

Chapter 21. Membership

Legislative History.

The Membership Ordinance was originally enacted by the Tribal Council on December 9, 1983. On October 11, 1988, the Tribal Council made the Membership Ordinance part of the Law Order Code, Chapter 21. Except for some minor changes in language and deletion of repetitive sections, there are no substantial changes to the provisions.

Sec. 1. Legislative Intent.

This chapter defining and regulating membership, in accordance with the authority contained in the Constitution, Art. II, Sections 1 – 3, is enacted to establish an orderly enrollment procedure which affords due process and equal protection to all persons who are members or those wishing to become members.

Sec. 2. Short Title.

This chapter of the Law & Order Code may be cited as the “Enrollment Act”.

Sec. 3. Definition of Terms.

- (a) “Applicant”, as used in this chapter means, the person seeking to be enrolled.
- (b) “Appellant”, as used in this chapter means, a person who is appealing the Tribal Council’s decision to reject an application for enrollment.
- (c) “Sponsor”, as used in this chapter means, the applicant’s parents, legal guardian, spouse, next of kin or other person authorized to file enrollment documents on behalf of the applicant.
- (d) “Enrollment Committee”, as used in this chapter means, a committee established by the Tribal Council with the authority to recommend to the Tribal Council whether enrollment applications should be approved or rejected and to initiate disenrollment proceedings.
- (e) “Relinquishment”, as used in this chapter means, the voluntary withdrawal from membership in the Fort McDermitt Tribe.
- (f) “Disenrollment”, as used in this chapter means, an affirmative action by the Tribal Council to deprive a member of the right to tribal membership.
- (g) “Member”, as used in this chapter means, a member of the Fort McDermitt Paiute-Shoshone Tribe.
- (h) “Enrollment document”, as used in this chapter means, an application, petition, letter, notice, or recommendation submitted by a member, applicant, or the Enrollment Committee.
- (i) “Bona-fide Residence”, as used in this chapter means, a fixed and permanent place on the Fort McDermitt Indian Reservation where one lives and if a member leaves the residence for employment, education, military service, etc., he intends to return.
- (j) “Tribal Council”, as used in this chapter means, a majority of the duly elected members of the Fort McDermitt Paiute-Shoshone Tribe’s Tribal Council.
- (k) “Tribe”, as used in this chapter means, the Fort McDermitt Paiute-Shoshone Tribe of Oregon & Nevada.

Sec. 4. Requirement of Written Application for Membership.

A separate written application or a form approved by the Tribal Council shall be filed with the Enrollment Committee by or on behalf of each person applying for enrollment as a member of the Tribe.

Sec. 5. Application Requirements.

Each application submitted to the Enrollment Committee shall be assigned a number and show the date of receipt by the Enrollment Committee.

Sec. 6. Enrollment Committee; Authority; Duties.

The Enrollment Committee shall review all enrollment applications, consider the information provided and make a written recommendation to the Tribal Council as to whether the application should be approved or rejected.

Where the Enrollment Committee needs additional information, it may request such information from the applicant or sponsor and/or ask the applicant to appear before the Committee for a personal interview.

Sec. 7. Notice Where Rejection of Application Recommended.

- (a) Written Notice Required. Whenever the Enrollment Committee recommends rejection of an application for membership, the Tribal Council shall give such applicant written notice that a hearing on the matter will be held, before the Tribal Council.
- (b) Contents of Notice. The notice shall advise the applicant (1) the tribal membership requirements which he applicant failed to establish or give the reasons the application's rejection is recommended; (2) advise the applicant that the hearing shall be held at the next regularly scheduled Tribal Council Meeting during Executive Session, unless the applicant wants a public hearing; (3) advise that the applicant has the ability to present and cross-examine witnesses and Enrollment Committee members; (4) advise the applicant that due process and equal protection guarantees afforded under tribal law will be extended; and, (5) advise that if the applicant needs more time to prepare that the hearing shall be continued to the following regularly scheduled Tribal Council Meeting if the applicant files written notice with the Secretary of the Tribal Council at least five days before the first scheduled hearing date.
- (c) Manner of Giving Notice. The notice required under this section shall be given twenty (20) days prior to the next regularly scheduled Tribal Council Meeting by Certified Mail and return receipt required or by personal service.

Sec. 8. Disenrollment; Method and Notice.

- (a) Authority to Review Member's Eligibility. When the Tribal Council has received a verified written statement, with the statement's author's signature notarized, citing specific allegations for disenrollment of a tribal member, the Tribal Council shall

review the tribal member's enrollment file to see if all requirements for membership have been met.

- (b) Notice to Member. When the Tribal Council has received a statement in accordance with subsection (a), and it has determined that there is sufficient evidence to question the membership of a member, it shall notify the member of the statement, provide him a copy and advise the member that a hearing shall be held at the next regular Tribal Council Meeting during Executive Session, unless the member wants a public hearing. The notice shall also advise the member that should he require more time to prepare for the hearing one continuance shall be granted as of right.
- (c) Determination by Resolution. The Tribal Council shall express its final determination of eligibility as a member by Tribal Council Resolution. The resolution shall demonstrate: the basis of the verified statement, date of birth of the member, the membership requirements not established, how notice of the hearing was given, date of receipt of notice of hearing, and whether the member was present at the hearing. A separate notice shall advise the member of the right to appeal to the Tribal Court.

Sec. 9. Enrollment; Method and Notice.

- (a) Notice. If the Tribal Council shall approve enrollment in the Fort McDermitt Tribe for an applicant, the applicant shall be afforded written notice of such action.
- (b) Contents of Notice. The notice afforded a newly enrolled member shall advise of the date of enrollment, the Tribal Council.
- (c) Manner of Notice. Notice shall be afforded a newly enrolled member promptly. Notice shall be sent by regular mail to the address on the application for membership or as the files of the Enrollment Committee, Tribe or Tribal Council indicate.

Sec. 10. Right to Appeal to Tribal Court.

Any person whose application for membership has been rejected by the Tribal Council or any member who has been disenrolled by act of the Tribal Council shall have the right to appeal to the Tribal Court.

Sec. 11. Decision of Tribal Court Final.

The decision of Tribal Court shall be final and there shall be no appeal from the decision of the Tribal Court by the applicant or member or Tribal Council.

Sec. 12. Method of Appeal.

To appeal, a person must clearly express, in writing, an intent to appeal the decision of the Tribal Council to the Tribal Court to the Chairman and Secretary of the Tribal Council by personal service on the Chairman and Secretary. After being served, the Secretary of the Tribal Council shall forward to the Court Clerk a complete copy of the membership file, notes and deliberations of the Enrollment Committee, names of the Enrollment Committee who participated in the decision to reject the application for membership or the names of the tribal council members who participated in the decision to accept the Enrollment Committee's recommendation or who acted on the request for disenrollment as well as the Minutes of the Tribal Council Meetings where this applicant's application or member's membership was discussed or acted on.

Sec. 13. Appellate Review; Burden of Proof.

- (a) Where Enrollment Applications Rejected. The burden of proof of establishing membership eligibility shall be on the applicant for membership. The Court shall review all documents, notes and other memorandums before the Enrollment Committee and Tribal Council as well as any new documents not discoverable during the proceedings before the Enrollment Committee or Tribal Council including those on file with any federal agency.
- (b) Where Member Disenrolled. The burden of proof of disenrollment of a member shall be on the Tribal Council. The Court shall review all documents, notes and other memorandums before the Enrollment Committee and Tribal Council as well as any new documents not discoverable during the proceedings before the Tribal Council including those on file with any federal agency.

Sec. 14. Tribal Membership Roll; Contents.

The tribal membership roll shall contain the names of all enrolled members of the Fort McDermitt Paiute-Shoshone Tribe of Nevada and Oregon arranged in alphabetical order. The roll shall also indicate the person's enrollment number, sex, date of birth, date of death, blood degrees, marital status, relationship to base enrollees, base roll number, constitutional authority for enrollment, and any remarks deemed necessary.

Sec. 15. Tribal Membership Roll; Keeping Current.

The Enrollment Committee shall take appropriate steps to keep the tribal membership roll current and shall annually review the roll for such purpose. The names of those who have died or relinquished membership shall be noted on the roll and the names of all persons whose applications for enrollment have been approved by the Tribal Council shall be promptly added to the roll.

Sec. 16. Repeal of Prior Conflicting Laws.

Any rules, regulations or ordinances enacted by the Tribal Council that are in conflict with any section or subsection of this chapter are hereby rescinded.

Sec. 17. Grounds for Disenrollment.

The Tribal Council shall not consider any statement or request for disenrollment of any member except for one of the following reasons:

- (a) The person obtaining membership by fraud, deceit or misrepresentation.
- (b) The person is a descendant of a person disenrolled pursuant to subsection (a) of this section and does not otherwise meet the membership criteria of the Fort McDermitt Tribe, provided, that the Tribal Council in its discretion may decline to proceed under this section.

Sec. 18. Relinquishment of Membership; Method.

An application for relinquishment of membership shall not be made by any person other than the member unless accompanied by proof that the person requesting the relinquishment is the legal guardian or conservator of the person whose membership will be relinquished. "Proof", as used in this section, means a court order by a court of competent jurisdiction or a notarized statement of the member.

Sec. 19. Effective Date of Relinquishment of Membership.

The effective date of the relinquishment of membership shall be the day following the action of the Tribal Council by Tribal Council Resolution.

Sec. 20. Honorary Membership.

Notwithstanding any requirements in this Chapter, the Tribal Council may adopt any person as an honorary member of the Fort McDermitt Paiute-Shoshone Tribe of Oregon & Nevada, provided, that no honorary member shall have the right to vote, share in tribal assets or participate in the government or share other rights and institutions of the Tribe.

Sec. 21. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.