

Ordinances of the Elk Valley Rancheria, California

Last amended: 2002

Enrollment Ordinance

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WHEREAS, Article III of the Constitution of the ELK VALLEY RANCHERIA prescribes certain requirements for membership in the Tribe; and

WHEREAS, Article III, section 3 of the Constitution authorizes the Tribal Council to enact ordinances, not inconsistent with the Constitution, concerning membership in the Tribe; and

WHEREAS, it is apparent that a current membership roll compiled under a consistent and reasonable interpretation of Article III is essential and necessary to plan, coordinate and conduct Tribal Business in an efficient manner;

NOW, THEREFORE, BE IT ENACTED THAT:

SECTION 1. PURPOSE.

The Elk Valley Rancheria Tribal Council finds it to be in the best interest of all members and potential members to clarify the procedures and evidence used by the Tribal Council for determining enrollment and blood degree corrections. This Ordinance formally establishes an Enrollment Committee and directs that committee, among other things, to process applications, hold necessary hearings, and prepare recommendations for the Council. The Council bears the

responsibility for making all enrollment decisions and for assuring compliance with the Constitution and this Ordinance.

SECTION 2. DEFINITIONS.

2.1 APPLICANT shall mean a person seeking to enroll in the Elk Valley Rancheria, and shall include a parent or guardian of a minor or incompetent seeking enrollment.

2.2 COMMITTEE shall mean the Enrollment Committee of the Tribe, as established in Section 10.1 herein.

2.3 COUNCIL shall mean the Tribal Council of the Elk Valley Rancheria.

2.4 ENROLL shall mean the lawful placement of a person's name upon the tribal roll in accordance with this Ordinance.

2.5 GENDER. The terms "he," "his," "him," and the like shall be deemed to include "she," "her," etc.

2.6 MARRIED shall mean being in the state of lawful matrimony as recognized by the written laws of the State of California.

2.7 TRIBAL MEMBER; MEMBER shall mean any living person who is a duly enrolled member of the Tribe.

2.8 PARENT shall mean the natural, biological parent.

2.9 PREPONDERANCE OF EVIDENCE shall mean evidence that is superior in weight, importance, or strength, and this is more credible and convincing to the mind, than the opposing evidence.

SECTION 3. MEMBERSHIP IN THE ELK VALLEY RANCHERIA.

Membership of the Elk Valley Rancheria is set forth under Article III, Sections 1 and 2 of the tribe's Constitution and consists as follows:

Section 1 (a). All persons whose names are listed as distributees on the Plan for the Distribution of Assets of the Elk Valley Rancheria approved by the Secretary of the Interior on January 15, 1960, pursuant to the California Rancheria Act of August 18, 1958, as amended. The list of distributees contained in the Distribution Plan shall constitute the base membership roll of the Rancheria.

Section 1 (b). Descendants of persons whose names are listed on the base membership roll, Provided That he/she possesses at least one eighth degree or more Indian blood.

Section 1 (c). All children born after the adoption of the Constitution to any member who are one-eighth degree or more Indian blood.

Section 2. Except as provided in section 7.4 of this ordinance, no person shall be eligible to be a member of the Elk Valley Rancheria if that person has at any time relinquished membership in the Rancheria, or, except as provided in Section 7.1.6 of this ordinance, if that person is enrolled in another federally recognized Indian tribe.

SECTION 4. ADOPTION. Pursuant to Article III, section 3 of the Constitution of the Elk Valley Rancheria the Elk Valley Rancheria Tribal Council hereby authorizes adoption into tribal membership.

4.1 ELIGIBILITY FOR ADOPTION. The following persons shall be eligible to apply for adoption into Tribal membership:

(a) All persons, possession at least one eighth degree or more Indian blood, who at any time resided on the Elk Valley Rancheria prior to publication of the Plan for the Distribution of Assets of the Elk Valley Rancheria approved by the Secretary of the Interior on January 15, 1960, pursuant to the California Rancheria Act of August 18, 1958, as amended, but who were not included on the Plan for Distribution.

(b) Descendants of persons meeting the criteria of subsection (a) above, Provided That he/she possesses at least one eighth degree or more Indian blood.

4.2 ADOPTION PROCEDURE. Applications for adoption shall be processed on such forms as may be developed by the enrollment committee, in the same manner as are applications for enrollment.

4.3 DISCRETIONARY AUTHORITY. Adoption of eligible applicants into tribal membership shall be at the sole and absolute discretion of the Tribal Council of the Elk Valley Rancheria.

SECTION 5. ENROLLMENT ELIGIBILITY; EVIDENCE.

5.1 ELIGIBILITY FOR ENROLLMENT. Any applicant who meets the criteria contained in Article III of the tribe's Constitution or has been approved for adoption into the Elk Valley Rancheria, shall, upon compliance with this Ordinance, be enrolled as a member of the Tribe by Council resolution approving an application for enrollment.

5.2 BURDEN OF PROOF. The burden of proof shall be upon the applicant to establish every element of his entitlement to enrollment under the tribe's Constitution and this Ordinance, unless otherwise specifically stated herein. Any matter to be proven under this Ordinance must be proven to the satisfaction of the Enrollment Committee or the Council by a preponderance of the evidence.

5.3 ENROLLMENT EVIDENCE. Any relevant evidence may be considered. Acceptable evidence shall include, but not be limited to: Birth certificates; certified copies of birth certificates; baptismal records; 1928, 1950, or 1968 applications for the roll of Indians of California; reservation census rolls; Bureau of Indian Affairs (BIA) certifications of Indian blood quantum, allotment or probate records; Indian Health Service records; hospital, clinic, or doctors' records; records of state Bureaus of Vita Statistics; adoption records; results of blood tests; verified statements concerning paternity; and testimony of witnesses based on personal knowledge. A BIA certification of Indian blood quantum combined with a birth certificate confirming the identities of the parents as identified in the BIA certification shall constitute a prima facie showing of enrollment eligibility.

SECTION 6. DETERMINATION OF INDIAN BLOOD.

6.1 COMPUTATION. The degree or quantum of Indian blood of an applicant shall be determined by adding one-half the degree of Indian blood of each parent as shown on the roll. In the event of a conflict, the most recent resolution regarding enrollment or Indian blood degree possessed shall control.

6.2 MARRIED PARENTS. Where the natural mother of the applicant was married at least nine months prior to the applicant's birth, there shall be a rebuttable presumption that the mother's husband at the time of the applicant's birth is the natural father of the applicant. The presumption may be rebutted by a preponderance of evidence.

6.3 UNMARRIED PARENTS. Where the natural mother of the applicant was not married nine months prior to the applicant's birth, the Indian blood degree of the natural father of the applicant may be used to compute the applicant's Indian blood degree only if the applicant provides evidence establishing the parent/child relationship.

SECTION 7. DISENROLLMENT.

7.1 GROUNDS FOR DISENROLLMENT. All proceedings for disenrollment shall be pursuant to this section. No person shall be disenrolled except on the following grounds:

7.1.1 Fraud or misrepresentation of any evidence, application or data presented in connection with his application; or

7.1.2 Error; provided that no person on the roll on the effective date of this Ordinance may be disenrolled for error, and provided further, that no person shall be disenrolled for error if five years have passed since the date of his enrollment; or

7.1.3 Receipt of a verified request of a member, or the member parent of a minor or incompetent member, voluntarily relinquishing membership, provided that, no relinquishment of membership on behalf of a minor shall become effective until the minor reaches the age of majority.

7.1.5 Conviction of a violation of tribal law that, under the law, is punishable by disenrollment.

7.1.6 Application for and acceptance into membership in another federally recognized tribe. Membership in another federally recognized tribal shall not result in disenrollment, upon a showing that the member has acted to relinquish membership in the other federally recognized tribe and taken such other affirmative steps as may be available to accomplish disenrollment in the other federally recognized tribe.

7.2 DISENROLLMENT PROCEDURE. An involuntary disenrollment proceeding may be initiated by the Committee. In the case of involuntary disenrollment, the burden of proof shall rest upon the Committee, and the member who is the subject of the proceeding shall be given not less than thirty days written notice, by certified mail, of a hearing before the Committee on the proposed disenrollment.

7.3 REMOVAL OF DECEASED. When the Committee learns that a member has passed away the name of the deceased member shall be removed from the roll. Information on the deceased shall be maintained in a list of formerly enrolled members.

7.4 RELINQUISHMENT OF MEMBERSHIP.

7.4.1 Adults. Any adult member who wishes to relinquish membership in the Elk Valley Rancheria must submit such relinquishment in writing to the Tribal Council Chairperson who shall cause tribal enrollment records to be adjusted accordingly. Any such member who voluntarily relinquishes membership shall not again be eligible to enroll as a member of the Elk Valley Rancheria.

7.4.2 Minors. An application to relinquish membership of a minor member must be submitted in writing to the Tribal Council Chairperson who shall cause tribal enrollment records to be adjusted to reflect the application. Except where relinquishment is required to allow immediate enrollment in another federally recognized tribe, no minor shall be removed from the membership rolls of the Elk Valley Rancheria prior to reaching the age of majority. Relinquishment of membership pursuant to application of a parent or guardian, submitted during the members minority shall not disqualify the member from applying for membership in the Elk Valley Rancheria after reaching the age of majority.

SECTION 8. ENROLLMENT PROCEDURE.

8.1 APPLICATION FORMS. All enrollments and blood degree corrections shall be requested by submission of a complete application, on forms approved by the Council. Forms may be obtained from the Enrollment Committee or the Enrollment Officer, upon written or oral request. Each complete application shall contain a statement that the applicant has supplied all relevant data that he/she intends to submit to the Tribe on the issue of his/her enrollment, and a certification that the information contained on the application form and accompanying documents is true to the best of the knowledge and belief of the applicant. Attached to the application shall be a BIA certification of Indian blood, birth certificate or other verifying evidence.

8.2 FILING OF APPLICATION FORMS. Application forms and supporting documents shall be filed with the Committee at the tribal office in person or by mail. Appropriate Tribal staff shall stamp all application forms with the date on which they were filed. A copy of receipt stamped application shall be made and returned to the applicant. The applicant shall notify the Enrollment Committee in writing of any change in address.

8.3 REVIEW OF APPLICATION BY ENROLLMENT COMMITTEE. The names of all applicants for enrollment shall be posted on the public bulletin board of the Tribal Office for at least fourteen days before an application may be acted on by the Committee. Thereafter, the Committee shall review an application, including all supporting documentation and any written challenges, as soon as is reasonably possible. After any relevant notice periods have expired, and upon review by an application, the Committee may do the following: Recommend approval or denial of the application to the Council, in writing, stating the reasons for approving or denying the application; Request more information or evidence in support of the application; Set the matter for hearing.

8.4 CHALLENGE TO ENROLLMENT. Any member of the tribe may file a challenge to an application for enrollment. Such challenge shall be in writing, filed on such form, if any, as the Election Committee shall prescribe and filed no later than fourteen days after the name of the applicant is posted. The challenge shall be submitted under penalty of perjury, shall state the grounds for the challenge and shall include as attachments, any evidence in support of the challenge.

8.5 DENIAL OF APPLICATION. If the Committee decides to recommend denial to the Council, the Committee shall notify the applicant or participant, by certified mail, of its action. The notice shall advise the applicant or participant of his right to request a hearing before the Committee, as provided in this Ordinance, within 30 days of receipt of the notice. An application that may be the subject of a Committee hearing shall not be sent to the Council with a recommendation until after the time for requesting a hearing has expired, or the hearing has been held and the applicant or participants have been notified.

8.6 COUNCIL ACTION. Following receipt of an application and the recommendation of the Committee, the Council shall approve or deny the application, request more information of the Committee, or remand an application to the Committee for a hearing. In general, enrollment matters shall be taken up on a quarterly basis. The factual basis for the Committee's recommendation shall not be reopened by an applicant or participant before the Council without a showing, as described in section 9.3, that the applicant or participant has available for immediate presentation certain evidence which was not available for presentation to the Committee, or that this Ordinance has been violated. Within 30 days of making a decision, the Council shall notify the applicant and any participant by certified mail of its decision. The Council's decision to approve or deny an application shall be final, subject to section 9.

8.7 EFFECTIVE DATE OF COUNCIL ACTION. A person enrolled by the Council, or by operation of this Ordinance, shall be entitled to exercise tribal rights on the date of favorable enrollment action by the Council or by operation of this Ordinance. A person whose application was denied shall be permitted to appeal pursuant to Section 9.

SECTION 9. HEARINGS REMANDS AND APPEAL.

9.1 NOTICE. When an applicant or participant requests a hearing by the Committee, or the Committee or Council sets a matter for a hearing, the applicant or participant shall be given written notice of hearing, by certified mail, not less than 30 days before the hearing. The notice shall contain the reason for the hearing, describe evidence to be presented, and shall advise the applicant or participant he/she has the right to be represented by counsel at his/her own expense and to present witnesses and other evidence and that the Committee may be represented by counsel for the Tribe.

9.2 COMMITTEE HEARING PROCEDURE. An applicant or participant wishing a hearing must request one in writing within 30 days after being notified of the Committee's recommendation to deny an application. The Applicant or participant may present witnesses and other evidence and be represented by counsel at his own expense. The hearing will be presided over by the Chairman or Vice-Chairman of the Committee. The Committee shall designate a hearing officer and may be advised by counsel at the hearing. Formal rules of evidence need not be followed, but the burden of proof remains on the applicant, except in disenrollment proceedings. At the end of the hearing, the Committee may make an immediate decision or take the matter under advisement. The Committee shall notify the applicant or participant of its recommendation to the Council within 30 days.

9.3 REOPENING THE APPLICATION. Either before or after the Council acts pursuant to Section 8.5, an applicant or participant may petition the Council, in writing, to reopen an application on the following grounds:

9.3.1 Newly-discovered, substantial, credible evidence that is material to the application, which the applicant or participant could not with reasonable diligence have discovered and given to the Committee; or

9.3.2 A violation of the tribe's Constitution or this Ordinance;

9.4 REMAND. Upon granting a petition under Section 9.3, the Council shall remand the application to the Committee for reconsideration upon any newly-discovered evidence and the previous record. A remanded application shall be treated as if it were an original application.

9.5 APPEALS. The decision of the Council pursuant to Section 8.5 or 9.3 or otherwise, to approve or deny an application, or to deny a petition to reopen, is final. Except where a case is remanded to the Committee, review of Committee determinations shall be limited to review of the record produced in connection with any Committee hearing and the application administration process.

SECTION 10. ENROLLMENT OFFICE AND COMMITTEE.

10.1 TRIBAL ENROLLMENT OFFICE. There is hereby established the Elk Valley Rancheria "Tribal Enrollment Office," which shall be headed by an Enrollment Officer who shall be the Secretary of the Elk Valley Rancheria. The Enrollment Officer may be assisted by such staff members as the Tribal Council may authorize. The Enrollment Officer and staff members shall be subject to the Policies and Procedures of the Elk Valley Rancheria and shall be paid such salaries, if any, as the Tribal Council shall in its budget provide. The Tribal Enrollment Office shall perform such duties as the Tribal Enrollment Committee may delegate.

10.2 ENROLLMENT COMMITTEE ESTABLISHMENT. There is hereby established an Enrollment Committee comprising three adult members of the Tribe who shall be residents of the Del Norte County Area. At least one of the Committee members shall be a member of the Tribal Council. The Committee shall be appointed by the Council to serve two-year terms, subject to removal for cause, as determined by the Council. From among its members the Committee shall select a Chairman and Vice-Chairman. The Enrollment Committee shall meet at the call of the Committee chairman. Its members shall be paid per diem and expenses, if any, as provided from time to time by the Tribal Council.

10.3 POWERS. The Enrollment Committee shall exercise the powers and perform the duties assigned to it by this Ordinance, and such other duties as may be assigned it by the Council. The Committee shall draft, for consideration by the Council, such regulations and forms as may be necessary fairly to implement this Ordinance.

10.4 RECORDS. The Enrollment Committee shall maintain and safeguard the tribal roll and the records and files of the Tribe relating to enrollment. No change shall be made in the tribal roll or in the blood degree of any member except pursuant to written resolution of the Council or this Ordinance. Minutes shall be taken of Committee meetings and a written record shall be kept of actions taken, and all recommendations to the Council made by the Committee. Transcripts or recordings shall be made of all hearings conducted by the Committee, and these shall be maintained for at least five years.

10.5 CONFIDENTIALITY. All records, documents, and information submitted by any person pursuant to this enrollment ordinance shall be maintained in confidential files at the tribal office. Confidential materials shall be available only to Enrollment Committee and Council members as necessary in administering this ordinance, or with the consent of the applicant.

SECTION 11. TRIBAL ROLL.

11.1 BASE MEMBERSHIP ROLL. The Base Membership Roll of the Rancheria shall consist of all persons whose names are listed as distributees on the Plan for the Distribution of Assets of the Elk Valley Rancheria approved by the Secretary of the Interior on January 15, 1960, pursuant to the California Rancheria Act of August 18, 1958, as amended. The list of distributees contained in the Distribution Plan shall constitute the base membership roll of the Rancheria.

11.2 TRIBAL MEMBERSHIP ROLL. A tribal membership roll shall be maintained which contains the names of all enrolled members of the Elk Valley Rancheria, arranged in alphabetical

order. For each member, the roll shall also contain the member's enrollment number, sex, date of birth, Indian blood degree, parents' Indian blood degree, member's address.

11.3 ROLL OF FORMER MEMBERS. The names of all persons who are deceased and all persons who have relinquished their membership or who have been disenrolled shall be removed from the roll and entered on a separate roll of former members, which shall include all information maintained on each member as designated in section 11.2, above, and shall also include the date and reason for removal of the person from the membership roll, as well as a reference to the Tribal Council resolution approving the removal of the person from the membership roll.

11.4 RESPONSIBILITY FOR MAINTENANCE. The Enrollment Officer shall maintain a current membership roll. The names of all persons who are deceased and all persons who have relinquished their membership or who have been disenrolled shall be removed from the roll and entered on a separate roll of former members, which roll shall include information as designated in section 11.3, above. The names of all persons whose applications have been approved shall be promptly added to the roll. All actions relating to official alteration of the roll shall be authorized by Council resolution.

The Official Tribal Membership Roll shall be certified by the tribal council on an annual basis. The Committee shall annually review the roll for such purpose, and shall present it to the Council for certification, along with a report summarizing all additions and deletions to the roll that occurred in the preceding year.

SECTION 12. ENROLLMENT MORATORIUM.

Nothing in this Ordinance shall be deemed to limit the authority of the Tribal Council to impose a moratorium on tribal enrollment at such time and for such reasonable period as the Council shall determine necessary to protect tribal interests. During an enrollment moratorium, the Tribal Council Chairperson, or his designee shall have authority to certify membership of minor's who are otherwise eligible for enrollment, for the limited purpose of applicability of the Indian Child Welfare Act, and such other purposes as may be designated by the Council when it enacts any moratorium.

SECTION 13. EFFECTIVE DATE & AMENDMENT.

This Ordinance shall be effective from the date of its certification by the Tribal Council Secretary following approval by a two-thirds vote of the Tribal Council, and may be amended in a like manner.

CODE REVISER CERTIFICATION

I, the undersigned, as Code Reviser of the Elk Valley Rancheria Tribal Code, do hereby certify as follows:

The Elk Valley Rancheria Tribal Council did the attached: ordinance regulation amendment

Title or descriptive name:

ENROLLMENT ORDINANCE, ELK VALLEY RANCHERIA

Date of Council Action: May 24, 1995

The attached document represents a complete and integrated copy of the: code ordinance

regulation amendment in effect as of the date of this certification.

The attached document represents a complete copy of the: code ordinance regulation

amendment in effect as of the date of this certification, as amended by the attached amendments with certified effective dates as follows:

This ordinance regulation amendment becomes effective on the date of this certification.

Dated: May 24, 1995

/s/

Tribal Council Secretary/Code Reviser
Elk Valley Rancheria

[Attach this Certification to the official copy of the ordinance to be permanently maintained in tribal records.]

Enacted 5/24/95, Resolution No. 95-21