 4 - CHILDREN, FAMILY, AND ELDER WELFARE CODE
SECTION 10 – MARRIAGE ORDINANCE
ENACTED BY LEGISLATURE: OCTOBER 19, 2004

LAST AMENDED: June 5, 2017

CITE AS: 4 HCC § 10

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1. Authority.

a. Article V, Section 2(a) 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(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.

c. 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.

d. 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.

e. 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.

f. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

2. Applicability.

- a. This Ordinance authorizes the Ho-Chunk Nation Trial Court (Court) to issue marriage licenses, perform marriages, or register domestic partnerships in which one or both parties to the marriage or domestic partnership is a member of the Ho-Chunk Nation or resides on Ho-Chunk Nation lands.
- b. The procedures set forth herein shall be exclusive as to any marriage performed by the Court on Nation lands, in which one or both parties are members of the Ho-Chunk Nation.
- c. There is concurrent jurisdiction with the procedures established by the law of the state of Wisconsin as to any marriage performed on Nation lands in which one party is not a member of the Ho-Chunk Nation or does not reside on Nation lands. The completion of an application for a marriage license under this Ordinance constitutes the nonmember's consent to the Nation's jurisdiction to grant such a license.

3. Marriage is a Contract. Marriage under this law is a civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of spouse and spouse.

4. Who may Contract; Marriageable Age.

- a. Any person who has attained the age of 18 years may marry if otherwise competent.
- b. Any person between the age of 16 and 18 may marry with the written consent of the person's parents, legal guardian or custodian.

5. Who may not Contract; Invalid or Prohibited Marriages.

- a. No marriages shall be contracted nor domestic partnership registered while either of the parties is lawfully married or in a registered domestic partnership to another person.
- b. Persons closer in relationships than second cousins may not marry nor enter into a domestic partnership.
- c. A marriage or domestic partnership may not be contracted if either party is not capable of understanding what it means to agree to become married.
- d. No person who is or has been a party to an action for divorce in any court may marry nor enter into a domestic partnership again until six (6) months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six (6) months from the date of the granting of judgment of divorce shall be void.

6. Identification of Parties.

- a. A person under the age of 30 must present proof of age by presenting a certified copy of his or her birth certificate or enrollment card.
- b. Each party to the marriage must present satisfactory documentary proof of identification and residence.

c. Each party to the marriage must present satisfactory copies of documents providing proof that they are free to marry, such as proof of death of previous spouses or proof of divorce or annulment of previous marriages.

7. **Marriage License.** A marriage license shall be issued by the Ho-Chunk Nation Trial Court upon receiving a completed application form from unmarried persons and in the absence of any showing that the proposed marriage would be invalid under any provisions of this Ordinance. The marriage license shall become effective on the 6th (sixth) day after issuance and shall remain effective until the 30th (thirtieth) day after issuance.

8. **Fee.** A fee shall be determined by the Court for the issuance of marriage licenses.

9. **Solemnization of Marriage Contract.** A marriage shall be validly solemnized and contracted by a Ho-Chunk Nation Trial Court Judge or Supreme Court Justice, in the presence of at least two competent adult witnesses, after the issuance of license and by the mutual declarations of the two parties involved that they agree to become spouses.

10. **Domestic Partnership.** Ho-Chunk Nation law recognizes marital cohabitation between couples who have resided together for at least seven (7) years or more. Couples who have resided together for at least seven (7) years or more may register with the Ho-Chunk Nation Trial Court as having entered into a domestic partnership. Those couples having entered into a domestic partnership shall enjoy the same legal treatment as partners who formalized their marital relationship in Section 9.

11. **Grounds for Annulment or Voidable Marriage.** A marriage or domestic partnership may be voided or annulled by the Trial Court for any one of the following reasons upon the application of one of the parties to marriage:

a. When either party to the marriage or domestic partnership was incapable of consenting thereto.

b. When the consent was obtained by force or fraud.

c. When either party was, at the time of the marriage or domestic partnership, incapable of consummating the marriage or domestic partnership and the incapacity is continuing.

d. When the marriage or domestic partnership was invalid on one of the grounds set forth in Section 5.

12. **Delivery and Filing of Marriage Certificate.** The marriage document, legibly and completely filled out in ink shall be returned by the Officiating person or by the parties to the marriage contract to the Ho-Chunk Nation Trial Court within 10 days after the date of marriage, so that it may be filed on record with the Enrollment Office and copy of the same with the State of Wisconsin Bureau of Vital Statistics.

Legislative History:

- 08/17/04 Legislature places draft Marriage Ordinance (4 HCC § 10) for 45-Day Public Review.
- 10/19/04 Enacted as the Marriage Ordinance (4 HCC § 10) by Legislative Resolution 10/19/04D.
- 08/09/16 Legislature adopts Resolution 08.09.16K placing proposed amendments to the Marriage Ordinance out for Forty-Five Day Public Comment.
- 06/05/17 Legislature adopts Resolution 06.05.17J enacting amendments to the Marriage Ordinance.