

## **TITLE 14 - ENROLLMENT**

### **CHAPTER 1 - ENROLLMENT ORDINANCE**

*Legislative History: Ordinance No. 05-81, "Enrollment," was enacted on October 7, 1981 by the Papago Council; amended by Resolution No. 213-84, which was enacted by the Papago Council on October 10, 1984; amended by Resolution No. 262-86, which was approved on May 13, 1986; amended by Resolution No. 91-514, which was passed and approved on November 12, 1991; amended by Resolution No. 02-460, which was approved on October 9, 2002; amended by Resolution No. 12-158 (clarifying the process under Article IX, Section 2(E) for judicial appeal of enrollment revocation) effective May 15, 2012; amended by Resolution 13-167, which amended Article IX to clarify the process for providing notice of revocation hearings effective May 23, 2013; amended by Resolution 14-463, which extended the terms of the Enrollment Committee members from three years to five years under Article II, Section 1(C), effective October 17, 2014.*

*Related Law: The Enrollment Ordinance is supplemented by the Enrollment Manual, which was adopted by Resolution No. 137-81. See <http://tolc-nsn.org/docs/EnrollmentManual.pdf>.*

*Related Law: Resolution No. 07-221, "Declaring Enrollment Card Issued by the Enrollment Office as the Sole Valid Tohono O'odham Nation Membership Identification," was approved April 18, 2007.*

**ENROLLMENT ORDINANCE**

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ORDINANCE OF THE TOHONO O'ODHAM NATION  
(Enrollment)

ORDINANCE NO. 5-81

~~Amended by Res. No. 213-84~~

~~Amended by Res. No. 262-86~~

Statement of Purpose: An ordinance to define and regulate membership in the Tohono O'odham Nation in accordance with the Constitution of the Tohono O'odham Nation, and to establish orderly procedures for enrollment, determinations of blood degree, of adoption and relinquishment or loss of membership which afford due process of law to all persons who have applied for enrollment or adoption as members of the Nation or who have relinquished or lost their membership in the Nation:

NOW THEREFORE, BE IT ENACTED by the Tohono O'odham Council of the Tohono O'odham Nation, as follows:

**ARTICLE I - TITLE AND DEFINITIONS**

Section 1 Short Title

This ordinance may be cited as the Enrollment Ordinance of the Tohono O'odham Nation.

Section 2 Definition of Terms

In this ordinance, unless the context otherwise requires:

- (1) "Adoption application" or "Application for Adoption" means a written application on a form prescribed by the ~~E~~enrollment ~~C~~ommittee to be adopted into membership of the Nation pursuant to Section 2 of Article II of the Constitution.
- (2) "Application for determination of blood degree" means a written application on a form prescribed by the ~~E~~enrollment ~~C~~ommittee for a determination by the ~~E~~enrollment ~~C~~ommittee of the degree of Papago - Tohono O'odham or other Indian blood possessed by persons on the base roll or subsequent membership rolls approved by the Council, or by their descendants.
- (3) The "base roll" is created by the Nation from the official census rolls of the Sells and Gila Bend Reservations as of January 1, 1937, and of the San Xavier Reservation as of January 1, 1940; provided that additions and changes may be made to said rolls by the Tohono O'odham Council, subject to the approval of the Secretary of the Interior solely to the extent such approval is expressly required by the Nation's Constitution.

- (4) “Constitution” means the Constitution of the Tohono O’odham Nation, adopted by the qualified voters of the Tohono O’odham Nation on January 18, 1986, and approved by the Acting Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, or, where applicable, the Constitution of the Tohono O’odham Nation, ratified by the Nation on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, as amended by three amendments adopted on April 9, 1960, February 8, 1975, and January 21, 1978.
- (5) “Council” means the Tohono O’odham Legislative Council.
- (6) “Descendants” or “lineal descendants” means those persons who are the issue of the ancestor through whom enrollment rights or degree of blood are claimed, namely, the children, grandchildren, etc. It does not include collateral relatives such as aunts, uncles, cousins, etc.
- (7) “Indians” as used in Section 1(a) of Article II of the Constitution means members of Indian tribes which as of the date of the base roll were federally recognized as eligible by the United States Government through the Secretary of the Interior for special programs and services provided by the Secretary to Indians because of their status as Indians and which have not been terminated.
- (8) “Lineal ancestors” means an ancestor, living or deceased, who is related to an applicant by direct ascent, namely parent, grandparent, etc. It does not include collateral relatives such as aunts, uncles, etc.
- (9) “Membership Application” or “Application for enrollment” means a written application on a form prescribed by the Enrollment Committee to be enrolled as a member of the Nation.
- (10) “Membership requirements” means the constitutional requirements for membership in the Nation set out in Section 1 of Article II of the Constitution.
- (11) “Nation” means the Tohono O’odham Nation, formerly the Papago Tribe.
- ~~(12) “Sponsor” means a parent, lineal descendant, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, or other person who files a membership application, an adoption application, or an application for determination of blood degree on behalf of another person as the applicant.~~
- (12) “Sponsor” means a person who files a Membership Application or an Adoption Application and is (1) a parent or legal guardian who files on behalf of a minor or a legally incompetent adult, (2) a lineal descendant who files on behalf of a deceased ancestor, (3) a lineal ancestor who files on behalf of a deceased lineal descendant,- (4) a parent, spouse, or family member with a power of attorney who files on behalf of a member of the Armed Services or other services of the United

States Government stationed outside the continental United States or (5) an employee of the Nation's Child Welfare Division who files on behalf of a minor who is a ward of the Nation's Children's Court or a ward of a court of competent jurisdiction.

- (13) "Resident member" as used in Section 1(b) of Article II of the Constitution of the Tohono O'odham Nation, means any member who lives on the Tohono O'odham Reservation with the intent to make the Reservation his or her only permanent home, or any member who lives outside the reservation with the intent to return to the reservation and to make it his or her only permanent home. The intent to return to the reservation shall be presumed and can only be rebutted by a preponderance of the evidence to the contrary.

## ARTICLE II - ENROLLMENT COMMITTEE

### Section 1     Enrollment Committee

- (A)     Establishment - There is established an Enrollment Committee as part of the Executive Branch which shall be composed of five members of the Tohono O’odham Nation who are bilingual in the O’odham and English languages.
- (B)     Appointment – Members of the Committee shall be appointed by the Chairman of the Nation, subject to the approval of the Tohono O’odham Legislative Council.
- (C)     Term – A Committee member shall be appointed for a five-year term, but shall continue to serve until the member’s successor is appointed. Vacancies shall be filled for the unexpired term of that seat on the Committee and appointments shall be staggered so that no more than two members’ terms shall expire in the same year.
- (D)     Removal – The Chairman of the Tohono O’odham Nation may remove a member of the Committee for good cause which shall include, without limitation:
  - (1)     Conviction of a felony or crime involving dishonesty in any court of competent jurisdiction, effective upon conviction or acceptance by the court of a guilty or no contest plea.
  - (2)     Three consecutive unexcused absences from meetings of the Committee. An absence shall be deemed “excused” if the member had good cause for the failure to attend the meeting and gave, or made a reasonable, good faith effort to give, timely notice to the Chairperson of the Committee.
  - (3)     Failure to satisfactorily perform the duties of office.
- (E)     Resignation – A member may resign the position by giving written notice to the Chairman of the Nation. If the resignation is unconditional, it shall be effective upon delivery and without formal acceptance.
- (F)     Vacancies – A position on the Committee shall be deemed vacant before the expiration of the term of the appointment if any of the following occurs:
  - (1)     Death of a member.
  - (2)     Insanity or incompetency of a member which is judicially determined.
  - (3)     Removal of a member from the position.
  - (4)     Resignation of a member from the position.

- (G) Filling Vacancies – Whenever there is a vacancy in the membership of the Committee the Chairman of the Nation shall appoint a replacement to fill the unexpired term of the vacant position. The provisions of this Section 1 concerning membership qualifications and other rights and obligations of members shall apply with equal force to replacement candidates and appointees.
- (H) Compensation – Members of the Committee shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as have been authorized pursuant to an approved budget and appropriation by the Tohono O’odham Legislative Council.
- (I) Quorum – The presence of three members of the Committee shall constitute a quorum to transact business.
- (J) Vote – The vote of a majority of the members constituting a quorum shall constitute action by the Committee.
- (K) Committee Chairperson – The Committee shall elect a Chairperson from within the Committee and the Chairperson shall serve for a one year term. There is no limit on the number of terms a person can serve as Chairperson, provided that no one person shall serve two consecutive terms as Chairperson of the Committee.

Section 2      General Duties and Powers of the Enrollment Committee

- (A) General Duties - The Enrollment Committee shall:
  - (1) Receive and review all membership applications for enrollment in the Nation and make recommendations to the Council whether such applications should be approved or rejected; provided that the Enrollment Committee shall not complete or alter any application or other materials submitted by the applicant.
  - (2) Receive and review all applications for adoption into membership of the Nation and make recommendations to the Council whether such applications should be approved or rejected.
  - (3) Make determinations of the degree of Indian or Papago - Tohono O’odham Indian blood possessed by persons on the base roll or subsequent membership rolls approved by the Council, or by their descendants.
  - (4) Cause the membership roll to be kept current.
- (B) General Powers - The Enrollment Committee may:
  - (1) Prescribe and enforce rules and regulations in conformity with this Ordinance.

- (2) Make or call for private or public investigations and conduct hearings to make determinations of degree of blood and to determine whether applicants have met membership or adoption requirements.
- (3) For the purpose of investigations or hearings which, in the opinion of the committee or its director are necessary and proper, the committee or its director and staff may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of documents, records, or information which the committee or its director deems relevant or material to the inquiry.

**ARTICLE III - FILING MEMBERSHIP APPLICATIONS**

Section 1      Membership Applications for Enrollment to be filed with Enrollment Committee

Any person who desires to be enrolled as a member of the Nation and believes he meets the membership requirements of the Nation must file or have filed in his behalf a completed membership application form with the Eenrollment Ccommittee, provided that all applications heretofore received shall be considered validly filed.

Section 2      Sponsoring Membership Applications on Behalf of Another Person

If the person sought to be enrolled is deceased, a minor or other person in need of assistance, a member of the Armed Services or other services of the United States Government stationed outside the Continental United States, an application for enrollment may be completed and filed by ~~a sponsor, the executor or administrator of the applicant's estate, the applicant's parents, lineal descendants, recognized guardian, next friend, next of kin, or by the applicant's spouse as the sponsor of such person.~~

Section 3      Applications to be Numbered and Dated

The Eenrollment Ccommittee shall assign an identifying number and shall record the date of each membership application received.

**ARTICLE IV - FILING APPLICATIONS FOR ADOPTION AND DETERMINATION OF BLOOD DEGREE**

Section 1      Application for Adoption and Determination of Blood Degree to be filed with Enrollment Committee

(A)      Application for Adoption

Any person who believes that he is one-half degree or more of Papago - Tohono

O'odham Indian blood and desires to be adopted as a member of the Nation must file or have filed in his behalf completed applications both for adoption and for determination of blood degree with the Enrollment Committee.

(B) Application for Determination of Blood Degree

Any person who questions the degree of Papago-Tohono O'odham or other Indian blood ascribed to him or his lineal ancestor on the base roll or subsequent membership roll may file or have filed in his behalf a completed application for determination of blood degree with the Enrollment Committee.

Section 2 Sponsoring Applications for Adoption and Determination of Blood Degree

If the person sought to be adopted, or if the person whose blood degree as ascribed on the base roll or subsequent membership rolls is questioned, is deceased, a minor or other person in need of assistance, a member of the Armed Services or other services of the United States Government stationed outside the Continental United States, applications for adoption and for determination of blood degree may be completed and filed by ~~a sponsor, the executor or administrator of the applicant's estate, the applicant's parents, lineal descendants, recognized guardian, next friend, next of kin, or by the applicant's spouse as the sponsor of such person.~~

Section 3 Adoption Applications to be Numbered and Dated

The Enrollment Committee shall assign an identifying number and shall record the date of each adoption application received, and shall thereupon process the application for determination of blood degree.

**ARTICLE V - PROCESSING DETERMINATIONS OF BLOOD DEGREE**

Section 1 Enrollment Committee shall make Preliminary Determinations of Blood Degree

(A) Whenever the Enrollment Committee has received a completed application for determination of blood degree from an applicant; or (2) whenever the Enrollment Committee discovers discrepancies in the degree of blood ascribed to persons on the base roll or subsequent membership rolls which were caused by mathematical errors in computation; or (3) whenever the Enrollment Committee discovers discrepancies in the degree of blood ascribed to the various descendants of a common lineal ancestor on the base roll or subsequent membership rolls, the Enrollment Committee shall examine the application and/or all available documents, records and information, including agency records of the Bureau of Indian Affairs; shall make or call for such investigations, whether private or public, and conduct such hearings as the committee deems necessary and proper to a determination of blood degree; and shall make a preliminary written determination of blood degree.

Where the committee considers additional information is needed it may require the production, by citation or otherwise, of such information from the person filing the application or from any other person who may be affected by the determination, and may request or subpoena such persons to appear before the committee, its director or staff for an informal personal interview. If it is determined by the Eenrollment Ccommittee that the degree of Papago - Tohono O'odham or other Indian blood should be changed, where necessary, an appropriate adjustment must be made in the degree of Papago - Tohono O'odham or other Indian blood ascribed to all lineal descendants and ancestors of the applicant or enrollee. Before such adjustments are made final, the head of each family concerned shall be notified of the proposed change and given at least twenty (20) days in which to show cause why the correction should not be made.

## Section 2 Notice of Hearing of Preliminary Determination of Blood Degree

### (A) Contents of Notice

Written notice of the Eenrollment Ccommittee's preliminary determination of degree of blood shall (1) indicate the degree of Papago - Tohono O'odham or other Indian blood, if any, ascribed on the records to the applicant or enrollee, or to each member of his family; (2) indicate the degree of Papago - Tohono O'odham or other Indian blood which the committee has determined to be properly ascribed to the applicant or enrollee, or to the members of his family; (3) indicate the reasons for the committee's determination; (4) fix the time and place for the Eenrollment Ccommittee to hold a hearing to make its final determination of the degree of Papago - Tohono O'odham or other Indian blood which will be ascribed to the applicant or enrollee, or to the members of his family; and (5) indicate that the applicant or enrollee, or the members of his family may appear before the Eenrollment Ccommittee at the time and place fixed for such hearing to show cause why the blood degree which the committee has determined to be properly ascribed should be rejected, and to present additional evidence, if any, concerning the blood degree of the applicant or enrollee, or of members of his family.

### (B) Manner of Giving Written Notice

The notice shall be given at least twenty (20) days prior to the time fixed by the Eenrollment Ccommittee to hold the hearing to make its final determination, and shall be served by certified mail, return receipt requested, or by personal service by a member or agent of the Eenrollment Ccommittee who shall verify service of a copy of the notice by endorsing his name and date of delivery upon another copy thereof, and by having the person served acknowledge receipt of a copy thereof by signing his name thereon. Where it appears that the notice required hereunder was deposited in a United States Post Office box more than thirty (30) days prior to the time fixed for the Eenrollment Ccommittee to hold its hearing and such notice was sent by certified mail as provided herein, it shall be presumed that such notice was received by the addressee more than twenty (20) days prior to the time fixed for the hearing by the committee.

Section 3 Enrollment Committee shall make Final Determination of Blood Degree

(A) Hearing

The Eenrollment Ccommittee shall review the application and all relevant evidence regarding blood degree, including any new evidence, produced by the applicant or enrollee, or by members of his family. The burden of proof of establishing a blood degree different than the one set out in the committee's preliminary determination of blood degree shall be on the applicant or enrollee, or members of his family.

(B) Final Determination of Blood Degree

The Eenrollment Ccommittee shall reduce its final determination of the degree of Papago - Tohono O'odham or other Indian blood of the applicant or enrollee, or of the members of his family, to writing and cause it to be signed by the chairperson of the committee.

(C) Notice of Final Determination

A copy of the determination, together with a notice that such determination may be appealed to the Tohono O'odham Courts shall be served on the applicant or enrollee, or upon the head of each family affected by the determination, either by certified mail, return receipt requested, or by personal service by a member or agent of the Eenrollment Ccommittee who shall verify service of a copy of the final determination and of the delivery upon a copy thereof, and by having the person served acknowledge receipt of a copy of the written determination and of the notice by signing his name thereon.

Section 4 Evidence in Determinations of Degree of Blood of Illegitimate Children

(A) Evidence

The degree of Papago - Tohono O'odham or other Indian blood possessed by an individual is  $\frac{1}{2}$  of the combined degree of Papago - Tohono O'odham or other Indian blood possessed by his parents. In determining the degree of Papago - Tohono O'odham or other Indian blood of a child whose parents were not legally married at the time of the child's birth, only  $\frac{1}{2}$  of the degree of Papago - Tohono O'odham or other Indian blood ascribed to its mother should be counted, unless paternity has been established. Paternity may be established by decree of a court of competent jurisdiction, by the written acknowledgment of paternity signed by the natural father, or by a marriage certificate establishing the subsequent marriage of the natural parents of the child. If paternity can be so established, copies of the documents on which the determination is based should be furnished in support of the degree of blood ascribed to the child.

(B) Request for Closed Hearing

Where such documents establishing paternity are not available, an applicant, or an

applicant's sponsor may request the Enrollment Committee to make determination of the degree of blood of an applicant whose parents were not legally married at the time of the child's birth. Such determination shall be made at a closed hearing of the Enrollment Committee and shall be based on the sworn testimony of the mother, the natural father or of a relative connected to the mother or the natural father by ties of blood or consanguinity, and on any other relevant evidence adduced by or on behalf of the applicant. The mother's testimony about who the child's natural father is may be heavily, but may not be conclusively, relied on, and other independent evidence must be presented which will establish the paternity by a preponderance of the available evidence.

(C) Written Determination

The Enrollment Committee's determination shall be reduced to writing; shall be signed by the chairperson of the committee and shall set forth the degree of Papago - Tohono O'odham or other Indian blood of the applicant and findings of fact upon which the committee based its determination.

(D) Notice of Ascription of Blood Degree

Written notice of the ascription of the degree of Papago - Tohono O'odham or other Indian blood to the applicant shall be served on the applicant or applicant's sponsor, which notice shall contain a statement that such ascription may be appealed to the Tohono O'odham Courts.

(E) Manner of Giving Notice

Service of the notice shall be by certified mail, return receipt requested, or by personal service by a member or agent of the Enrollment Committee who shall verify service of a copy of the notice by endorsing his name and date of delivery upon another copy thereof, and by having the person served acknowledge receipt of a copy thereof by signing his name thereon.

(F) Confidential Confidentiality of Records

Only the degree of Papago - Tohono O'odham or other Indian blood ascribed by the Enrollment Committee pursuant to the foregoing provisions, or by the Tohono O'odham Courts pursuant to Section 5 hereof, shall be made public. No other information, testimony, evidence, files, records, reports and papers, including the Enrollment Committee's written determination, produced before or in possession of the Enrollment Committee or the Tohono O'odham Courts shall be made public; shall be admitted in evidence or used in any manner in any other proceedings; or shall be released to, or disclosed by any person, agency or court, except to the applicant, or the applicant's sponsor or attorneys, and to the Tohono O'odham Courts for the purpose of an appeal from the Enrollment Committee's determination of the degree Papago - Tohono or other Indian blood ascribed to the applicant pursuant to the foregoing provisions. After

completion of final ascription of blood degree by the committee pursuant to the foregoing provisions, or by the Tohono O’odham Courts pursuant to Section 5 hereof, all such files, records, reports and other papers in the possession of the ~~E~~enrollment ~~C~~committee or the Tohono O’odham Courts may be released to, or disclosed only to (1) an applicant upon filing of a written consent signed by the applicant’s mother or upon filing of a certificate of death of the applicant’s mother, and (2) to the lineal descendants of an applicant upon filing of certificates of death of both the applicant and applicant’s mother.

Section 5 Appeal from Final Determinations or Ascription of Blood Degree by Enrollment Committee

(A) Right of Appeal

An appeal to the Tohono O’odham Courts may be taken from any final determination of blood degree made by the ~~E~~enrollment ~~C~~committee pursuant to Section 3 above or from the ascription of degree of blood made by the ~~enrollment committee~~Enrollment Committee pursuant to Section 4 above by any person adversely affected thereby.

(B) Commencing Appeal

To commence an appeal such person must clearly express an intent to appeal such determination or ascription of degree of blood to the Tohono O’odham Courts, a copy of which must be served on the ~~enrollment committee~~Enrollment Committee before the close of business on the 30th day after receipt of a copy of the final determination or ascription of degree of blood, unless such notice is served at an address outside the Continental United States, in which case there shall be 60 days rather than 30 days to file such an appeal.

(C) Stay of Proceedings and Record on Appeal

Upon an appeal being commenced, all pending or further proceedings before the ~~enrollment committee~~Enrollment Committee and the Council shall be stayed, and the ~~enrollment committee~~Enrollment Committee shall transmit to the Court the complete record pertaining to the matter appealed, together with all evidence presented to the ~~enrollment committee~~Enrollment Committee, and the ~~enrollment committee~~Enrollment Committee’s written determination. The burden of proof shall be on the appellant to modify or reverse the findings, determination and ascriptions of blood degree made by the ~~enrollment committee~~Enrollment Committee. The appeal should include any supporting evidence not previously furnished and may include a copy of reference to any records of the Nation or the Department of Interior having a direct bearing on the appellant’s case. An appellant may request additional time to submit supporting evidence. A period considered reasonable for such a submission may be granted by the Court.

(D) Decision of the Court

The Court will consider the record as presented, together with such additional information that may be considered pertinent, and the Court may in its own discretion allow oral presentation to be made. Any such additional information shall be specifically identified in its decision. The decision of the Court on appeal shall be final and conclusive and, if the determination of, or ascription of degree of blood by the ~~enrollment committee~~Enrollment Committee is reversed or modified, the Court shall by its mandate specifically direct the committee as to further action in the matter, including the making and entering of a different and final determination or ascription of degree of blood by the ~~enrollment committee~~Enrollment Committee.

Section 6      Report to Council and Secretary of the Interior

Any adjustments made by the ~~enrollment committee~~Enrollment Committee in the blood degree of an enrollee on the base roll shall be submitted for approval to the Council, together with a copy of the committee's written determination. The Council's approval of such adjustment and a copy of the committee's written determination shall be submitted to the Secretary of the Interior for further approval by the Secretary in accordance with the provisions of Section 1(a) of Article II of the Constitution.

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**ARTICLE VI - PROCESSING MEMBERSHIP APPLICATIONS**  
**BY THE ENROLLMENT COMMITTEE**

Section 1     The Enrollment Committee shall Review Membership Applications and Make Recommendations to the Legislative Council

The ~~enrollment committee~~Enrollment Committee shall review all membership applications ~~for enrollment~~ and shall consider the information provided in such applications, together with all other available evidence concerning the applicant's eligibility for membership and make its written recommendation to the Council ~~as to whether approve or reject the application should be approved or rejected.~~ Where the committee ~~considers~~determines additional information is needed, it may request such information from the ~~person filing the application~~applicant or sponsor and may request such person to appear before the committee for a personal informal interview. If the Committee recommends approval, the Committee is not required to conduct a hearing or give notice of the recommendation to the applicant or the sponsor.

Section 2     Notice of Hearing to be Given when Membership Application is being Recommended or Considered for When Enrollment Committee Enrollment Committee Recommends Rejection

(A)     Written Notices Notice Required

Whenever the ~~enrollment committee~~Enrollment Committee recommends rejection or the Council considers that a membership application should be rejected, ~~(2) two written notices~~notice shall be given to the ~~person filing the application in the manner hereinafter provided;~~applicant or sponsor before a final determination of the applicant's eligibility ~~for enrollment~~ is made by the Council.

(B)     Contents of First Notice

The ~~first~~ written notice ~~which is required to be given~~ under this Section shall ~~(1) indicate the:~~

(1) The membership requirement ~~or requirements~~(s) which the applicant failed to establish or other reasons why the application should be rejected; ~~(2) indicate that~~

(2) That the applicant may be eligible for adoption into tribal membership provided the applicant is one-half degree or more of Papago ~~—~~ Tohono O'odham Indian blood; ~~(3) advise the applicant that~~

~~(1)~~(3) That the ~~enrollment committee~~Enrollment Committee will defer action on its recommendation to reject the membership application provided it receives an application ~~both~~ for adoption and for determination of blood degree in accordance with the provisions of Section 1(A) of Article IV hereof within ~~twenty (20)~~30 days of the mailing of the written notice ~~;~~

(4) That the applicant has 30 days of the mailing of the written notice to file a written appeal with the Council Chairperson and Secretary, with a copy to the Enrollment Committee, asking the Council to hold a closed session rejection hearing to make its final determination of the applicant's eligibility for enrollment; provided that the applicant's right to appeal to the Council is waived if a written request is not filed as required by this subsection;

(5) That the applicant must comply with any hearing rules adopted by the Council; and

(6) That if the applicant does not submit within 30 days of the mailing of the written notice either an adoption application or file a written appeal with the Council Chairperson and Secretary, the Enrollment Committee shall proceed with its recommendation to reject the application in accordance with the provisions of Article VIII of this Chapter.

(C) Manner of Giving Notice of Rejection Hearing

—The notice shall be sent by ~~regular~~certified U.S. Mail or registered mail, return receipt requested, addressed to the ~~person filing the application for enrollment~~applicant or sponsor at the mailing address provided ~~by such person~~ in the application form, or at such different address as such person may subsequently have provided the ~~enrollment committee~~Enrollment Committee in writing. ~~The applicant has the duty and responsibility to maintain his or her current address and contact information with the Enrollment Program at all times in order to receive such notices from the Enrollment Program. If the notice is returned to the Enrollment Program as undeliverable, incorrect address or as unclaimed, the Enrollment Committee shall proceed with its recommendation to reject the application in accordance with the provisions of Article VIII hereof and Council may proceed with its final determination. If Council makes a final determination to reject applicant's membership application, the applicant may reapply.~~

(D) ~~Contents of Second~~ Notice of Rejection Hearing

If the applicant properly files a written appeal with the Council Chairperson and Secretary, the Enrollment Committee or its designee shall send written notice of the closed session rejection hearing to the applicant or sponsor by certified U.S. Mail or by registered mail. The Enrollment Committee shall send the notice at least sixty (60) days before the hearing if residing within the continental United States or at least seventy-five (75) days if residing outside the continental United States.

(E) ~~Where it appears that the first notice required under this Section was deposited in~~

~~a United States Post Office box more than twenty (20) days and the enrollment committee has not received applications for adoption and for a written determination of blood degree in accordance with the provisions of Section 1(A) of Article IV hereof, a second written notice shall be given, which shall (1) indicate the membership requirement or requirements which applicant failed to establish or other reasons why the application should be rejected; (2) fix a time and place for the Council to hold a hearing and make its final determination of the applicant's eligibility for enrollment; (3) indicate that the person filing the application may appear before the Council at the time and place fixed for such hearing to show why the application for enrollment should not be rejected, and to present additional evidence, if any, concerning the applicant's eligibility for enrollment.~~

~~(E) Manner of Giving Second Notice~~

~~The notice shall be given at least twenty (20) days prior to the time fixed for the Council to hold a hearing to make its final determination of applicant's eligibility for enrollment, and shall be served by certified mail, return receipt requested, or by personal service by a member or agent of the enrollment committee who shall verify service of a copy of the notice by endorsing his name and date of delivery upon another copy thereof, and by having the person served acknowledge receipt of a copy thereof by signing his name thereon. Where it appears that the notice required under this Section was deposited in a United States Post Office box more than thirty (30) days prior to the time fixed for the Council to hold its hearing concerning the applicant's eligibility for enrollment and such notice was sent by certified mail as provided herein, it shall be presumed that such notice was received by the addressee more than twenty (20) days prior to the time fixed for the hearing by the Council.~~

Contents of Rejection Hearing Notice

The written rejection hearing notice required under this Section shall indicate:

- (1) That the Enrollment Committee is recommending that the membership application be rejected;
- (2) That the applicant or sponsor must comply with any hearing rules adopted by the Council, a copy of which will be provided to the applicant or sponsor by the Enrollment Program upon request;
- (3) The date and time of the closed session rejection hearing;
- (4) That the applicant or sponsor has a right to represented by an attorney at the applicant or sponsor's own expense;

(5) That the applicant or sponsor may request the assistance of an interpreter at the rejection hearing by contacting the Enrollment Program; and

(6) Notice that the applicant or sponsor may appear before the Council at the requested hearing to present additional evidence to support the application, and will have the burden of showing why the application should not be rejected.

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Section 3 Council Hearing

If an applicant fails to file a written appeal as required under subsection (D) of this Section, the applicant will be deemed to have waived the right to an appeal to the Council and the Judicial Court shall not have jurisdiction to consider the rejection. If a timely appeal is filed in accordance with this Chapter and any rules adopted by the Legislative Council, the Council shall conduct a rejection hearing within 90 days after receiving the appeal.

**ARTICLE VII - PROCESSING ADOPTION APPLICATIONS BY THE ENROLLMENT COMMITTEE**

Section 1 ~~Enrollment Committee shall review~~ Adoption Application Review and make Recommendations ~~Recommendation to Council-~~

The Enrollment Committee shall review all applications for adoption and shall consider the information provided in such applications, together with all other available evidence concerning the applicant's eligibility for adoption, and make a written recommendation to Council to approve or reject the application. If the committee determines that additional information is needed, it may request such information and follow the procedures outlined in Section 1(A) of Article V. If the committee recommends that the application be approved, neither a hearing nor notice of such recommendation is required.

Section 2 Notice of Hearing When Enrollment Committee Recommends Rejection of Adoption

(A)- Written Notice Required-

Whenever the ~~enrollment committee~~ Enrollment Committee recommends rejection or the Council considers that an adoption application should be rejected, ~~written notice that a hearing will be held concerning such application~~ the applicant or sponsor shall be given to the person filing written notice of the application in right to appeal the manner hereinafter provided, rejection recommendation before the Council makes its final determination ~~on the applicant's request for adoption.~~

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(B) Contents of Notice

The written notice ~~which~~ that is required ~~to be given~~ under this Section shall ~~(1)~~

~~indicate~~include the following:

- (1) The degree of Papago—Tohono O’odham ~~or other~~ Indian blood ascribed to the applicant for adoption and the ~~reasons~~reason(s) why the application should be rejected;
- (2) ~~fix~~ That the applicant has 30 days of the mailing of the written notice to file a ~~time-written~~ appeal with the Council Chairperson and ~~place for~~Secretary, with a copy to the Enrollment Committee, asking the Council to hold a closed session rejection hearing ~~and to~~ make its final determination ~~on applicant’s of the applicant’s eligibility for enrollment; provided that the applicant’s right to appeal to the Council is waived if a written request for adoption is not filed as required by this subsection;~~
- (3) That the applicant or sponsor must comply with any hearing rules adopted by the Council;
- (4) Notice that the applicant or sponsor has 30 days from the date the notice is mailed to file a written appeal with the Council Chairperson and Secretary, with a copy to the Enrollment Committee, asking the Council to hold a closed session rejection hearing to make its final determination of the applicant’s eligibility for adoption; ~~(3) indicate that the person filing the application provided that the applicant’s right to appeal to the Council is waived if a written request is not filed as required by this subsection;~~
- ~~(3)~~(5) Notice that the applicant or sponsor may appear before the Council at the ~~time-requested hearing to present additional evidence to support the application and ~~place-fixed for such hearing to show~~ will have the burden of showing why the application for adoption should not be rejected, and to present additional evidence, if any, concerning applicant’s eligibility for adoption.~~

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In the event

- (6) Notice that the applicant or sponsor must comply with any hearing rules adopted by the Council; and
- (7) That if the applicant does not submit within 30 days of the mailing of the written notice a written appeal with the Council Chairperson and Secretary, the Enrollment Committee shall proceed with its recommendation to reject the application pursuant to Article VIII.
- (8) If the applicant for adoption ~~had~~ previously filed a membership application upon which action was deferred ~~by the enrollment committee pending review by the committee of the applicant’s application~~ in accordance with the provisions of Section 2(B) of Article VI, both applications will be heard at the same closed session rejection hearing, provided that the written appeal was submitted as required.

(C) Manner of Giving Notice of Rejection Hearing

The Enrollment Committee or its designee shall serve the notice of the committee's by certified U.S. mail or registered mail, return receipt requested. The applicant has the duty and responsibility to maintain his or her current address and contact information with the Enrollment Program at all times in order to receive such notices from the Enrollment Program. If the notice is returned to the Enrollment Program as undeliverable, incorrect address or as unclaimed, the Enrollment Committee shall proceed with its recommendation to reject the applicant's application in accordance with Article VIII hereof and Council may proceed with its final determination. If Council makes a final determination to reject applicant's membership application, the applicant may reapply.

(D) Notice of Rejection Hearing

If the applicant properly files a written appeal with the Council Chairperson and Secretary, the Enrollment Committee or its designee shall send written notice of the closed session rejection hearing to the applicant or sponsor by certified U.S. Mail or by registered mail. The Enrollment Committee shall send the notice at least sixty (60) days before the hearing if residing within the continental United States or at least seventy-five (75) days if residing outside the continental United States.

(E) Contents of Rejection Hearing Notice

The rejection hearing notice required under this Section shall indicate:

- (1) That the Enrollment Committee is recommending that the membership application required by Section 2(C) of the Article VI shall also be given to the person filing the application, and the time and place fixed in both notices for the Council to hold hearings and make final determinations on both the membership rejected;
- (2) That the applicant or sponsor must comply with any hearing rules adopted by the Council, a copy of which will be provided to the applicant or sponsor by the Enrollment Program upon request;
- (3) The date and adoption applications shall be the same time of the closed session rejection hearing;
- (4) That the applicant or sponsor has a right to represented by an attorney at the applicant or sponsor's own expense;
- (5) That the applicant or sponsor may request the assistance of an interpreter at the rejection hearing by contacting the Enrollment Program;

(6) Notice that the applicant or sponsor may appear before the Council at the requested hearing to present additional evidence to support the application, and will have the burden of showing why the application should not be rejected.

### Section 3 Council Hearing

If an applicant fails to file a written appeal as required under Section 2(B)(2) of this Article, the applicant will be deemed to have waived the right to an appeal to the Council and the Judicial Court shall not have jurisdiction to consider the rejection. If a timely appeal is filed in accordance with this Chapter and any rules adopted by the Legislative Council, the Council shall conduct a rejection hearing within 90 days after receiving the appeal.

=  
~~(C)~~ Manner of Giving Notice(s)  
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~~The notice(s) shall be given at least twenty (20) days prior to the time fixed for the Council to hold a hearing to make its final determination of applicant's application(s) for adoption and enrollment, and shall be served by certified mail, return receipt requested, or by personal service by a member or agent of the enrollment committee who shall verify service of a copy of the notice by endorsing his name and date of delivery upon another copy thereof, and by having the person served acknowledge receipt of a copy thereof by signing his name thereon. Where it appears that the notice(s) required under this Section was deposited in a United States Post Office box more than thirty (30) days prior to the time fixed for the Council to hold its hearing concerning the applicant's eligibility for adoption and enrollment and such notice was sent by certified mail as provided herein, it shall be presumed that such notice was received by the addressee more than twenty (20) days prior to the time fixed for the hearing by the Council.~~

## **ARTICLE VIII - FINAL DETERMINATION OF ELIGIBILITY FOR ENROLLMENT MEMBERSHIP OR ADOPTION**

### Section 1 Council shall Determine Applicant's Eligibility for Enrollment or Adoption

#### (A) Reviewing Applicant's Eligibility

(1) The Council shall review each application for enrollment membership or adoption in a closed legislative session, together with the recommendations of the enrollment committee Enrollment Committee, and determine whether the applicant is eligible to be enrolled for membership or should be adopted as a member of the Nation. The person filing adoption. Unless the Council directs otherwise, the Enrollment Committee and any staff the committee requires shall be present.

~~(1)(2)~~ If an application applicant exercises the right to appeal the Enrollment Committee's rejection recommendation to the Council, the applicant has the burden of proof of establishing to the satisfaction of the Council either that the applicant meets all membership requirements or that the applicant ishas one-half degree or more Papago—Tohono O'odham Indian blood and should be adopted into membership as a member of the Nation. The Council shall consider all relevant evidence regarding the applicant's eligibility for enrollment or adoption, but the relevancy, weight, and sufficiency of such evidence shall be determined by the Council.

(B) Hearing Right to be Held Appeal Before Application is Rejected

~~Before making a final determination that~~ If an application for applicant exercises the right to appeal the enrollment or adoption should be rejected, the committee's rejection recommendation, Council shall hold a closed session hearing concerning the applicant's eligibility for enrollment or adoption, ~~and the person filing the application shall be given within 90 days after receiving a~~ written notice of the appeal as required by this Chapter and any rules adopted by the Council. A single, consolidated hearing in accordance with the provisions of Section 2 of Article VII, may be conducted on multiple applications when the applicants are related. The manner of conducting ~~such~~ the closed hearing ~~or any other matters pertaining to enrollment or adoption procedures~~ shall be determined by the Council.

(C) Determination of Applicant's Eligibility

The final determination ~~as to whether approve or reject~~ an application for enrollment membership or adoption ~~is approved or rejected by the Tohono O'odham shall be recorded in a Legislative Council shall be reduced to writing and signed by the Chairman of the Tohono O'odham Council regarding each application for enrollment or adoption filed with the enrollment committee. Such determinations resolution. Each determination~~ shall set forth the following findings of fact:

- (1) ~~If on~~ an application for adoption is approved, the ~~date of~~ applicant's date of birth ~~and,~~ the degree of Papago—Tohono O'odham Indian blood ascribed to the applicant, and the Enrollment Committee's recommendation that the application be approved or rejected;
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- (2) ~~If on~~ an application for enrollment membership is approved, the ~~date of~~ applicant's date of birth, the membership requirement ~~or requirements~~ which ~~the Tohono O'odham Council found determined that~~ the applicant ~~did or failed to establish~~ established, and the Enrollment Committee's recommendation that the application be approved or rejected; and
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- (3) If the application for adoption or membership is rejected, the written notice ~~of (s)~~ of the rejection recommendation that was mailed and, if the applicant exercised

the right to appeal to the Council, notice of the rejection hearing which was given to the person filing the application and applicant, whether or not such person the applicant was present at the scheduled hearing, the requirement(s) which Council determined that the applicant failed to establish, and whether the Enrollment Committee recommended that the application be approved or rejected.

(D) Finality of Determinations

Any determination by the ~~Tohono O'odham~~ Council to reject an application for adoption shall be final. Any determination by the Tohono O'odham Council to reject a membership application ~~for enrollment~~ shall be final unless a timely appeal is made in accordance with the appeals procedure outlined in Section 3 of this Article below; provided that if an applicant fails to file a written appeal as required under Section 2(D)(2) of Article VI or Section 2(B)(2) of Article VII, the applicant will be deemed to have waived the right to an appeal to the Council and the Judicial Court shall not have jurisdiction to consider the rejection.

Section 2 Notice of ~~Tohono O'odham~~ Legislative Council's Determination

(A) Notice Required

Every person filing an application for adoption or ~~enrollment~~ membership shall be given written notice ~~whether of the Tohono O'odham Council rejected~~ Council's decision to approve or accepted ~~reject~~ the application for adoption or ~~enrollment~~ membership.

(B) Content of ~~and Manner of Giving~~ the Notice of Approval

If the ~~Tohono O'odham~~ Council approved the application for adoption or ~~enrollment,~~ the membership, the Enrollment Program shall send written notice of Council's approval to the applicant or sponsor within 30 business days of Council's determination. Written notice shall indicate that the following:

- (1) That the application was approved and the Council;
- (2) The applicable resolution number and the date of its enactment whereby the showing approval of such the application and the date the resolution was commemorated. The notice shall be given promptly after the Tohono O'odham Council makes its determination and shall be sent by regular mail addressed to the person filing enacted; and
- (3) The applicant's official enrollment number.

(C) Content of Notice of Rejection for an Adoption Application

If the Council rejected the application for ~~enrollment or~~ adoption, the Council Enrollment

Program shall send written notice of ~~its~~the Council's decision to reject the application to the applicant or the sponsor within 30 days of Council's determination. The written notice shall indicate the following:

- (1) That the application was rejected;
- (2) That the determination is final; and
- (3) The applicable resolution number showing rejection of the application and the date the resolution was enacted.

(D) Content of Notice of Rejection for a Membership Application

If Council rejects an application for membership, the ~~Legislative Council~~Enrollment Program shall send written notice of the determination to the applicant or sponsor within 30 days of Council's determination. The written notice shall indicate the following:

- (1) That the application was rejected and shall set forth the membership requirement(s) which the Council found the applicant failed to establish;
- (2) That, if the applicant has properly exercised the right to appeal to the Council, the membership application may be appealed to the Tohono O'odham Judicial Courts in accordance with the appeal procedures established in Section 3 of this Article.
- (3) The time within which such an appeal must be commenced and the procedure for commencing such an appeal, if any.

(E) Manner of Giving Notice of Rejection

Notice shall be sent by certified U.S. Mail or registered mail, return receipt requested, addressed to the applicant or sponsor for adoption or membership at the mailing address provided by such person in the application form, or at such different address as such person may subsequently have provided the ~~Enrollment committee in writing.~~ ~~P~~program in writing. ~~The applicant shall maintain his or her current address and contact information with the enrollment program at all times.~~The applicant has the duty and responsibility to maintain his or her current address and contact information with the Enrollment Program at all times in order to receive such notices from the Enrollment Program.

~~(C) Content of Notice of Rejection Adoption~~

~~If the Tohono O'odham Council rejected the application for adoption the written notice shall indicate that the application was rejected, that the rejection determination is final and shall indicate the Council resolution number and the date of its enactment whereby the rejection of such application was commemorated.~~

~~(D) Content of Notice of Rejection – Enrollment~~

~~If the Tohono O’odham Council rejected the application for enrollment, the written notice shall (1) indicate that the application was rejected and set forth the membership requirement or requirements which the Tohono O’odham Council found the applicant failed to establish; and (2) indicate that the rejection of the application for enrollment may be appealed to the Tohono O’odham Tribal Courts in accordance with the appeal procedures established in Section 3 of this Article. The notice shall indicate the time within which such an appeal must be commenced and the procedure for commencing such appeal.~~

~~(E) Manner of Giving Notice of Rejection~~

~~The notice required to be given under subsections (C) and (D) of this Section shall be given promptly after the Tohono O’odham Council makes its final determination that the application for enrollment or adoption is rejected, and shall be sent by certified mail, return receipt requested, addressed to the person filing the application for enrollment or adoption at the mailing address provided by such person in the application form, or at such different address as such person may subsequently have provided the enrollment committee in writing.~~

Section 3 Appeal from Final Determination Rejecting ~~Enrollment~~Membership Application

(A) Right of Appeal

Any person filing a membership application ~~for enrollment~~ which has been rejected by the Council may appeal such rejection to the Tohono O’odham ~~Courts~~Judicial Court; provided that a person who fails to exercise the right to an appeal to the Council as provided in this Chapter will be deemed to have waived that right and the Judicial Court shall not have jurisdiction to consider the rejection.

(B) Commencing an Appeal

~~To commence~~The applicant or sponsor appealing the Council’s final determination to reject an appeal such person application must clearly express an intent file a petition to appeal such rejection to in the Tohono O’odham ~~Courts, a~~Judicial Court with the clerk of the court. A copy of which the petition must be served ~~on~~to the ~~Council, Tohono O’odham Nation, Sells, Arizona,~~Legislative Council chairperson through the Legislative Attorney’s Office before the close of business on the 30th calendar day after the notice of rejection is ~~received by the person filing the application for enrollment mailed to the applicant or sponsor~~ unless such notice is delivered to an address outside the ~~Continental~~continental United States in which case ~~there~~the applicant shall ~~behave~~have 60 calendar days ~~rather than 30 in which~~ to file such an appeal. The applicant or sponsor shall provide a copy of the petition to the enrollment committee~~Enrollment Committee.~~

(C) Appellate Review

Upon ~~an~~ appeal ~~being commenced~~ filed with the Tohono O'odham Judicial Court, the Council shall transmit ~~or make available~~ to the Court the complete record pertaining to the membership application for enrollment, together with all evidence presented concerning the applicant's eligibility. The burden of proof shall be upon the applicant ~~shall be~~ to show by clear and convincing evidence that the Council acted arbitrarily, ~~unreasonably capriciously~~, or contrary to the law in rejecting the application.-

The Council shall have 30 calendar days after receipt of the Petition in which to file a response. The Council shall send a copy of the response to the enrollment committee Enrollment Committee.

(D) Decision of the Court

The Court ~~will~~shall consider the record as presented, together with any legal authority that it may consider pertinent, and the Court may, in its own discretion, allow oral argument ~~to be made upon request by either the appellant or Council. If oral argument is granted it shall be a closed hearing, regardless of a party's request to have an open hearing.~~ The decision of the Tohono O'odham ~~Courts~~Judicial Court on appeal shall be final and conclusive ~~and~~. The Court shall give written notice of ~~the its~~ decision ~~shall be given to appellant~~ the applicant or sponsor and the Council within 60 calendar days after oral argument or if oral argument is not held, within 60 calendar days after Council's response has been filed with the Court. The Court shall also send a courtesy copy of its decision to the enrollment committee Enrollment Committee.

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## **ARTICLE IX - RELINQUISHMENT AND LOSS OF MEMBERSHIP**

### Section 1 Relinquishment of Membership

A member of the Nation may relinquish his membership in the Nation by submitting a written statement clearly expressing an intent to relinquish his membership to the Council, a copy of which must be served on the committee. The written statement must be signed by the person wishing to relinquish his membership or, if a minor or incompetent, by the parent(s), guardian or other person legally authorized to act on his behalf. Relinquishment does not require the approval of the Council, but is effective upon receipt of the statement by the Council and cannot be subsequently denied. Upon recognition by the Council that the individual has renounced his membership, his name shall be deleted from the membership roll.

### Section 2 Loss or Abandonment of Membership

#### (A) Dual Enrollment

Membership in the Nation and all rights deriving therefrom shall be lost or abandoned if

a person is or becomes enrolled as a member in another Indian nation, tribe, community or band. Whenever the committee determines that a person who is a member of the Nation or qualifies for membership in the Nation is or becomes enrolled as a member of another Indian nation, tribe, community or band, the committee shall notify such person that he must either relinquish his membership in such other Indian nation, tribe, community or band, or relinquish or lose his membership in the Tohono O'odham Nation. If such person does not relinquish his membership in such other Indian nation, tribe, community or band within 30 days after the Committee's written request for relinquishment is sent, the committee shall recommend to the Council that his membership in the Nation be declared lost and abandoned.

(B) Enrollment Based Upon Incorrect Information

Membership in the Nation and all rights deriving therefrom shall be lost if enrollment is based upon information which was mistaken, fraudulent, deceitful, deceptive, misrepresented or falsified. Membership shall also be lost if information is omitted that would have resulted in ineligibility for membership. Whenever the Enrollment Committee determines that membership approval was based on mistake, fraud, deceit, deception, misrepresentation, falsification or omission, the Committee shall first give such person an opportunity to relinquish his membership in the Nation. If such person does not relinquish his membership within 30 days after the Committee's written request for relinquishment is sent, the Committee shall recommend to the Council that such person's membership in the Nation be lost.

(C) Notice of Intent to Revoke

Whenever the committee recommends that the Council declare a membership to be lost or abandoned as provided above, written notice shall be given before a final determination is made by the Council. The notice shall (1) advise the person of the committee's recommendation to revoke the individual's membership, and (2) indicate that the member may appear before the Council at the time and place the Council sets for such hearing to show why his or her membership in the Nation and all rights deriving therefrom should not be determined to be lost or abandoned.

(D) Manner of Giving Notice

- (1) An enrolled member, or a minor or legally incompetent member's parent, guardian, or other person legally authorized to act on the member's behalf, shall maintain the member's current address and contact information with the ~~enrollment committee~~ Enrollment Committee at all times. If the member does not respond to a written communication using information last provided to the ~~enrollment committee~~ Enrollment Committee, the committee shall use reasonable efforts to discover the member's current address and contact information.
- (2) The notice of intent to revoke shall be given to the member subject to revocation

or, if a minor or legally incompetent adult, to his or her parent(s), guardian or other person legally authorized to act on the member's behalf. The notice shall be given by (a) personal service which shall be verified on a form containing the name and signature of the person whom service was made, the date, time, and location service was made, and the signature of the person providing service, (b) certified mail with return receipt requested, or (c) alternate mailing service that provides documentation of delivery, including signature of a recipient at the address; provided that if notice by any one of the above means is unsuccessful or a mailing address cannot be determined, notice shall be given by publication (i) twice in one month if last known address is on the Nation, or (ii) once a week for four weeks in a county of last known address if off the Nation, or by other alternative means reasonably calculated to give notice. Where it appears that the notice required under this Section was sent to the addressee's current or last known address and was sent by certified mail as provided herein, it shall be presumed that such notice was received 10 days after being sent.

(E) Council Determination and Notice

- (1) At least 20 days before the Council's revocation hearing, the Council secretary shall provide the member who is subject to revocation with written notice of the committee's recommendation; the time, date, and location of the revocation hearing; and a copy of any hearing procedures. The notice shall be provided in the manner set forth in subsection (D)(2); provided that if the ~~Enrollment Committee~~Enrollment Committee was unable to provide its notice by personal service, certified mail, or an alternative mailing service, the Council shall serve notice by publication or other alternative means.
- (2) Revocations based upon the same facts may be consolidated in a single revocation hearing. The Council shall review the committee's recommendation and, based upon presentations and evidence presented at an enrollment revocation hearing, determine whether (a) the person is a member of the Nation and is also enrolled as a member in another Indian nation, tribe, community or band, or (b) the enrollment in the Nation was based upon mistake, fraud, deceit, deception, misrepresentation, falsification or omission.
- (3) If the member fails to appear, a written summary and any records reflecting the committee's efforts and secretary's efforts to provide notice shall be submitted to the Council and the hearing may proceed in the member's absence.
- (4) The ~~enrollment committee~~Enrollment Committee shall have the burden of proving the grounds for revoking membership. If the ~~enrollment committee~~Enrollment Committee establishes the existence of dual enrollment, the member shall then have the burden of proof of establishing that he is not a member of such other Indian nation, tribe, community or band. If the ~~enrollment-~~

~~committee~~Enrollment Committee establishes that enrollment was based upon mistake, fraud, deceit, deception, misrepresentation, falsification or omission, the member shall then have the burden of establishing that enrollment was not based upon such information of lack of information.

- (5) The determination of the Council shall be recorded in a ~~legislative order~~resolution and shall be final unless a timely appeal is made in accordance with the appeals procedures in subsection (F). Notice of the Council's determination shall be given promptly; shall be provided in the manner prescribed by subsection (D); and shall advise that the determination may be appealed to the Tohono O'odham Judicial Court in accordance with the appeals procedures in subsection (F). The notice shall indicate the time within which an appeal must be commenced and the procedure for commencing such appeal.

(F) Appeal from Final Determination

Any person whose membership in the Nation has been revoked by a final determination of the Council that his membership was lost or abandoned based upon the grounds identified in this Section may appeal such determination to the Tohono O'odham Courts. To commence an appeal such person must file a written complaint appealing the Council's determination to the Tohono O'odham Courts, a copy of which must be served on the Council in accordance with the rules of court before the close of business on the 30th day after the notice was received by such person unless such notice is delivered to an address outside the Continental United States, in which case there shall be 60 days rather than 30 in which to file such an appeal. Upon an appeal being commenced, the Council shall transmit or make available to the Court the written record pertaining to the determination. The burden of proof upon such person shall be to show by clear and convincing evidence that the Council acted contrary to the law in making the determination. The Court will consider the record as presented and upon written request may allow oral argument to be made. The decision of the Tohono O'odham Courts on appeal shall be final and conclusive and written notice of the decision shall be given to such person, the Council, and the committee.

**ARTICLE X - MISCELLANEOUS; CERTIFIED COPIES; PENALTIES**

Section 1 List of Applicant's names to be Provided Superintendent

The Council shall furnish the Superintendent of the Bureau of Indian Affairs with a list of names of persons who have filed membership and adoption applications and their application numbers, indicating those applications which were approved and those rejected. A separate statement shall accompany such list stating the reasons for the rejection of each rejected application.

Section 2 Membership Roll

The membership roll shall contain the names of all enrolled members of the Nation, arranged in alphabetical order. For each such member, the roll shall also indicate the person's District residence and address, enrollment number, sex, date and place of birth, degree of Papago - Tohono O'odham or other Indian blood and parent's blood, residence of parents at time of birth, and a column for remarks, i.e. date of enrollment, adoption, etc. The remarks column should also indicate the name and base roll number of the person's parents. Any notations made upon such roll shall indicate by whom such notations were made, the date and the authority for making such notations.

### Section 3 Membership Roll to be Kept Current

The Council shall cause the membership roll to be kept current and shall annually review the roll for such purpose. The names of all persons who are deceased and all persons who have relinquished or lost their membership in the Nation shall be noted in the roll and the names of all persons whose applications for enrollment or adoption have been approved by the Council shall be promptly added to the roll.

### Section 4 Base Roll Additions and Changes

(A) Requests to be added to the Nation's base roll may be submitted to the Enrollment Committee, which shall review and consider all base roll addition requests, together with all other available evidence concerning the applicant's eligibility for addition to the Nation's base roll.

(B) Applicants for addition to the Nation's base roll may submit evidence such as an affidavit of an applicant or applicant's sponsor, official ethnic and census reports and studies, historic documents, and the affidavits of relatives or other persons who have definite knowledge that the individual's name was omitted from the roll through error. The applicant seeking to be added to the base roll must have a birth date prior to the January 1, 1937 census roll of the Sells and Gila Bend Reservations or prior to the January 1, 1940 census roll for San Xavier Reservation and provide sufficient evidence showing connection to the Nation.

(C) The Enrollment Committee shall review base roll addition materials and make a recommendation to the Legislative Council for a final determination. A resolution approving additions to the base roll shall include the name of the individual, a statement explaining the need for the change and a statement certifying that the Nation has conducted research and possesses records in the file of each individual to be added to the Nation's base roll. The resolution shall also request approval from the Secretary of the Interior in accordance with Article II, Section 1(a) of the Constitution.

(D) The Enrollment Program shall submit the resolution and properly formatted base roll document adding or changing the base roll to the Secretary for approval. The Secretary will consider the Nation's request and the statement in the resolution certifying that the additions were properly researched in accordance with subsection C.

Section ~~45~~ Certified Copies of Enrollment Records

(A) Certified Copies

Upon written request, the ~~enrollment committee~~Enrollment Committee, its director or staff, shall issue a certified copy of any certificate or record in its custody to any person eligible to receive such copy, except such certificates or records which are made confidential and have been sealed in accordance with subsection 4(F) of Article V of this ordinance. Each copy shall bear the date it was issued and shall be impressed with the raised seal of the Tohono O'odham Nation ~~of Arizona~~.

(B) Legal Status of Certified Copies

A certified copy of a certificate or record or any part thereof issued in accordance with this section shall have the same status and shall be considered for all purposes that same as the original, and shall be prima facie evidence of the facts therein states.

(C) Dissemination of Information

Tribal, federal and such other agencies as the director of the ~~enrollment committee~~Enrollment Committee may designate may, upon request, be furnished copies or data for statistical or research purposes upon such terms and conditions, including fees and other costs, as the director of the ~~enrollment committee~~Enrollment Committee may provide.

(D) Identification Cards

Upon request, the ~~enrollment committee~~Enrollment Committee shall issue an official identification card to any person whose name is contained on the membership roll of the Tohono O'odham Nation. The identification card shall be in form and content designated by the ~~enrollment committee~~Enrollment Committee and shall include the name and membership number of the enrollee.

(E) ~~—~~Prohibitions

No person shall prepare or issue any identification card or certificate which purports to be an original, certified copy, or copy of any identification card, or of a certificate or record of enrollment, blood degree or adoption into membership of the Tohono O'odham Nation except as authorized by this article and the regulations adopted hereunder.

(F) ~~—~~Rules and Regulations

The director of the ~~enrollment committee~~Enrollment Committee shall establish by rules and regulations the fees, if any, to be charged for searches, copies of records and identification cards. The director shall keep a true and accurate account of all fees

collected by him under this article and shall deposit them with the treasurer of the Tohono O'odham Nation to be credited to the general fund of the Nation.

Section 56 Confidentiality of Records

(A) Except as provided in this ordinance,

(1) No information, including but not limited to testimony, evidence, membership applications, adoption applications, files, records, degree of Papago-Tohono O'odham Indian blood, reports and papers produced before or in possession of the Enrollment Committee or the Enrollment Program shall be made public, admitted in evidence, or used in any manner in any proceedings not authorized by this ordinance; and

(2) No information, documents or records shall be released to or disclosed to any person as all documents and records are the property of the Enrollment Program.

(B) The Tohono O'odham Judicial Court shall receive Enrollment Committee and program records only for the purpose of appeals that are expressly authorized by this ordinance.

(C) Exception. The enrollment office shall provide the following information exclusively for the purposes stated below, provided that such information shall not be used for any other purpose and shall remain confidential:

(1) The names and addresses of all enrolled adult members shall be provided to the Chief Judge of the Tohono O'odham Judicial Court solely for inclusion in a master jury pool list;

(2) The number of members assigned to each regional reference shall be provided to the Election Board solely for the purpose of fulfilling its duties in accordance with the provisions of Article V, Section 2 of the Constitution; and

(3) The following shall be provided to the Office of Attorney General upon written request for its representation of the Nation in child in need of care cases and in Indian Child Welfare Act proceedings:

a. Name and last known address of a minor child's parent(s) and/or legal guardian(s)

b. Enrollment status and certificates of final determination for minor child(ren), parent(s), and legal guardian(s).

- (4) A status letter confirming the membership status of a tribal member may only be issued to an agency or federal, state, or tribal entity upon submission of a formal written request to the Enrollment Program.
- (5) The information required by Arizona laws and regulations in support of a member's request for a delayed birth certificate may be issued to the Arizona Department of Health Services, Bureau of Vital Records upon submission of a formal written request to the Enrollment Program.
- (6) The lineal ancestors, regional reference, and community/village of a legally adopted member may be released to that member for purposes of enrolling that member's biological child(ren).
- (7) The names and enrollment numbers of members who have relinquished their tribal membership shall be given only to the Nation's Election Board, district chairperson, and district vice-chairperson of the relinquished member's regional reference after Council has recognized the relinquishment.
- (8) The enrollment director may release member information to tribal, federal or other agencies upon written request.

Section 67    Master Jury List

(A) On July 1<sup>st</sup> of every general election year, the Enrollment Director shall furnish the names, dates of birth, and addresses of all enrolled adult members of the Nation to the chief judge for the sole purpose of creating a master jury list pursuant to 6 T.O.C. Chapter 1, Section 1215. \_

(B) The Enrollment Director shall also furnish the information specified in Subsection (a) above upon written request by the chief judge indicating that the master jury list has been destroyed or substantially damaged.

(C) The Enrollment Director may share information with the clerk of court for verification purposes.

Section 67    Notice of Address or Name Change

(A) An enrolled member shall notify the Enrollment Program within 30 days after any change in the member's name or address by submitting an enrollment name or address change form with applicable legal documents.

(B) The parent or guardian with legal decision-making authority over an enrolled minor shall notify the Enrollment Program within 30 days after any change in the minor's name or address by submitting an enrollment name or address change form with applicable legal documents. \_

Section ~~78~~ Penalties

(A) A person is guilty of a criminal offense punishable by a fine of not less than fifty dollars nor more than five hundred dollars or imprisonment for not more than four months, or both, who:

- (1) Wilfully and knowingly make any false statement in an application for membership, for determination of blood degree or for adoption required to be filed under this ordinance, or who wilfully and knowingly supplies false information intending that such information be used in the processing of applications for membership, for determination of blood degree or for adoption.
- (2) Without lawful authority and with the intent to deceive makes, alters, amends, mutilates or removes any identification card, record, certificate or document filed or issued under this ordinance or a certified copy of such record, certificate or document.

(B) Nothing in this section shall be construed to authorize or require the criminal trial and punishment of non-Indians except to the extent allowed by any applicable present or future acts of Congress or any applicable federal court decision.

Section ~~8-9~~ Effective Dates-Multiple Applications

For purposes of the Act of January 3, 1983 (Public Law 97-408) which provides for per capita distributions to enrolled members of the Tohono O'odham Nation of funds appropriated pursuant to the Act of September 30, 1976, (90 Stat. 1416) in satisfaction of a judgment awarded to the Nation in Dockets 345 and 102 of the Indian Claims Commission, every application for enrollment or adoption filed after July 2, 1983, by or on behalf of an applicant in whose name an application for enrollment or adoption has been filed on or before July 2, 1983, and upon which no final determination has been made, shall be deemed an amendment of, and shall date back to the date of the earlier application.

Section ~~9-10~~ Repeal of Prior Conflicting Ordinances and Resolutions

Any ordinances or resolutions in conflict herewith shall be repealed to the extent of such conflict.