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# The Cherokee Code

## Published by Order of the

### Tribal Council of the Eastern Band of Cherokee

### Indians

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**\*Digitizer's Note:** Chapter numbers that are skipped below do not represent undigitized portions of the code. Some chapter numbers were not used and also not marked "Reserved" by the tribe

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## Officials of the Eastern Band of the Cherokee Nation at the Time of This Codification

\_\_\_\_\_  
Leon D. Jones  
*Principal Chief*

\_\_\_\_\_  
Carroll J. Crowe  
*Vice-Chief*

\_\_\_\_\_  
*Cherokee Tribal Council  
Chairman*

Dan McCoy, Birdtown Township  
*Vice-Chairman*

Alan B. Ensley, Yellowhill Township  
*Members*

Bob Blankenship, Yellowhill Township

Larry Blythe, Wolfetown Township

Marie L. Junaluska, Painttown Township

Brenda L. Norville, Snowbird and Cherokee County Township

Teresa Bradley McCoy, Big Cove Township

Jim Owle, Birdtown Community

Carroll Parker, Wolfetown Township

Glenda Fisher Sanders, Snowbird & Cherokee County Township

Tommye B. Saunooke, Painttown Township

Mary W. Thompson, Big Cove Township

### Preface

This Code constitutes a recodification of the general laws and permanent ordinances and resolutions of the Eastern Band of the Cherokee Nation.

Source materials used in the preparation of the Code were the 1992 Code and ordinances and resolutions subsequently adopted by the Tribal Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The history note indicates the number of the ordinance or resolution, and the effective date thereof. By use of the comparative table appearing in the back of this Code, the reader can locate any ordinance or resolution included herein.

The chapters of the Code have been conveniently arranged and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together have been included.

#### ***Chapter and Section Numbering System***

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Chapter numbers generally will coincide with the North Carolina General Statutes to aid attorneys and others researching the law of the Eastern Band. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is

identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included in the same manner. If the new material is to be included between chapters 12 and 13, it will be designated as chapter 12.5.

### ***Page Numbering System***

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
CHARTER COMPARATIVE TABLE	CHTCT:1
CODE CHAPTERS [chapter number: page number]	1:1
CODE COMPARATIVE TABLE	CCT:1
CHARTER INDEX	CHTi:1
CODE INDEX	CDi:1

### ***Indexes***

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

### ***Looseleaf Supplements***

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

### ***Acknowledgments***

This publication was under the direct supervision of Mary Grace Tavel, Supervising Editor, and Robert McNaughton, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to David L. Nash, Associate Counsel, Office of the Attorney General, for his cooperation and assistance during the progress of the work on this

publication. The Eastern Band also acknowledges the vision and dedication of Bradley B. Letts, Attorney General, in pursuing the republication of this expanded Code, the work of Alysia E. LaCounte of Brown & LaCounte in initially compiling this Code, and the seminal work of Ben O. Bridgers, Esq., in publishing the original Cherokee Code. It is hoped that these efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the Eastern Band of the Cherokee Nation readily accessible to all members and which will be a valuable tool in the day-to-day administration of the Tribe's affairs.

### **Copyright**

All editorial enhancements of this Code are copyrighted by Municipal Code Corporation and the Eastern Band of the Cherokee Nation. Editorial enhancements include, but are not limited to: organization; table of contents; section catchlines; prechapter section analyses; editor's notes; cross references; numbering system; code comparative table; and indexes. Such material may not be used or reproduced for commercial purposes without the express written consent of Municipal Code Corporation and the Eastern Band of the Cherokee Nation.

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## **Adopting Ordinance**

CHEROKEE COUNCIL HOUSE  
CHEROKEE, QUALLA BOUNDARY (NC)  
DATE: Introduced October 11, 1999,  
Amended and Passed November 16, 1999,  
Ratified November 24, 1999.

### **ORDINANCE NO. 20 (1999)**

*WHEREAS* the Cherokee Tribal Council is the legislative branch of the Eastern Band of Cherokee Indians; and

*WHEREAS* it is critical that the laws and ordinances of the Eastern Band be codified, printed, and made available to the public, and

*WHEREAS* the Cherokee Code was last printed in 1992, and since that time the Eastern Band has enacted a number of significant new laws and ordinances, and made important amendments to much of the existing Code; and

*WHEREAS* the Office of the Attorney General has worked with Municipal Code Corporation to publish a Tribal Code that includes all amendments through September 30, 1999, and can easily be updated to keep the published law current.

*NOW THEREFORE BE IT ORDAINED* by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that the Cherokee Code, containing the laws of the Eastern Band of Cherokee Indians enacted by the Tribal Council through September 30, 1999 is hereby adopted as the official codification of the laws of the Tribe.

*BE IT FURTHER ORDAINED* that all prior editions of the Cherokee Code, all resolutions or ordinances that are inconsistent with or in conflict with the provision of this Cherokee Code are hereby rescinded. This section shall not apply to laws, ordinances or amendments enacted after September 30, 1999, which shall be published in the next supplement to the Code and shall supercede all inconsistent provisions of this Code. Likewise, this section shall not apply to the Personnel Policy which shall be published as an appendix to Chapter 96 in the next supplement to the Code.

*BE IT FURTHER ORDAINED* that the Cherokee Code is hereby authorized for publication in sufficient copies to make these laws generally available to the public, to practicing attorneys, to government officials, and to court and law enforcement personnel.

*BE IT FURTHER ORDAINED* that the Office of the Attorney General is authorized and directed to make minor typographical and grammatical changes from time to time as may be necessary to improve the language of this Code without changing the meaning or intent of the laws enacted by the Tribal Council.

*BE IT FURTHER ORDAINED* that the Tribal Council shall ensure that this Cherokee Code is kept current by the semi-annual publication of revised pages of this Code to reflect new and amended laws. The Tribal Council will provide for the cost of such publication through its budget process.

*BE IT FINALLY ORDAINED* that this Ordinance shall be effective upon ratification by the Principal Chief.

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## Part 1: Charter and Governing Document of the Eastern Band of Cherokee Indians

Enacted and adopted May 8, 1986, by the Tribal Council of the Eastern Band of Cherokee Indians, Cherokee Council House, Cherokee, North Carolina, by Resolution No. 132 (1986), and amended by Tribal Referendum conducted October 8, 1986.

**Section 1.** The officers of the Tribe shall consist of a Principal Chief, Vice-Chief and twelve members of Council as follows: From Yellowhill Township two members; from Big Cove Township two members; from Birdtown Township two members; from Wolfetown Township two members; from Painttown Township two members; from Cherokee and Graham Counties, constituting one Township, two members.

**Section 2.** The Principal Chief or Vice-Chief and members of Council shall be elected to their respective offices by the enrolled members of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years. All officers elected by the Council shall hold office until the first annual council held after the next tribal election and all officers shall hold office until their successors are duly qualified.

**Section 3.** The election for Principal Chief and Vice Chief and Tribal Council shall be held on

the first Thursday in September, 1987, and every two (2) years thereafter, under such rules and regulations as may be adopted by the council.

**Section 4.** There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief. The committee shall execute and carry out tribal laws and administer the daily operations of the Tribe.

**Section 5.** The representatives elected to the Tribal Council shall hold office for terms of two years. The Principal Chief and Vice Chief shall hold office for terms of four years.

**Section 6.** The Tribal Council shall establish a Board of Elections and enact election rules and regulations for the conduct of tribal elections. Election for Principal Chief and Vice-Chief must be by a majority of at-large votes cast by eligible voters.

**Section 7.** The Principal Chief shall receive as compensation for his services such sum as shall be appropriated by the Tribal Council, not to exceed one pay raise per annum. The Vice-Chief shall receive such sum as shall be fixed by the Tribal Council, not to exceed one pay raise per annum. Both the Principal Chief and Vice-Chief shall receive such traveling expenses as may be authorized by the Tribal Council. The members of the Tribal Council shall receive such compensation as shall be appropriated by the Tribal Council, with no pay raise to take effect until the next council is seated. All other officers and employees of the Tribe shall receive compensation for their services as shall be provided by the Tribal Council.

**Section 8.** The seat of government of the Eastern Band of Cherokee Indians shall be centrally located within the Qualla Boundary, North Carolina.

**Section 9.** In order to run for or serve as Principal Chief, Vice-Chief or Tribal Council member, a candidate must be an enrolled member of the Eastern Band. For the offices of Chief and Vice-Chief a candidate must also be at least thirty-five years of age by the date of the election and have resided on Cherokee trust lands continuously for at least two years immediately preceding the date of the election. For the Tribal Council a candidate must be at least eighteen years of age by the date of election and have resided in the township which he is to represent for at least ninety days immediately preceding the date of the election.

**Section 10.** There shall be an Annual Council held on the first Monday in October of every year, and in cases of emergency the Principal Chief may call a Special Council, but no business can be transacted in either Annual or Special Council unless a quorum of the members shall be present, with a quorum consisting of a majority of the members of Council elected at the last preceding election. The Principal Chief shall have the right to call a Grand Council of all enrolled members to attend and he shall preside over such meeting.

**Section 11.** At the convening of the Annual Council a new chairman, vice-chairman and clerk shall be elected by its members and hold office until the next Annual Council; provided, that all officers elected or appointed by the Council shall serve during the pleasure

of the Council and for failure to perform their duties may be removed by said Council and others elected in their stead.

**Section 12.** All acts of Council shall be signed by the chairman and the clerks, and countersigned by the Principal Chief or Vice-Chief.

**Section 13.** The Principal Chief shall have the power to veto all acts of Council but his veto shall not prevail against a two-thirds vote of Council. All acts neither ratified nor vetoed by the Principal Chief within thirty (30) days shall be deemed valid legislation.

**Section 14.** In the case of death, resignation or disability of the Principal Chief, the Vice-Chief shall become the Principal Chief and shall serve the balance of the elected term of office until removal or disability or his successor is elected. In case of death, resignation or disability of the Vice-Chief, the Council may elect a successor who shall serve until removal or disability or his successor is elected. In the event the offices of both Principal Chief and Vice-Chief become vacant simultaneously, the Chairman of the Council shall become Principal Chief and shall serve the balance of the elected term of office and the Council shall elect a Vice-Chief who shall serve the balance of the elected term. If the Chairman does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled by an election under rules established by the Council.

**Section 15.** In case of death, resignation or disability of any member of Council a new member shall be elected by the Township under such rules and regulations as may be prescribed by Council or election rules.

**Section 16.** The Council of the Eastern Band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the Tribe, but no person shall be entitled to the enjoyment of any lands belonging to the Eastern Band of Cherokee Indians as a tribe, or any profits accruing therefrom, or any monies which may belong to the Tribe, unless such person shall be an enrolled member of the Tribe, and in case any money, derived from any source whatsoever, belonging to the Eastern Band of Cherokees, shall be distributed among the members thereof, the same shall be distributed per capita among the members entitled thereto.

The first generation of an enrolled member of the Eastern Band of Cherokee Indians shall enjoy all property, both real and personal, that is held in said enrolled member's possession at their death. First generation shall include all children born to or adopted by an enrolled member.

**Section 17.** No person shall ever be eligible for office or appointment of honor, profit, or trust who shall have aided, abetted, counselled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, who has been convicted of a felony.

**Section 18.** The Principal Chief, Vice-Chief and members of Council before entering on the duties of office shall take the following oath before some officer authorized to administer oaths: "I do solemnly swear (or affirm) that I will faithfully execute the duties of the office of \_\_\_\_\_ of the Eastern Band of Cherokees and will to the best of my ability, preserve, protect and defend the charter and governing document and laws confirmed and ratified by the enrolled members of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained my election or appointment to Tribal office by bribery or any undue or unlawful means or fraud, and that in all measures which may come before me I will so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of the Eastern Band of Cherokees."

**Section 19.** In order to provide equal representation to all members of the Eastern Band, the members of the Tribal Council shall, in their deliberations, cast votes on a weighted basis, with the weight of each vote determined by each Council member. A tribal census, for the purposes of determining the weight of the votes to be cast by each Tribal Council member, shall be conducted prior to the 1981 tribal election and prior to the election each ten years thereafter to determine the number of enrolled tribal members residing in each township.

After the regular 1981 tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting authority to each Council member. The voting weight allotted to each Council member shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of enrolled tribal members residing in each township and the total number of enrolled tribal members. All Council members, including the Chairman, shall be entitled to vote on all issues.

**Section 20.** No money shall be paid out except upon warrant of the Principal Chief as authorized by an act of the Council.

**Section 21.** The Executive Committee shall present a proposed budget to Tribal Council no later than July 1 of each year.

**Section 22.** Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

**Section 23.** The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe, govern the management of real and personal property held by the Tribe, and direct and assign among its members thereof, homes in the Qualla Boundary and other land held by them as a Tribe, and is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted.

**Section 24.** Whenever it may become necessary, in the opinion of the council to appropriate to public purposes for the benefit of the Tribe any of the lands owned by the Eastern Band of Cherokee Indians, and occupied by any individual Indian or Indians of the



Tribe, the Council may condemn such land for the aforesaid purposes only by paying to the occupant of such land the value of such improvements and betterments as he may have placed or caused to be placed thereon, and the value of such improvements or betterments shall be assessed by a jury of not less than six competent persons, who are members of the Tribe, under such laws and regulations as may be prescribed by the Council. The Eastern Band of Cherokee Indians will not use eminent domain under this section or any other Tribal or Federal laws to take an individual Tribal member's possessory holding except for bridges, roads, power lines, schools, hospitals, or sewer and water lines. Each Tribal member shall receive proper notice, proper hearings, and proper compensation for their lands.

(Amended by Res. No. 480, 6-8-95; approved by Referendum 9-5-1995)

### CHARTER COMPARATIVE TABLE

This table shows the location of the sections of the basic Charter and any amendments thereto.

Date	Section	Section this Charter
5-8-1986	1-24	1-24
6-8-1995	Res. No. 480	24
9-5-1995	Referendum	24

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## Part II: Code of Ordinances - Chapter 1: Civil Procedure\*

\***Cross references:** Exclusion powers of Tribe, ch. 2; juvenile code, ch. 7A; criminal procedure, ch. 15; limitations, ch. 22; judgement collection, ch. 25; arbitration ordinance, ch. 94; emergency commitment, ch. 108B; child support enforcement, ch. 110.

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### ARTICLE I. IN GENERAL

#### **Sec. 1-1. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of the court and derived from the Code of 1992.

#### **Sec. 1-2. Civil jurisdiction.**

(a) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall have jurisdiction over all persons in civil suits which arise on the Cherokee Indian Reservation and involve the personal, property or legal rights of an individual Indian or an Indian owned business, corporation or other legal entity.

(b) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over the domestic relations of all individuals residing on Cherokee trust lands where either spouse, parent or child is a Tribal member, or where a nonmember spouse, parent and child are all living on Indian trust land. Jurisdiction shall be exercised for divorce, separation, child custody, support, alimony, adoption and paternity.

(c) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over tortious conduct of all persons where the conduct occurs on Indian trust land.

(d) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over disputes involving any contract that is negotiated or executed on Indian trust land, or involves any interest in Cherokee trust lands and contractual right of the Tribe.

(e) The Cherokee Court of Indian Offenses or any successor Court shall exercise jurisdiction over all persons, firms, corporations, partnerships or other legal business entities which conduct business on Cherokee trust lands. Such jurisdiction shall be limited to transactions involving or affecting individual Indians, Indian owned businesses, Tribal laws and policy or Indian property.

(f) The enforcement of all eviction and foreclosure proceedings shall be in the Cherokee Court. The Cherokee Court shall have jurisdiction over all leasehold foreclosures of deeds of trust or mortgages on Cherokee trust lands. Valid deeds of trust or mortgages approved by the Tribe and Bureau of Indian Affairs shall constitute enforceable first liens against such leaseholds.

(g) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over actions against the Eastern Band of Cherokee Indians seeking the following relief:

(1) An injunction, writ of mandamus or a declaratory judgment concerning individual rights guaranteed by the Indian Civil Rights Act;

(2) Damages for condemnation by the Tribe;

(3) Damages for tort claims where the Tribe maintains insurance coverage for such claims, with recovery not to exceed the amount of liability coverage maintained by the Tribe.

(h) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall retain personal jurisdiction over persons or entities resident on Cherokee trust lands for a period of six months after such persons or entities move from Cherokee trust lands.

(i) None of the foregoing language is intended to grant a waiver of sovereign immunity against the Eastern Band of Cherokee Indians so that a temporary restraining order or preliminary injunction may be entered against the Eastern Band of Cherokee Indians or any agent or official acting in their official capacity, ex parte or otherwise, unless said action is instituted by the Eastern Band of Cherokee Indians against said agent or employee or official.

(Ord. No. 168, 6-2-1994; Ord. No. 328, 1-13-1986; Res. No. 336, 1-3-1991; Ord. No. 369, 10-17-1996; Ord. No. 556, 4-24-1997)

### **Sec. 1-3. Jurisdiction - juveniles.**

(a) The Courts of the State of North Carolina are granted jurisdiction to hear and decide cases involving alleged abuse, neglect and dependency of Cherokee juveniles under the same terms and conditions as it asserts jurisdiction over non-Indian juveniles under the laws of North Carolina.

(b) The Eastern Band of Cherokee Indians reserves the right to notify the State of North

Carolina six months prior to the Tribe assuming jurisdiction over juveniles residing on Cherokee trust lands.

(Res. No. 160, 6-17-1980)

**Sec. 1-4. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of civil procedure and derived from the Code of 1992.

**Sec. 1-5. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of evidence and derived from the Code of 1992.

**Sec. 1-6. Imprisonment for debt.**

The Cherokee Court shall imprison no person for debt, except in cases of fraud. Application of this section shall not be inconsistent with the application and interpretation of Article I, Section 28 of the Constitution of North Carolina.

(Res. No. 176, 5-10-84)

**ARTICLE II. STRUCTURE OF COURT**

**Sec. 1-7. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to divisions of court and derived from the Code of 1992.

**Sec. 1-8. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to the responsibilities of magistrate or judge and derived from the Code of 1992.

**Sec. 1-9. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to appeals and derived from the Code of 1992.

**Sec. 1-10. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to decisions of the appellate division and derived from the Code of 1992.

**Sec. 1-11. Small claims actions.**

(a) For purposes of this section, a small claims action includes any lawsuit:

- (1) Seeking money damages in which the amount claimed does not exceed \$5,000.00, excluding interest and costs;

(2) Seeking a domestic violence protective order under Chapter 50B, or other relief in a family law matter provided any amount claimed does not exceed \$5,000.00 excluding interest and costs;

(3) Seeking eviction from a residential dwelling regardless of the amount in controversy; or

(4) Seeking repossession under section 25-9 regardless of the amount in controversy.

(b) The Cherokee Court shall prepare or adopt standard forms which may be used by the parties in small claims actions.

(c) All plaintiffs shall pay court costs at the time of filing a small claim complaint. Any judge shall have authority to permit a pauper's affidavit to be accepted in lieu of court costs.

(d) Defendants may file a written answer, including counterclaims if any, and shall serve a copy with the clerk and the plaintiff no later than the date and time set for trial. If written answer is not filed, the allegations of the complaint shall be deemed denied.

(e) All parties making claims or counterclaims must prove such claims or counterclaims by the greater weight of the evidence.

(f) Appeals from a small claims judgment shall be filed with the Cherokee Supreme Court.

(g) Notwithstanding any other provision of law, in a small claims action:

(1) Individuals shall have the right, as they do in every case, to represent themselves. Businesses, agencies, and other organizational entities shall be permitted to have an owner, officer, or employee, but not an independent contractor, present their claims or defenses in court without legal counsel.

(2) Any party may be represented in court by an advocate who is a law school graduate or paralegal, provided that the advocate is employed by an indigent legal services program, a licensed attorney assumes responsibility for the advocate's work, and no fee is charged by the attorney or advocate for the representation.

(3) Nothing in this section shall be construed to grant any party the right to be represented by court-appointed counsel in a small claims action or any other civil action.

(h) No person shall have a right to a jury trial in a small claims action filed pursuant to this section.

(Res. No. 176, 5-10-1984; Ord. No. 371, 8-9-2000)

### **ARTICLE III. APPELLATE PROCEEDINGS**

#### **Sec. 1-12. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to the jurisdiction of the appellate division and derived from Res. No. 176, adopted May 1, 1984.

**Sec. 1-13. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to procedures on appeal and derived from the Code of 1992.

**Sec. 1-14. Judgment against surety.**

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses and irrevocably appoints the Clerk of Court as his or her agent upon whom any paper affecting his or her liability on the bond may be served.

**Sec. 1-15. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to certification of a record on appeal and derived from the Code of 1992.

**Sec. 1-16. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to briefs and memoranda and derived from the Code of 1992.

**Sec. 1-17. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to oral argument and derived from the Code of 1992.

**Sec. 1-18. Reserved.**

**Editor's note:** Ord. No. 29, adopted April 1, 2000 completely repealed the provisions of this section which pertained to rules of court and derived from the Code of 1992.

**ARTICLE IV. PARTICULAR PROCEEDINGS**

**Sec. 1-19. Comparative negligence.**

(a) In all actions hereunder brought in the Cherokee Court for personal injuries, wrongful death, or for injury to property, the fact that the person injured, or the owner of the property, or person having control over the property, may not have exercised due care shall not bar a recovery, but damages shall be diminished by the finder of fact in proportion to the percentage of negligence attributable to the person injured, or the owner of the property or the person having control over the property.

(b) In determining the percentage of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.

(c) A claim and counterclaim shall be set off and only the difference between them is recoverable through a judgment.

(d) The negligence of one spouse shall not be imputed to the other spouse of the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person.

(e) This act shall become effective January 1, 1983, and shall apply to claims for relief arising on and after that date.

(Res. No. 10, 10-19-1982)

### **Sec. 1-20. Criminal contempt.**

(a) Criminal contempt shall include any of the following:

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

(4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

(6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

(7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.

(8) Willful refusal to testify or produce other information upon the order of a judge when such person has been granted immunity from criminal prosecution.

(9) Willful communication with a juror in an improper attempt to influence his deliberations.

(b) No person may be held in contempt on the basis of the content of any broadcast, publication or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(Ord. No. 514, 6-18-85)

**Sec. 1-21. Punishment for criminal contempt.**

(a) A person who commits criminal contempt, whether direct or indirect, is subject to imprisonment up to 30 days, fine not to exceed \$500.00, or both.

(b) Except for contempt under section 1-20(a)(5) or 1-20(a)(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

(1) The act or omission was willfully contemptuous; or

(2) The act or omission was preceded by a clear warning by the court that the conduct is improper.

(c) The judicial official who finds a person in contempt may at any time withdraw, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt, if warranted by the conduct of the contempt or by the ends of justice.

(d) A person held in criminal contempt may nevertheless be found in civil contempt for the same conduct. If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in section 1-27(c).

(Ord. No. 514, 6-18-85)

**Sec. 1-22. Direct and indirect criminal contempt.**

(a) Criminal contempt is direct criminal contempt when the act:

(1) Is committed within the sight or hearing of a presiding judicial official; and

(2) Is committed in, or in the immediate proximity to, the room where proceedings are being held before the court; and

(3) Is likely to interrupt or interfere with matters then before the court.

The presiding judicial official may punish summarily for direct criminal contempt or may defer adjudication and sentencing. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intentions to institute contempt proceedings.

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure outlined in section 1-24.

(Ord. No. 514, 6-18-85)

**Sec. 1-23. Summary proceedings for contempt.**

(a) The presiding judicial official may summarily impose measures in response to direct criminal contempt when necessary to restore order or to maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt.

(b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of measures in response to contempt. The facts must be established beyond a reasonable doubt.

(Ord. No. 514, 6-18-85)

#### **Sec. 1-24. Plenary proceedings for contempt.**

(a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) The person ordered to show cause may move to dismiss the order.

(c) The judge is the trier of facts at the show cause hearing.

(d) The person charged with contempt may not be compelled to be a witness against himself or herself in the hearing.

(e) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If a person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(f) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt.

(Ord. No. 514, 6-18-85)

#### **Sec. 1-25. Custody.**

(a) A judicial official may orally order that a person he is charging with direct criminal contempt be taken into custody and restrained to the extent necessary to assure his presence for summary proceedings or notice of plenary proceedings.

(b) If a judicial official who initiates plenary proceedings for contempt finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person. A person arrested under this subsection is entitled to release under bail.

(Ord. No. 514, 6-18-85)

#### **Sec. 1-26. Appeal.**



A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions.

(Ord. No. 514, 6-18-85)

**Sec. 1-27. Civil contempt.**

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

- (1) The order remains in force;
- (2) The purpose of the order may still be served by compliance with the order; and
- (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as his civil contempt continues, unless the contempt is failure by a person not arrested for the crime to comply with a nontestimonial identification order. In that case, he may be imprisoned for not more than 90 days unless he is arrested on probable cause.

(c) A person who is found in civil contempt may, nevertheless, for the same conduct, be found in criminal contempt, but the total period of imprisonment arising from the conduct may not exceed the greater of:

- (1) The period during which the contemptnor may be imprisoned for civil contempt;  
or
- (2) The period of punishment provided in section 1-21(a).

(Ord. No. 514, 6-18-85)

**Sec. 1-28. Release.**

(a) A person imprisoned for civil contempt must be released when his civil contempt no longer continues. The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. Upon finding compliance with the specifications, the officer having custody may release the person without further order from the court .

(b) On motion of the contemptnor, the court must determine if he is subject to release and, on an affirmative determination, order his release. The motion must be directed to the judge who found civil contempt unless he is not available. The contemptnor may also seek his release under other procedures available under law.

(Ord. No. 514, 6-18-85)

**Sec. 1-29. Proceedings for civil contempt.**

(a) Proceedings for civil contempt are either by the order of a judicial official directing the alleged contemptnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt or by the notice of a judicial official that the alleged contemptnor will be held in contempt unless he appears at a specified reasonable time and

shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt.

(b) The person ordered to show cause may move to dismiss the order.

(c) The judicial official is the trier of facts at the show cause hearing.

(d) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged contemptor. If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemptor must take to purge himself of the contempt.

(e) A person with an interest in enforcing the order may present the case for a finding of civil contempt for failure to comply with an order.

(f) A judge conducting a hearing to determine if a person is in civil contempt may at the hearing, upon making the required findings, find the person in criminal contempt for the same conduct, regardless of whether imprisonment for civil contempt is proper in the case.

(Ord. No. 514, 6-18-85)

### **Sec. 1-30. Appeals.**

A person found in civil contempt may appeal in the manner provided for in appeals in civil actions.

( Ord. No. 514, 6-18-1985)

### **Sec. 1-31. Jury list.**

(a) The Tribal Enrollment Office shall prepare a current list of eligible jurors from the Tribal enrollment records and provide the list to the Clerk of the Cherokee Court each year during the month of January.

(b) Eligible jurors shall be those enrolled members who are 18 years of age or older and who are currently residing on Cherokee trust lands.

(Res. No. 122, 5-1-1980)

### **Sec. 1-32. Involuntary commitment.**

(a) *Petition process.* Anyone who has knowledge of a person who is mentally ill or a substance abuser and presents a danger to self or others may petition for the involuntary or emergency commitment of that person, using the following procedure

(1) The petitioner shall appear before a magistrate, clerk, or deputy clerk of the Cherokee Court, execute an affidavit on the form adopted by that court, and petition the clerk or magistrate for an order to take the respondent into custody for examination by a licensed physician or psychologist. The affidavit shall include the facts on which the petitioner's opinion, that the respondent is mentally ill or a

substance abuser and presents a danger to self or others, is based. If the petitioner knows or reasonably believes that the respondent is also mentally retarded, this fact shall be stated in the affidavit.

(2) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent is mentally ill or a substance abuser and presents a danger to self or others, the clerk or magistrate shall issue an order to a law enforcement officer or other responsible person to take the respondent into custody for examination by a licensed physician or psychologist. If the clerk or magistrate finds probable cause to believe that the respondent is also mentally retarded, the clerk or magistrate shall note that fact in the order. The clerk or magistrate shall inform the petitioner and the respondent, if present, specifically about the next steps in the process.

(3) Because the Qualla Boundary is located in a single portal area under state law, Smoky Mountain Mental Health is the area agency that determines the placement of respondents who are involuntarily committed. It performs that duty through the single portal of entry at Harris Regional Hospital in Sylva.

(4) Upon receipt of a custody order, a law enforcement officer or other person named in the order shall take the respondent into custody within 24 hours after the order was signed, and transport him/her to Harris Regional Hospital to obtain the examination required in subsection (d) below.

(5) If the petitioner is a licensed physician or psychologist, he/she may execute the affidavit and petition forms before any official authorized to administer oaths. He or she is not required to appear before the clerk or magistrate for this purpose. If the petitioner is a licensed physician or psychologist, an independent examination shall also be conducted pursuant to subsection (d), except in an emergency as set forth in subsection (e).

(b) *Definitions.* As used in this section, these terms shall have the following meanings:

(1) *Danger to self.* Within the recent past, a person has acted in such a way as to show that he/she cannot exercise self-control, judgment or discretion in handling his/her responsibilities, or cannot satisfy his/her own need for nourishment, medical care, shelter, or personal safety, without the help and supervision of another person and that other person is not available.

(2) *Danger to others.* Within the recent past, a person has inflicted or threatened or attempted to inflict serious bodily harm on another, or has acted in a way that creates a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property, and there is reason to believe he/she will continue or repeat this conduct.

(3) *Respondent.* Person for whom an emergency commitment is sought.

(4) *Petitioner.* Person who is seeking the involuntary or emergency commitment of a respondent.

(c) *Duties of law enforcement officer or other authorized person transporting respondent.* In addition to the duties described elsewhere herein, the person authorized to transport respondent for examination under subsection (d) shall do so without unnecessary delay. If a licensed physician or psychologist is not immediately available to conduct an examination, respondent may be temporarily detained at the facility, or if none is available, detained

under appropriate supervision at his home, or a hospital, but not in a jail if he is not charged with a crime.

(d) *Examination.* Except in an emergency situation covered by subsection (e), the following medical examination should be conducted at Harris Regional Hospital by Smoky Mountain Mental Health, as the area mental health authority and single portal of entry for involuntary commitments. A licensed physician or psychologist shall examine the respondent within 24 hours after the respondent is presented for examination. The examination shall include, but is not limited to, an assessment of the respondent's:

- (1) Current and previous mental illness and mental retardation including, if available, previous treatment history;
- (2) Danger to self or others as defined herein;
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment.

After the examination, if the licensed physician or psychologist finds that the respondent is mentally ill or a substance abuser and presents a danger to self or others, the licensed physician or psychologist shall recommend inpatient commitment, and shall so state on the examination report. If not, the person designated in the order to provide transportation shall return the respondent to the respondent's regular residence and the respondent shall be released from custody. If the licensed physician or psychologist also finds that the respondent is mentally retarded, this finding shall be shown on the report. The report shall be transmitted to the Clerk of the Cherokee Court within 24 hours. The law enforcement officer or other designated person shall transport the respondent to a 24-hour facility, as directed by the Court.

(e) *Emergency procedures for persons needing immediate hospitalization.* Anyone, including a law enforcement officer, who knows of a person who is mentally ill or a substance abuser and presents a danger to self or others, and who requires immediate hospitalization to prevent harm to self or others, may transport the individual directly to a facility for examination as required in subsection (d) by a licensed physician or psychologist. If the licensed physician or psychologist finds that the person is a danger to self or others, he/she shall certify this and the reason the respondent needs immediate hospitalization, under oath, and transmit that certification to the Clerk of the Cherokee Court of Indian Offenses within 24 hours. The certification shall serve as a custody order. After certification, the law enforcement officer, or any other person designated by the Court's order, shall transport the respondent to a 24-hour facility.

(f) *Involuntary commitment case worker.* To assist mentally ill or substance abusing persons, and their families and care givers, with the Tribal and State systems of mental health and involuntary commitment, there is established within the Health and Medical Division the position of involuntary commitment case worker. The duties of the case worker shall include providing any petitioner, respondent, or next-of-kin or care giver of a respondent with assistance and advocacy as they proceed through the mental health and involuntary commitment processes. Specific duties of the case worker shall include assisting family members or respondents with petitioning, admission, examination, hearings, discharge, communication between family, facility, and respondent, alternate resource and payment issues, and in obtaining ancillary services for restoration of respondent's baseline safe level of functioning.

(g) *Due process*. Respondents shall be afforded the due process of law throughout this procedure. Upon transfer to a state mental health or other facility, respondents shall also have all due process rights afforded by state law.

(Res. No. 106, 11-19-1981; Ord. No. 655, 9-8-1999; Ord. No. 72, 1-13-2000)

**Sec. 1-33. Limitations on authority of Cherokee Court.**

The Cherokee Court of Indian Offenses or any successor Cherokee Court, shall not have authority, in deciding any case within its lawful jurisdiction, to:

(a) Grant, approve or assign a possessory interest in any Cherokee trust lands to any person; or

(b) Grant, approve or assign a life estate in any Cherokee trust land or any improvements located thereon, to a nonmember of the Eastern Band of Cherokee Indians; or

(c) Grant, approve or assign a writ of possession in any Cherokee trust lands or any improvements thereon, to a nonmember of the Eastern Band of Cherokee Indians unless such property shall be used as a residence for children of enrolled members.

(1) Such writ of possession shall not extend beyond the 18th birthday of the youngest child of an enrolled member actually residing in a home located on such lands; but

(2) Such writ of possession may extend beyond the 18th birthday of a child of an enrolled member actually residing in such house if said child is not physically or mentally capable of caring for himself or herself upon reaching the age of 18.

(d) A writ of possession entered by the Cherokee Court shall automatically expire on the date the youngest member of an enrolled member living in the home located on trust lands reaches the age of 18 years. A writ of possession may be extended beyond such date only if a petition is filed with the Cherokee Court showing the minor child of an enrolled member then living in such house is physically or mentally incapable of caring for themselves.

(Ord. No. 66, 12-5-1991)

**ARTICLE V. LONG ARM LAW**

**Sec. 1-34. Subject matter jurisdiction.**

The Cherokee Court having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. Jurisdiction in rem or quasi in rem may be involved in any of the following cases:

(a) When the subject of the action is real or personal property located on Cherokee Indian trust lands and the defendant has or claims any lien or interest therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply whether any such defendant is known or unknown.

(b) When the action is to foreclose, redeem from or satisfy a leasehold deed of trust,

mortgage or lien upon real or personal property located on Cherokee trust lands.

(c) When the action is for a divorce or annulment of marriage of an enrolled member or a spouse of an enrolled member, either of whom is a resident of Cherokee trust lands at the date of separation and both spouses resided on Cherokee trust lands prior to separation.

(d) In any other action in which in rem or quasi in rem jurisdiction may be lawfully exercised under Tribal law or federal law applicable to Federal Indian Tribes. Such jurisdiction shall not be exercised over any subject matter which would be inconsistent with federal prohibition against alienation (25 U.S.C. 177) or any other federal law restricting the use or conveyance of Indian lands, property or legal rights.

(Ord. No. 285, 11-5-1992)

**Sec. 1-35. Service; interlocutory orders.**

The Cherokee Court, in exercising jurisdiction in rem or quasi in rem may affect the interests of a defendant in such an action only if process has been served upon the defendant in accordance with the provisions of Rule 4(k) of the Rules of Civil Procedure, as adopted by the Cherokee Code or by the Cherokee Court, but nothing herein shall prevent the court from making interlocutory orders for the protection of the parties, children or property while the action is pending.

(Ord. No. 285, 11-5-1992)

**Sec. 1-36. Proof of service of process.**

When the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(a) *Personal service or substituted personal service.*

(1) If served by Cherokee Police Department or a lawful process officer under Tribal law, by the officer's certificate thereof, showing place, time and manner of service; and

(2) If served by any other person, his affidavit thereof, showing the place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j)(3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside the confines of Cherokee trust lands, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(b) *Service by publication.* In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the date and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(c) *Written admission of defendant.* The written admission of the defendant, whose

signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(d) *Service by registered or certified mail.* In the case of service by registered or certified mail, by affidavit of the serving party averring:

- (1) That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
- (2) That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
- (3) That the genuine receipt or other evidence of delivery is attached.

(Ord. No. 285, 11-5-1992)

### **Sec. 1-37. Default judgments.**

Where a defendant fails to appear in an action within the appropriate time, the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by section 1-36 above and, in addition, shall require further proof as follows:

- (a) Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.
- (b) Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property, or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

(Ord. No. 285, 11-5-1992)

### **Sec. 1-38. Stay of proceeding to permit trial in another jurisdiction.**

(a) If, in any action pending in any other court, with lawful jurisdiction over the parties or subject matter, the judge shall find that it would work substantial injustice for the action to be tried in the Cherokee Court, the judge on motion of any party may enter an order to stay further proceedings in the action in the Cherokee Court. A moving party under this section must stipulate their consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

(b) In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years, the clerk shall enter an order dismissing the action.

(c) Whenever a motion for a stay made pursuant to this section is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute

a waiver of any error the judge may have committed in denying the motion.

(Ord. No. 285, 11-5-1992)

**Sec. 1-39. Acceptance of privileges; department of motor vehicles as attorney for service of process.**

The acceptance by a nonresident of the rights and privileges conferred by the laws of the Eastern Band of Cherokee Indians, as they are established or set forth in section 1-2 of the Cherokee Code, as evidenced by the nonresident having engaged in any of the lawful civil activities set forth or covered in section 1-2, or by their operation of a motor vehicle on the public highways and roadways within the confines of Cherokee trust lands, shall be deemed equivalent to the jurisdiction of the Cherokee Courts.

(a) Operation of motor vehicles within Cherokee trust lands shall be deemed to be equivalent to the appointment by such nonresident of the Commissioner of Motor Vehicles, as set forth in N.C.G.S. 1-105, to be his lawful attorney for purposes of service of process, which may be effected in the manner and form established under North Carolina law in N.C.G.S. 1-105.

(b) The provisions of N.C.G.S. 1-105.1 are hereby adopted and made applicable to the Cherokee Courts for those residents who establish residence outside the State of North Carolina or who depart from Cherokee trust lands and the State of North Carolina.

(Ord. No. 285, 11-5-1992)

**Sec. 1-40. Application of the Indian Civil Rights Act.**

All provisions of the Indian Civil Rights Act, 25 U.S.C. 1301-1303, shall apply in all court proceedings before the Cherokee Court.

(Ord. No. 407, 11-21-1996)

**Sec. 1-41. Transitional provisions for the Cherokee Court.**

(a) After transfer of authority from the CFR Court of Indian Offenses to the Cherokee Court pursuant to the Indian Self Determination Act contract between the United States and the Eastern Band of Cherokee Indians, any cases over which the CFR Court was exercising continuing jurisdiction prior to the transfer of authority shall be transferred to the Cherokee Court, on the motion of any party or on the Court's own motion.

(b) No transferred case shall abate or be dismissed solely on the ground that it was filed in the CFR Court prior to the transfer of authority to the Cherokee Court. The Cherokee Court shall have jurisdiction over all cases properly filed in the CFR Court and transferred pursuant to this section.

(c) The Cherokee Court's jurisdiction shall not be limited by restrictions set forth in the Code of Federal Regulations, and shall extend to all cases for which jurisdiction is granted by the Cherokee Code. In a case transferred from the CFR Court, whenever the Cherokee Court can exercise jurisdiction over a non-Indian defendant over whom the CFR Court could not exercise jurisdiction under 25 C.F.R. § 11.103(a), the non-Indian defendant shall be joined as a party to the transferred action upon proper service of process, provided that the defendant shall be permitted to present any available defense regardless of the stage of the case when the defendant is joined.



(d) When the interest of justice so requires, a judge of the Cherokee Court shall have the authority to convene a session of the CFR Court to hear a case that was filed with the CFR Court and not transferred to the Cherokee Court, so long as the Eastern Band of Cherokee Indians remains listed in 25 C.F.R. § 11.100. No new case shall be filed in the CFR Court after the transfer of authority to the Cherokee Court.

(e) After the transfer of authority to the Cherokee Court, the Cherokee Supreme Court shall have jurisdiction over all appeals, including those pending when authority is transferred, regardless of whether the trial was held in the CFR Court or the Cherokee Court.

(f) The statute of limitations shall be tolled, and shall not be a defense to any claim filed in the Cherokee Court, provided that the same claim was timely filed in the CFR Court; the claim was not the subject of a final judgment or order in the CFR Court; and the claim is filed in the Cherokee Court within 90 days after the transfer of authority to the Cherokee Court.

(g) On the motion of any party or the Court's own motion, the Cherokee Court shall give full faith and credit to all judgments and orders entered by the CFR Court that were properly within the jurisdiction of the CFR Court and not stayed by a pending appeal at the time of the transfer of authority, and shall enforce such judgments and orders as its own.

(h) The Cherokee Court shall maintain and protect all the files and records of the CFR Court.

(i) This section shall apply to all cases whether denominated as civil, criminal, special proceeding, estate or any other category.

(j) The Cherokee Court shall have jurisdiction to adjudicate criminal charges filed under the criminal provisions applicable at the time the alleged crime was committed, whether the source of those criminal provisions is the Code of Federal Regulations, the Cherokee Code, or other applicable law.

(Ord. No. 117, 3-3-2000; Ord. No. 291, 7-6-2000)

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## Chapter 2: Exclusion Powers of the Tribe\*

**\*Cross references:** Civil procedure, ch. 1; exclusion or rejection of individuals for Tribal gaming, § 16-9.01 et seq.; enrollment, ch. 49; Tribal government, ch. 117.

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### **Sec. 2-1. Power to exclude.**

The Tribal Council shall have the power to exclude enrolled Tribal members for sexual offenses against minors, and shall have the power to exclude other persons from Cherokee trust lands when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996)

### **Sec. 2-2. Tribal Council proceedings.**

The Tribal Council shall exercise its power to exclude persons from Cherokee trust lands only in open session of the Council.

(Ord. No. 92, 5-5-1994)

**Sec. 2-3. Notice and legal defense rights.**

(a) The Tribal Council shall provide reasonable notice to all persons over whom it exercises the power of exclusion, together with hearing before the Tribal Council.

(b) The Tribal Council shall provide not less than ten calendar days written notice to such persons prior to hearing. For good cause shown, the Council can waive the ten-day period and exclude immediately.

(c) Such persons shall be provided with a written statement of the grounds for the proposed exclusion at the same time notice of the hearing is served upon them.

(d) Such persons shall have the right to appear in person before the Tribal Council, to be represented by legal counsel before the Tribal Council, to require all testimony to be under oath at such hearing, to subpoena witnesses in their behalf for such hearing, to confront or question witnesses bringing exclusion actions against them to the Tribal Council or testifying against them in such hearing.

(e) Notice of exclusion hearings shall specify the duration of exclusion proposed for each individual.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996)

**Sec. 2-4. Terms of exclusion.**

The Tribal Council may exclude persons from Cherokee trust lands for limited periods of time, indefinite periods of time or permanently.

(Ord. No. 92, 5-5-1994)

**Sec. 2-5. Votes required for exclusion.**

(a) Exclusion of any person from Cherokee trust lands for a limited period of time not exceeding 90 days shall require a majority vote of the entire Tribal Council.

(b) Exclusion of any person from Cherokee trust lands for more than 90 days or for an indefinite period of time shall require a two-thirds vote of the entire Tribal Council.

(c) Permanent exclusion of any person from Cherokee trust lands shall require a three-fourths vote of the entire Tribal Council.

(Ord. No. 92, 5-5-1994)

**Sec. 2-6. Enrolled members; permanent exclusion.**

If an enrolled Tribal member is permanently excluded from Cherokee trust lands, then the member's name shall be removed from the membership roll of the Tribe, and all privileges

pertaining thereto shall immediately be suspended indefinitely. The removal of the person's name from the roll shall be submitted to the Superintendent of the Eastern Cherokee Agency for approval by the Secretary of the Interior or his authorized representative.

(Ord. No. 271, 7-24-1996)

**Sec. 2-7. Request for exclusion action.**

The persons with standing to bring a request to the Tribal Council for an exclusion action against a person who is subject to this Chapter are:

- (1) The Principal Chief.
- (2) The Vice Chief.
- (3) Members of the Tribal Council.
- (4) The Chief of the Cherokee Police Department.

(Ord. No. 271, 7-24-1996; Ord. No. 757, 5-3-2001)

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## Chapter 7: Judicial Code

**Sec. 7-1. Composition of the Judicial Branch.**

(a) The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, and such other Trial Courts of Special Jurisdiction as established by law. The Supreme Court shall be known as the "Cherokee Supreme Court" and the Trial Court shall be known as the "Cherokee Court." Trial Courts of Special Jurisdiction shall be established by the Tribal Council and named according to their function (e.g., Cherokee Juvenile Court).

(b) The Supreme Court shall be comprised of one Chief Justice and two Associate Justices. The Trial Court shall be comprised of one Chief Judge and two Associate Judges, and other Associate Judges of the Trial Courts of Special Jurisdiction.

(c) All Justices and Judges shall be appointed upon nomination by the Principal Chief, and confirmation by the Tribal Council.

(d) The Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice. Prior to assignment by the Chief Justice, temporary justices, judges or magistrates must be nominated and confirmed in accordance with subsection (c) of this section.

(Ord. No. 29, 4-1-2000)

**Sec. 7-2. Jurisdiction of the Judicial Branch.**

(a) The jurisdiction of the Eastern Band of Cherokee Indians, including the Judicial Branch, extends to all persons, activities, and property within the territory of the Eastern Band based upon inherent territorial or popular sovereignty. The territory of the Eastern Band is comprised of all lands within the Qualla Boundary, all lands held by the United States for the benefit of the Eastern Band or any member of the Eastern Band, and all other lands

acquired by the Eastern Band, notwithstanding the issuance of any right-of-way. The territory includes all surface and sub-surface lands, submerged lands under navigable or non-navigable waters, all air and water, and all natural resources. Every person who enters the territory shall, by entering, be deemed to have consented to the jurisdiction of the Eastern Band of Cherokee Indians.

(b) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, including cases in which the Eastern Band of Cherokee Indians, or its officials and employees, shall be a party. Any such case or controversy arising within the territory of the Eastern Band of Cherokee Indians shall be filed and exhausted in the Judicial Branch before it is filed in any other jurisdiction. This grant of jurisdiction shall not be construed to be a waiver of sovereign immunity.

(c) The Judicial Branch shall not have jurisdiction over matters in which the exercise of jurisdiction has been specifically prohibited by a binding decision of the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit or by an Act of Congress.

(d) In deciding cases and controversies over which it has jurisdiction, the Judicial Branch shall be bound by the laws, customs, traditions, and precedents of the Eastern Band of Cherokee Indians. If there is no applicable Cherokee law, the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance. Limitations on the authority of the Cherokee Court to grant certain types of relief, which are set forth in the Cherokee Code, shall remain in full force and effect, unless they are specifically rescinded by the Tribal Council.

(e) The Supreme Court shall have appellate jurisdiction to certify and decide any appeal from the Trial Court. The Supreme Court shall have original and exclusive jurisdiction to review a final determination made by the Election Board in any election dispute.

(Ord. No. 29, 4-1-2000; Ord. No. 291, 7-6-2000)

### **Sec. 7-3. Powers and Duties of the Judicial Branch.**

(a) The judicial power shall be vested in the Judicial Branch. The Judicial Branch shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians. The Chief Justice of the Supreme Court shall administer the Judicial Branch.

(b) The Judicial Branch shall develop a system of precedent based on the common law, customs, and traditions of the Eastern Band of Cherokee Indians. The Judicial Branch shall not adjudicate the same matter twice. The Judicial Branch shall have the power to assess fees and costs in accordance with law.

(c) The Judicial Branch shall make projections of judicial revenues and propose an annual budget for the Judicial Branch. The Chief Justice shall have the power to administer funds appropriated by law for the Judicial Branch.

(d) With the exception of appointed Judges and Justices, Judicial Branch personnel shall be tribal employees who are subject to the Tribe's personnel policies and procedures.

(Ord. No. 29, 4-1-2000)

**Sec. 7-4. Powers of the Trial Court.**

(a) The Trial Court shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make findings of fact and conclusions of law and issue all remedies in law and relief in equity.

(b) Orders of the Trial Court shall be written and published.

(Ord. No. 29, 4-1-2000)

**Sec. 7-5. Powers of the Supreme Court.**

(a) The Supreme Court shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make conclusions of law. The Supreme Court shall not have the power to make findings of fact.

(b) The Supreme Court shall have the power to declare any law void if such violates the Charter and Governing Document of the Eastern Band of Cherokee Indians, enacted in 1986, as it may from time to time be amended.

(c) The Supreme Court shall have the power to establish written rules for the Judicial Branch, including qualifications to practice law, provided such rules are consistent with law. No person shall be permitted to practice law in any court of the Judicial Branch unless that person has a license to practice law from the State of North Carolina.

(d) Orders and opinions of the Supreme Court shall be written and published.

(e) Orders of the Supreme Court are final and shall not be subject to appeal to any other body of the Eastern Band of Cherokee Indians.

(Ord. No. 29, 4-1-2000)

**Sec. 7-6. Terms of office.**

The Chief Justice, the Chief Judge, and Associate Judges for Trial Courts of Special Jurisdiction shall each serve terms of six years, or until their successors have been sworn into office, and shall be eligible for reappointment. Associate Justices of the Supreme Court and Associate Judges of the Trial Court shall serve terms of four years, or until their successors have been sworn into office, and shall be eligible for reappointment.

(Ord. No. 29, 4-1-2000)

**Sec. 7-7. Compensation.**

The Justices and Judges shall be paid reasonable compensation as established by law which shall not be decreased during a term of office. The Chief Justice of the Supreme Court shall be paid an annual salary. The Associate Justices of the Supreme Court shall be paid on a per case basis. The Chief Judge and Associate Judges of the Trial Court shall be paid an annual salary. Associate Judges for Trial Courts of Special Jurisdiction shall be paid on a per case basis.

(Ord. No. 29, 4-1-2000)

### **Sec. 7-8. Judicial qualifications.**

(a) The Chief Justice of the Supreme Court and the Chief Judge of the Trial Court shall be attorneys licensed by the North Carolina State Bar and members in good standing of the practicing bar of the Eastern Band of Cherokee Indians. No person shall serve as a justice or judge who has ever been convicted of a felony or other crime of moral turpitude in any jurisdiction, convicted of any crime involving embezzlement, fraud, bribery or theft against the Eastern Band of Cherokee Indians, removed by impeachment from any office, or resigned from any office while under official investigation for impeachment.

(b) All persons appointed as associate justices of the Cherokee Supreme Court and as associate judges of the Cherokee Tribal Court shall also be attorneys licensed by and in good standing with the North Carolina State Bar. This subsection shall not apply to persons appointed and confirmed before the effective date of this amendment.

(Ord. No. 29, 4-1-2000; Ord. No. 503, 12-20-00)

### **Sec. 7-9. Conflict of interest.**

Any Justice or Judge with a direct personal or financial interest in the outcome of any matter shall recuse himself or herself, and failure to recuse shall constitute grounds for impeachment and removal from office.

(Ord. No. 29, 4-1-2000)

### **Sec. 7-10. Removal by impeachment.**

(a) The Ethics Commission shall have the sole power to remove Judges and Justices by impeachment, and any other power delegated by law. The Ethics Commission shall be comprised of five members, who shall be the Principal Chief, Vice-Chief, Chairperson of the Tribal Council, Vice Chairperson of the Tribal Council, and the Chairperson of the Community Club Council. A judge or justice subject to impeachment proceedings shall be given reasonable notice of the charges and shall address the Ethics Commission in a public hearing. An affirmative vote of four members of the Ethics Commission shall be required to remove by impeachment under this section.

(b) The Ethics Commission shall choose from among its own members an officer to preside over an impeachment of a judge or justice. Impeachment proceedings shall be open to the public. A resignation tendered by a person subject to pending impeachment proceedings shall be deemed an affirmative judgment for removal by impeachment. Judgment to remove by impeachment shall be final and not subject to judicial review.

(c) A judgment to remove by impeachment rendered by the Ethics Commission shall include disqualification to hold future office, disqualification to be employed in any governmental capacity by the Eastern Band of Cherokee Indians, and may include denial of certain rights, benefits, or privileges as an enrolled member of the Eastern Band of Cherokee Indians. A judgment to remove by impeachment shall be final and jeopardy shall not attach so that an impeached official may be bound over for prosecution, trial, conviction, and sentencing in a court of law. The Eastern Band of Cherokee Indians may initiate a civil action in the Judicial Branch to seek restitution of any funds wrongfully acquired by an individual removed by impeachment.

(Ord. No. 29, 4-1-2000)

**Sec. 7-11. Vacancies in the Judicial Branch.**

A vacancy in any judicial office shall be filled by appointment in accordance with section 7-1 above.

(Ord. No. 29, 4-1-2000)

**Sec. 7-12. Annual report.**

The Chief Justice shall make an annual report to the Tribal Council at the Annual Council concerning the following issues:

- (1) Recommended clarifications, changes or additions to the rules of procedure and evidence governing litigation in the Judicial Branch;
- (2) Suggested clarifications, changes or additions, if any, to the Cherokee Code to facilitate the administration of justice;
- (3) Statistics concerning the general nature and character of disputes heard or resolved by the Judicial Branch over the preceding year;
- (4) Budgetary and financial matters related to the Judicial Branch; and
- (5) Such other matters as the Chief Justice deems appropriate.

(Ord. No. 29, 4-1-2000)

**Sec. 7-13. Sovereign immunity.**

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians. The Judicial Branch shall dismiss any claim or cause of action against the Eastern Band of Cherokee Indians, or any of its programs, enterprises, authorities, officials, agents, or employees acting in their official capacities, unless the complaining party demonstrates that the Cherokee Tribal Council or the United States Congress has expressly and unequivocally waived the Eastern Band's sovereign immunity for such a claim in a written ordinance, law, or contract.

(Ord. No. 29, 4-1-2000)

**Sec. 7-14. Rules of procedure and evidence.**

(a) Proceedings in the courts of the Judicial Branch shall be governed by the North Carolina Rules of Civil Procedure, the North Carolina Rules of Evidence, and the North Carolina Rules of Appellate Procedure. The Cherokee Tribal Council adopts these North Carolina rules as a matter of comity to promote respect for the Cherokee Courts and to facilitate the practice of law in the Cherokee Courts.

(b) All documents to be filed with the courts shall be filed at the Cherokee Courthouse, Acquoni Road, Cherokee, Qualla Boundary (North Carolina).

(c) This section shall not be construed as a waiver of the Tribe's inherent sovereign authority to make its own laws and rules. The Supreme Court may propose amendments to specific rules for approval by the Tribal Council. Such rules shall not take effect until so approved and published in the Cherokee Code.

(Ord. No. 29, 4-1-2000)

**Sec. 7-15. Transition.**

The Tribal Council has stated its intention to enter into a self-determination contract with the Bureau of Indian Affairs under Public Law 93-638 to assume responsibility for the court system using available federal funds. This section shall not have the effect of transferring judicial responsibility from the BIA to the Tribe until such a contract has been successfully negotiated.

(Ord. No. 29, 4-1-2000)

**Editor's note:** Contract negotiated effective 4-1-2000.

**Sec. 7-16. Severability.**

If any section of this chapter is found to be inconsistent with a specific provision of the Charter or Governing Document of the Eastern Band of Cherokee Indians, then the Charter shall supersede that section, but all other sections of this chapter shall remain in full force and effect.

(Ord. No. 29, 4-1-2000)

**Sec. 7-17. Amendment.**

To protect the independence of the Judicial Branch, this Chapter may only be amended by a vote of two-thirds of the Cherokee Tribal Council and ratification by the Principal Chief.

(Ord. No. 29, 4-1-2000)

**Sec. 7-18. Repeal of prior law.**

The following sections of Chapter 1 are hereby rescinded, effective upon the implementation of the self-determination contract with the Bureau of Indian Affairs: Sections 1-1, 1-4, 1-5, 1-7, 1-8, 1-9, 1-10, 1-12, 1-13, 1-15, 1-16, 1-17, and 1-18. All other provisions of Chapter 1 shall remain in effect.

(Ord. No. 29, 4-1-2000)

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## Chapter 7A: Juvenile Code\*

**\*Cross references:** Civil procedure, ch. 1; crimes against children, § 14-30 et seq.;



adoption, ch. 48; domestic and family violence, ch. 50C; child support enforcement, ch. 110.

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## **ARTICLE I. IN GENERAL**

### **Sec. 7A-1. Purpose.**

This chapter shall be interpreted and construed so as to implement the following purposes and policies:

- (a) To divert juvenile offenders from the juvenile system through the intake services authorized herein so that juveniles may remain in their own homes and may be treated through community-based services when this approach is consistent with the protection of the public safety;
- (b) To provide procedures for the hearing of juvenile cases that ensure fairness and equity and that protect the constitutional rights of the juveniles and parents; and
- (c) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public safety.

### **Sec. 7A-2. Definitions.**

Unless the context clearly requires otherwise, the following words have the listed meanings:

- (a) *Caretaker* shall mean any person other than a parent who is caring for a juvenile, including any blood relative, step-parent, foster parent, or house parent, cottage parent or other person supervising a juvenile in a child care facility.
- (b) *Clerk* shall mean the Clerk of the Cherokee Court, acting clerk, or assistant or deputy clerk.
- (c) *Court* shall mean the Cherokee Court of Indian Offenses or Cherokee Tribal Court.
- (d) *Court counselor* shall mean a person responsible for probation and aftercare services to juveniles on probation or on conditional release.
- (e) *Custodian* shall mean the person or agency that has been awarded legal custody of a juvenile by a court.
- (f) *Delinquent juvenile* shall mean any juvenile who is less than 16 years of age who has committed a criminal offense under tribal or federal laws, including violation of the motor vehicle laws.
- (g) *Detention* shall mean the confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement.
- (h) *Detention home* shall mean an authorized facility providing secure custody for juveniles.

(i) *Guardian* shall mean a person who legally has the care and management of the person or the estate or both, of a child during its minority.

(j) *In loco parentis* shall mean person acting in loco parentis, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(k) *Intake counselor* shall mean a person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(l) *Judge* shall mean any judge of the Cherokee Court of Indian Offenses or Cherokee Tribal Court.

(m) *Juvenile* shall mean any person who is less than 18 years of age and is not married, emancipated or a member of the armed services of the United States. A juvenile who is married, emancipated or a member of the armed forces shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(n) *Parent* shall mean any biological parent or parents of a juvenile or any person who has lawfully adopted a juvenile. It does not include the unwed father where paternity has not been acknowledged or established.

(o) *Petitioner* shall mean the individual who initiates court action whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(p) *Probation* shall mean the status of a juvenile who has been adjudicated delinquent subject to specific conditions under the supervision of a court counselor who may be returned to the court for violation of those conditions during the period of probation.

(q) *Prosecutor* shall mean the prosecuting attorney for the Cherokee Court of Indian Offenses or the Cherokee Tribal Court.

(r) *Protective supervision* shall mean the status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(s) *Shelter care* shall mean the temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(t) *Undisciplined juvenile* shall mean a juvenile who is less than 18 years of age who is unlawfully absent from school; who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control, who is found in places where it is unlawful for a juvenile to be, or who has run away from home.

(Ord. No. 76A, 1-8-1998; Ord. No. 289, 7-17-00)

**Sec. 7A-3. Jurisdiction.** |

The Cherokee Court has exclusive, original jurisdiction over any case involving an Indian juvenile who is domiciled within the territory of the Eastern Band of Cherokee Indians and is alleged to be delinquent or undisciplined. In addition, the Cherokee Court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to section 7A-18. For purposes of determining jurisdiction, the age of the juvenile at the time of the alleged offense governs. For juveniles alleged to be delinquent or undisciplined, the minimum age is six years of age. The court also has exclusive original jurisdiction of the following proceedings:

- (1) Proceedings to determine jurisdiction;
- (2) Proceedings to determine whether the juvenile is within the jurisdiction of the court;
- (3) Proceedings to determine whether the facts alleged constitute a delinquent or undisciplined offense;
- (4) Proceedings to determine whether the facts are sufficiently serious to warrant court action;
- (5) Proceedings to obtain assistance from community resources when court action is not necessary;
- (6) Proceedings to determine whether a juvenile who is on conditional release and under after-care supervision of the court counselor has violated the terms of his conditional release;
- (7) Hearing procedures;
- (8) Proceedings for expunction of records of juveniles adjudicated delinquent or undisciplined.

(Ord. No. 289, 7-17-00)

#### **Sec. 7A-4. Retention of jurisdiction.**

When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or, until the delinquent juvenile reaches his 16th birthday and until the undisciplined juvenile reaches his 18th birthday, except as provided otherwise in this section. The court has continuing jurisdiction over a delinquent juvenile who is in custody and over proceedings to determine whether a delinquent juvenile is on probation or who is under the post-release supervision of the court has violated the terms of the delinquent juvenile's probation or the delinquent juvenile's post-release supervision. In addition, the court retains jurisdiction over the parent, guardian or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section if the parent, guardian or custodian has been served with a summons pursuant to section 7A-18.

(Ord. No. 289, 7-17-00)

### **ARTICLE II. SCREENING OF DELINQUENCY AND UNDISCIPLINED PETITIONS**

#### **Sec. 7A-5. Intake services.**

(a) The intake counselor/court counselor shall establish intake services for all delinquency and undisciplined cases.

(b) The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action and to obtain assistance from community resources when court referral is not necessary. The intake counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complaints to law enforcement agencies for those purposes.

#### **Sec. 7A-6. Preliminary inquiry.**

(a) When a complaint is received, the intake counselor shall make a preliminary determination whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the intake counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, he shall, without further inquiry, refuse authorization to file the complaint.

(b) When requested by the intake counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of the offenses.

(c) If the intake counselor finds reasonable grounds to believe that the juvenile has committed any of the offenses included under the Major Crimes Act, 18 U.S.C. 1153, he shall, without further inquiry, refer the matter to the United States Attorney.

#### **Sec. 7A-7. Evaluation.**

Upon finding of legal sufficiency, the intake counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted to a community resource, or the case resolved without further action. The intake process shall include the following steps, if practicable:

(a) Interviews with the complainant and the victim, if someone other than the complainant;

(b) Interviews with persons known to have information about the juvenile or family, which information is pertinent to the case;

(c) Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone.

#### **Sec. 7A-8. Evaluation decision.**

(a) The evaluation of a particular complaint shall be completed within 15 days, with an extension of a maximum of 15 additional days at the discretion of the intake counselor/court counselor. The intake counselor must decide within this time period whether or not a complaint will be filed as a juvenile petition. If the intake counselor determines that a complaint should be filed as a petition, he shall assist the complainant when necessary

with the preparation and filing of the petition, or help with the preparation and filing of the petition, shall endorse on it the date and the words "Approved for filing," shall sign it beneath such words, and shall transmit it to the clerk. If the intake counselor determines that a petition should not be filed, he shall immediately notify the complainant in writing with the reasons for his decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The intake counselor shall then sign his name on the complaint beneath the words "Not approved."

(b) Any complaint not approved for filing as a juvenile petition shall be destroyed by the intake counselor after holding the complaint for a temporary period to allow follow-up and review.

#### **Sec. 7A-9. Referral and follow-up.**

The intake counselor may refer any case to an appropriate public or private resource unless the offense is one in which a petition is required. After making a referral, the intake counselor shall ascertain that the juvenile actually contacted or was seen by the resource to which he was referred. In the event that the juvenile does not contact or visit the community resource, the intake counselor may reconsider his decision to divert and may authorize the filing of a complaint as a petition within 60 days from the date of the referral. If the juvenile contacts or is seen by the resource, the intake counselor shall close the file.

#### **Sec. 7A-10. Request for review by prosecutor.**

The complainant has five calendar days, from receipt of the intake counselor's decision not to approve the filing of a complaint, to request review by the prosecutor. The intake counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant and the intake counselor of the time and place for the review.

#### **Sec. 7A-11. Review of determination that petition should not be filed.**

The prosecutor shall review the intake counselor's determination that a juvenile petition should not be filed within 20 days after the complainant is notified. Review shall include conferences with the complainant and the intake counselor. At the conclusion of the review, the prosecutor shall affirm the decision of the intake counselor or direct the filing of a petition and notify the complainant of his action.

#### **Sec. 7A-12. Pleading and process.**

The pleading in a juvenile action is the petition. The process in a juvenile action is the summons.

#### **Sec. 7A-13. Contents of the petition.**

(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of his parent, guardian or custodian and shall allege the facts which invoke jurisdiction over the juvenile. In cases of alleged delinquency or undisciplined behavior, the petition shall be separate for each juvenile.

(b) A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to

apprise the juvenile of the conduct which is the subject of the accusation.

(c) Sufficient copies of the petition shall be prepared so that copies will be available for each juvenile, for each parent if living separate and apart, for the court counselor or social worker, and for any person determined by the court to be a necessary party.

**Sec. 7A-14. Receipt of complaints; filing of petition.**

(a) All reports concerning a juvenile alleged to be delinquent or undisciplined shall be referred to the intake counselor. If the intake counselor determines that a petition should be drawn and filed, the petition shall be drawn by the intake counselor or the clerk, signed by the complainant and verified before an official authorized to administer oaths. If the circumstances indicate a need for immediate attachment of jurisdiction and if the intake counselor is unavailable to receive a complaint and to draw a petition when it is needed, the clerk shall assist the complainant in communicating his complaint to the intake counselor by telephone and, with the approval of the intake counselor, shall draw a petition and file it when signed and verified. A copy of the complaint and petition shall be transmitted to the intake counselor.

(b) All complaints, and any decision of the intake counselor not to authorize that a complaint be filed as a petition, shall be reviewed by the prosecutor, if review is requested. If the prosecutor, after making his review, shall authorize a complaint to be filed as a petition, he shall prepare the complaint to be filed by the clerk as a petition, recording the day of filing.

**Sec. 7A-15. Immediate need for petition when clerk's office is closed.**

(a) All complaints which may arise when the office of the clerk is closed shall be referred to the intake counselor according to the nature of the complaint.

(b) When the office of the clerk is closed, a Judge may draw, verify and issue petitions when an intake counselor requests a petition alleging a juvenile to be delinquent or undisciplined.

(c) The authority of the Judge under subsection (b) is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition issued under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

**Sec. 7A-16. Commencement of action.**

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the issuance of a juvenile petition by a Judge when the clerk's office is closed, which issuance shall constitute filing.

**Sec. 7A-17. Issuance of summons.**

(a) After a petition has been filed, the clerk shall issue a summons to the juvenile, to the parent and to the guardian, custodian or caretaker, requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons. The summons shall advise the parent that upon service, jurisdiction over him is obtained and that failure of the parent to comply with any order of the court may cause the court to issue a show cause order for contempt.

(b) A summons shall be directed to the person summoned to appear and shall be delivered to any law enforcement officer having authority and territorial jurisdiction or to a juvenile court counselor, to execute the process.

**Sec. 7A-18. Service of summons.**

(a) The summons shall be personally served upon the parent, the guardian, custodian or caretaker and the juvenile or counsel or guardian ad litem, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the Judge.

(b) If the parent, guardian or custodian entitled to receive a summons cannot be found by a diligent effort, the Judge may authorize service of the summons and petition by mail or publication. The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the Judge, in his discretion, may direct.

(c) If the parent, guardian or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, he may be proceeded against as for contempt of court.

**ARTICLE III. TEMPORARY CUSTODY; SECURE AND NONSECURE CUSTODY;  
CUSTODY HEARINGS**

**Sec. 7A-19. Taking a juvenile into temporary custody.**

Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody under the following circumstances:

(1) A juvenile may be taken into temporary custody by a law enforcement officer without a court order if grounds exist for the arrest of an adult in similar circumstances.

(2) A juvenile may be taken into temporary custody without a court order by a law enforcement officer if there are reasonable grounds to believe that he is an undisciplined juvenile.

(3) A juvenile may be taken into custody without a court order by a law enforcement officer, if there are reasonable grounds to believe the juvenile is an absconder from any State training school or approved detention facility.

(Ord. No. 872, 8-9-2001)

**Sec. 7A-20. Duties of person taking juvenile into temporary custody.**

(a) A person who takes a juvenile into custody without a court order under section 7A-19 shall proceed as follows:

(1) Notify the juvenile's parent, guardian or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian or custodian of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;

(2) Release the juvenile to his parents, guardian or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary;

(3) If the juvenile is not released under subsection (2), the person having temporary custody shall proceed as follows: In the case of a juvenile alleged to be delinquent or undisciplined, he shall request a petition be drawn. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the Judge or person delegated authority pursuant to section 7A-21 if other than the intake counselor, for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this article shall not be held for more than 12 hours unless:

(1) A petition or motion for review has been filed by an intake counselor, and

(2) An order for secure or nonsecure custody has been entered by a Judge.

#### **Sec. 7A-21. Authority to issue custody orders.**

In the case of any juvenile alleged to be within the jurisdiction of the court, when the Judge finds it necessary to place the juvenile in custody, he may order that the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in section 7A-22. Any Judge shall have the authority to issue secure and nonsecure custody orders.

#### **Sec. 7A-22. Criteria for secure or nonsecure custody.**

(a) Nonsecure custody shall be rendered unless secure custody is appropriate under the criteria set out in subsections (b), (c) and (d) of this section.

(b) When a request is made for secure custody, the Judge may order secure custody only where he finds there is a reasonable factual basis to believe that the juvenile actually committed the offense as alleged in the petition, and:

(1) That the juvenile is presently charged with one or more felonies, or

(2) That the juvenile has willfully failed to appear on the pending delinquency charge or has a record of willful failures to appear at court proceedings, or

(3) That by reason of the juvenile's threat to flee from the court's jurisdiction or circumstances indicating preparation or design to flee from the court's jurisdiction, there is reasonable cause to believe the juvenile will not appear in court on a pending delinquency charge unless he is detained, or

(4) That the juvenile is an absconder from any training school or facility in this or another state, or

(5) That the juvenile has a recent record of adjudications for violent conduct resulting in serious physical injury to others, the petition pending is for delinquency and the charge involves physical injury, or

(6) That by reason of the juvenile's recent self-inflicted injury or attempted self-



injury there is reasonable cause to believe the juvenile should be detained for his own protection for a period of less than 24 hours while action is initiated to determine the need for inpatient hospitalization, provided that the juvenile has been refused admittance by any appropriate hospital, or

(7) That the juvenile alleged to be undisciplined by virtue of his being a runaway may be detained for a period of no more than 82 hours to facilitate evaluation of the juvenile's need for medical or psychiatric treatment or to facilitate reunion with his parents.

(c) When a juvenile has been adjudicated delinquent, the Judge may order secure or nonsecure custody pending the dispositional hearing or pending placement of a delinquent juvenile. The Judge may also order secure custody for a juvenile who is alleged to have violated the terms of his probation or conditional release.

(d) In determining whether secure custody should be ordered, the Judge should consider the nature of the circumstances of the offense; the weight of the evidence against the juvenile; the juvenile's family ties, character, mental condition, and school attendance record; and whether the juvenile is on conditional release. If the criteria for secure custody as set out in subsection (b) or (c) are met, the Judge may enter an order directing an officer to assume custody of the juvenile and to take the juvenile to the place designated in the order.

(Ord. No. 872, 8-9-2001)

**Sec. 7A-23. Order for secure or nonsecure custody.**

(a) The custody order shall be in writing and shall direct a law enforcement officer to assume custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian or custodian by the official executing the order. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail.

(b) An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

(Ord. No. 872, 8-9-2001)

**Sec. 7A-24. Place of secure or nonsecure custody.**

(a) A juvenile meeting the criteria set out in section 7A-22(a), may be placed in nonsecure custody with the Department of Social Services or an appropriate person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care, or

(2) Any other home or facility approved by the court and designated in the order.

(b) A juvenile meeting the criteria set out in section 7A-22(b) may be temporarily detained in an approved detention home or regional detention facility which shall be separate from any jail, lockup, prison or other adult penal institution.

**Sec. 7A-25. Hearing to determine need for continued secure or nonsecure custody.**

(a) No juvenile shall be held under a custody order for more than five calendar days without a hearing on the merits or a hearing to determine the need for continued custody. In every case in which an order has been entered by an official exercising authority delegated pursuant to chapter 21 of this Code, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of court, if such session precedes the expiration of the five calendar day period.

(b) Any juvenile who is alleged to be delinquent shall be advised of his right to have an attorney represent him.

(c) At a hearing to determine the need for continued custody, the Judge shall receive testimony and shall allow the juvenile and his parent, guardian or custodian an opportunity to introduce evidence, to be heard in their own behalf and to examine witnesses. The Tribe shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The Judge shall not be bound by the usual rules of evidence at such hearings.

(d) The Judge shall be bound by criteria set forth in section 7A-22 in determining whether continued custody is warranted.

(e) The Judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(1) Release on the written promise of the juvenile's parent, guardian or custodian to produce him in court for subsequent proceedings, or

(2) Release into the care of a reasonable person or organization, or

(3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court, or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the Judge determines that the juvenile meets the criteria in section 7A-22 and should continue in custody, he shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

#### **Sec. 7A-26. Telephonic communications authorized.**

All communications, notices, orders, authorizations and requests authorized or required by this Code may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order and the hour and the date of the authorization.

### **ARTICLE IV. BASIC RIGHTS**

#### **Sec. 7A-27. Juvenile's right to counsel.**

A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel, at their own expense, in all proceedings in which delinquency is alleged. The

right of representation shall not include the right to counsel at the expense of the Tribe. Neither the United States Constitution nor the Indian Civil Rights Act require legal counsel to be provided at the expense of the Tribe.

**Sec. 7A-28. Appointment of guardian.**

In any case when no parent appears in a hearing with the juvenile or when the Judge finds it would be in the best interest of the juvenile, the Judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody and control of the juvenile or may arrange a suitable placement for him and may represent the juvenile in legal actions before any court. The guardian shall also have authority to consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces, and undergoing major surgery. The authority of the guardian shall continue until the guardianship is terminated by order, until the juvenile is emancipated or until the juvenile reaches the age of majority.

**ARTICLE V. LAW ENFORCEMENT PROCEDURES IN DELINQUENCY PROCEEDINGS**

**Sec. 7A-29. Role of the law enforcement officer.**

(a) The records of law enforcement officers concerning juvenile cases shall be maintained separately from other police records and may not be inspected or disclosed to the public, except:

- (1) To the victim and appropriate school officials in each case when the juvenile is found guilty of a delinquent act;
- (2) By order of the court;
- (3) When the court orders the child to be held for criminal proceedings;
- (4) When there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
- (5) When disclosure is to a tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information to assist in apprehension, to conduct an investigation, or as otherwise provided by law.

(b) A law enforcement officer, when he takes a juvenile into temporary custody, should select the least restrictive course of action appropriate to the situation and needs of the juvenile from the following:

- (1) To divert the juvenile from the court by:
  - a. Release;
  - b. Counsel and release;
  - c. Release to parents;
  - d. Referral to community resources;

- (2) To seek a petition;
- (3) To seek a petition and request for custody order.  
(Ord. No. 289, 7-17-00)

**Sec. 7A-30. Interrogation procedures.**

- (a) Any juvenile in custody must be advised prior to questioning:
  - (1) That he has a right to remain silent, and
  - (2) That any statement he does make can be and may be used against him, and
  - (3) That he has a right to have a parent, guardian or custodian present during questioning, and
  - (4) That he has the right to consult with an attorney.

(b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a); however, a parent, guardian or custodian may not waive any right on behalf of the juvenile.

**Sec. 7A-31. Authority to issue nontestimonial identification order where juvenile alleged to be delinquent.**

Nontestimonial identification procedures shall not be conducted on any juvenile without a court order issued pursuant to this Code unless the juvenile has been transferred to Tribal court or the federal court for trial as an adult, in which case procedures applicable to adults shall apply. A nontestimonial identification order may be issued by any Judge upon request of a prosecutor. As used in this Code, "nontestimonial identification" means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples or other reasonable physical examination, handwriting samples, voice samples, photographs and lineups or similar identification procedures requiring the presence of a juvenile.

**Sec. 7A-32. Time of application of nontestimonial identification order.**

A request for nontestimonial identification order may be made prior to taking a juvenile into custody or after custody and prior to the adjudicatory hearing.

**Sec. 7A-33. Grounds for order.**

An order may issue only on affidavit or affidavits sworn before the Judge and establishing the following grounds for the order:

- (a) That there is probable cause to believe that an offense has been committed which if committed by an adult would be punishable in federal court by imprisonment for more than two years, and
- (b) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense, and

(c) That the result of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

**Sec. 7A-34. Issuance of order.**

Upon a showing that the grounds specified in section 7A-33 of this Code exist, the Judge may issue an order.

**Sec. 7A-35. Nontestimonial identification order at request of juvenile.**

A juvenile in custody for or charged with an offense which if committed by an adult would be punishable in federal court by imprisonment for more than two years, may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the Judge to whom the request was directed must order the Tribe to conduct the identification procedures.

**Sec. 7A-36. Destruction of records resulting from nontestimonial identification procedures.**

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

(a) If a petition is not filed against a juvenile who has been subject to nontestimonial identification procedures, all records of such evidence shall be destroyed.

(b) If the juvenile is found not guilty, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under 14 years of age, and who is adjudicated to have committed a delinquent act which would be less than a felony had the juvenile been an adult, all records shall be destroyed.

(c) If a juvenile 14 years of age or older is found to have committed a delinquent act which would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in such a manner and under safeguards as to limit their use to inspection for comparison purposes by law enforcement officials only in the investigation of a crime.

(d) Any evidence seized pursuant to a nontestimonial order shall be retained by law enforcement officers until further order is entered by the court.

(e) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law enforcement agency having possession of such records. Following destruction, the law enforcement agency shall make written certification to the court of such destruction.

**Sec. 7A-37. Penalty for willful violation.**

Any person who willfully violates provisions of this Code, which prohibit conducting nontestimonial identification procedures without an order issued by a Judge, shall be guilty

of a misdemeanor and may be punished by imprisonment for up to six months and a fine of up to \$500.00.

**Sec. 7A-38. Transfer of jurisdiction of juvenile.**

After notice, hearing and a finding of probable cause, the court may transfer jurisdiction of a juvenile who is 14 years of age or older at the time he allegedly committed an offense which would be a felony if committed by an adult. If the alleged felony constitutes a capital offense, the Judge shall transfer the case to the federal court for trial as in the case of adults.

**Sec. 7A-39. Amendment of petition.**

The Judge may permit a petition to be amended when the amendment does not change the nature of the offense alleged or the conditions upon which the petition is based. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations.

**Sec. 7A-40. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.**

The provisions of the Tribal Criminal Code or Code of Federal Regulations apply to all cases in which a juvenile is alleged to be delinquent. No juvenile committed under this section may be placed in a situation where he will come in contact with adults committed for any purpose.

**Sec. 7A-41. Adjudicatory hearing.**

The adjudicatory hearing shall be held in the court at such time and place as the Judge shall designate. The Judge may exclude the public from hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

**Sec. 7A-42. Participation of the prosecutor.**

A prosecutor shall represent the Tribe in contested delinquency hearings including detention, probable cause, adjudicatory, dispositional, probation, revocation and conditional release hearings.

**Sec. 7A-43. Conduct of hearing.**

The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the Judge shall protect the following rights of the juvenile and his parents to assure due process of law; the right to written notice of the facts alleged in the petition, the right to counsel at their own expense, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right of discovery and all rights afforded adult offenders except the right to bail and the right of self-representation.

**Sec. 7A-44. Continuances.**

The court may continue at any time any case to allow additional factual evidence, social information or other information needed in the best interest of the juvenile or in the interest of justice.

**Sec. 7A-45. When admission by juvenile may be accepted.**

(a) A Judge may accept an admission from a juvenile only after first addressing him personally, and:

- (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him,
- (2) Determining that he understands the nature of the charge,
- (3) Informing him that he has a right to deny the allegations,
- (4) Informing him that by his admission he waives his right to be confronted by the witnesses against him,
- (5) Determining that the juvenile is satisfied with his representation, and
- (6) Informing him of the most restrictive disposition on the charge.

(b) By inquiring of the prosecutor, the juvenile's attorney and the juvenile personally, the Judge shall determine whether there were any prior discussions involving admissions, whether the parties have entered into any arrangement with respect to the admissions and the terms thereof and whether any improper pressure was exerted. The Judge may accept an admission from a juvenile only after determining that the admission is a product of informed choice.

(c) The Judge may accept an admission only after determining that there is a factual basis for the admission. This determination may be based upon any of the following information: a statement of facts by the prosecutor; a written statement of the juvenile; sworn testimony which may include reliable hearsay; or a statement of facts by the juvenile's attorney.

**Sec. 7A-46. Rules of evidence.**

Where delinquent or undisciplined behavior is alleged and the allegation is denied, the court shall proceed in accordance with rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the intake counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing.

**Sec. 7A-47. Quantum of proof in adjudicatory hearing.**

The allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt.

**Sec. 7A-48. Records of proceedings.**

All adjudicatory and dispositional hearings and hearings on transfer to federal court shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The Judge may order that other hearings be recorded.

**Sec. 7A-49. Adjudication.**

If the Judge finds that the allegations in the petition have been proved as provided in section 7A-13 he shall so state. If the Judge finds that the allegations have not been proved, he shall dismiss the petition with prejudice and the juvenile shall be released from secure or nonsecure custody.

**Sec. 7A-50. Predisposition investigation and report.**

The Judge shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological and educational information. No predisposition report shall be submitted to or considered by the Judge prior to the completion of the adjudicatory hearing. The Judge shall permit the juvenile to inspect any predisposition report to be considered by him in making his disposition unless the Judge determines that disclosure would seriously harm his treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and his parent, guardian or custodian at dispositional hearing. The Judge may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian or custodian if the Judge finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information.

**Sec. 7A-51. Dispositional hearing.**

The dispositional hearing may be informal, and the Judge may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and his parent, guardian or custodian shall have an opportunity to present evidence and they may advise the Judge concerning the disposition they believe to be in the best interest of the juvenile. The Judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

**Sec. 7A-52. Purpose.**

(a) The purpose of the disposition in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the Tribe in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and his family in their own home so that the appropriate community resources may be involved in care, supervision and treatment according to the needs of the juvenile. Thus, the Judge should arrange for the appropriate community-level services to be provided to the juvenile and his family in order to strengthen the home situation.

(b) In choosing among statutorily permissible dispositions for a delinquent juvenile, the Judge shall select the least restrictive disposition both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile. A juvenile should not be committed to training school or to any other institution if he can be helped through community-level resources.

**Sec. 7A-53. Dispositional alternatives for delinquent juvenile.**

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives:

- (1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:



- a. Require that a juvenile be supervised in the juvenile's own home by the Eastern Band of Cherokee Indians Juvenile Services, a court counselor, or other personnel may be available to the parent, guardian, or custodian or the juvenile as the judge may specify; or
- b. Place the juvenile in the custody of a parent, guardian, custodian, relative, agency offering placement services, or some other suitable person; or
- c. Place the juvenile in the custody of the Eastern Band of Cherokee Indians Juvenile Services.

(2) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:

- a. An education related to the needs or abilities of the juvenile including vocational education or special education;
- b. A suitable plan of supervision or placement; or
- c. Some other plan that the court finds to be in the best interests of the juvenile.

(3) Order the juvenile to cooperate with a community-based program, an intensive substance abuse treatment program, or a residential or nonresidential treatment program. Participation in the programs shall not exceed 12 months.

(4) Require restitution, full or partial, payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. The court may determine the amount, terms, and conditions of the restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution; however, the court shall not require the juvenile to make immediate restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution.

(5) Impose a fine related to the seriousness of the juvenile's offense. If the juvenile has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult.

(6) Order the juvenile to perform up to 100 hours supervised community service consistent with the juvenile's age, skill, and ability, specifying the nature of the work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense and in no event may the obligation to work exceed 12 months.

(7) Order the juvenile to participate in the victim-offender reconciliation/mediation program.

(8) Place the juvenile on probation under the supervision of a court counselor and impose any combination of the following conditions:

- a. That the juvenile remain on good behavior;
- b. That the juvenile shall not violate any laws;

- c. That the juvenile not violate any reasonable and lawful rules of a parent, guardian or custodian;
- d. That the juvenile attend school regularly;
- e. That the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades;
- f. That the juvenile not associate with specified persons or be in specified places;
- g. That the juvenile refrain from use or possession of any alcoholic beverage or controlled substance as described in section 14-25.2 of the Cherokee Code;
- h. That the juvenile abide by a prescribed curfew;
- i. That the juvenile submit to a warrantless search at reasonable times;
- j. That the juvenile submit to substance abuse monitoring and treatment;
- k. That the juvenile cooperate with electronic monitoring;
- l. That the juvenile participate in a life skills or an educational skills program;
- m. That the juvenile possess no firearm, explosive device, or other deadly weapon;
- n. That the juvenile report to a court counselor as often as required by the court counselor;
- o. That the juvenile make specified financial restitution or pay a fine;
- p. That the juvenile be employed regularly if not attending school; and
- q. That the juvenile satisfy any other condition determined appropriate by the court

(9) Prohibit the juvenile from operating a motor vehicle for as long as the court retains jurisdiction over the juvenile or for any shorter period of time;

(10) Impose a curfew upon the juvenile;

(11) Order that the juvenile not associate with specified persons or be in specified places;

(12) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to not more than five 24-hour periods, the timing of which is determined by the court in its discretion.

(13) Order that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods, which confinement shall not be imposed consecutively with intermittent confinement pursuant to subsection (12) of this section at the same dispositional hearing. The timing of this confinement shall be determined by the court in its discretion.

(14) Order the juvenile to cooperate with placement in a wilderness program.

(15) Order the juvenile to cooperate with placement in a residential treatment facility, an intensive nonresidential treatment program, an intensive substance abuse program, or in a group home, including but not limited to the Cherokee Children's Home.

(16) Order the juvenile to cooperate with a supervised day program requiring the juvenile to be present at a specified place for all or part of every day or of certain days. The court also may require the juvenile to comply with any other reasonable conditions specified in the dispositional order that are designed to facilitate supervision.

(17) Order the juvenile to participate in a regimented training program.

(18) Order the juvenile to be placed on house arrest.

(19) Suspend imposition of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to by the juvenile and specified in the dispositional order. The conditions shall not exceed the allowable dispositions for the level under which disposition is being imposed.

(20) Order the residential placement of a juvenile in a multipurpose group home.

(21) Place the juvenile in a training school for a period of not less than six months.

(Ord. No. 289, 7-17-00)

### **Sec. 7A-53A. Dispositional alternatives for undisciplined juveniles.**

The following alternatives for disposition shall be available to the court exercising jurisdiction over a juvenile who has been adjudicated undisciplined. The court may combine any of the applicable alternatives when the court finds it to be in the best interests of the juvenile:

(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that the juvenile be supervised in the juvenile's own home by a court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or

b. Place the juvenile in the custody of a parent, guardian, custodian, relative, residential agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the Cherokee Children's Home, or other similar type facility.

(2) Place the juvenile under the protective supervision of a court counselor so that the counselor may:

(i) Assist the juvenile in securing social, medical, and educational services; and

(ii) Visit and work with the family as a unit to ensure the juvenile is provided proper supervision and care.

This supervision may be issued for a period of up to three months, with an extension of an additional three months in the discretion of the court. In addition, the court may impose any combination of the following conditions which may relate to the needs of the juvenile, including:

a. That the juvenile remain on good behavior and not violate any laws;

b. That the juvenile attend school regularly;

c. That the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades;

d. That the juvenile not associate with specified persons or be in specified places;

e. That the juvenile abide by a prescribed curfew;

f. That the juvenile report to a court counselor as often as required by the court counselor;

g. That the juvenile be employed regularly if not attending school; and

h. That the juvenile satisfy any other conditions determined appropriate by the court.

(3) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:

a. An education related to the needs or abilities of the juvenile including vocational education or special education;

b. A suitable plan of supervision or placement; or

c. Some other plan that the court finds to be in the best interests of the juvenile.

(Ord. No. 289, 7-17-00)

**Sec. 7A-54. Authority over parent of juvenile adjudicated as delinquent and undisciplined.**

(a) In each case brought pursuant to this chapter, on the date of the arraignment, the court shall identify the parent or parents of the minor or, in their absence, the guardian or other responsible person charged by law with the responsibility for the welfare of the juvenile. It shall be the obligation of such parent or other responsible person to:

(1) Personally attend and assure the attendance of the juvenile at all hearings of the court as well as all meetings with support service agencies occasioned by the action;

(2) Pay a portion or all of any restitution or fines imposed by the court when the court finds the payment by the parent to be in the best interest of justice and rehabilitation. An order to pay restitution or a fine shall be subject to enforcement as a debt to the Tribe and the restitution shall be distributed by the court to the victim(s) of the crime;

(3) Supervise the juvenile's compliance with all orders of the court and conditions of release and probation, including but not limited to curfew, school attendance and general behavior.

(b) If the judge orders medical, surgical, psychiatric, psychological or other evaluations or treatment, the judge may order the parent or other responsible parties to participate in the evaluation or treatment and to pay the cost of the treatment or care ordered.

(c) At the dispositional hearing or subsequent hearing the judge may determine whether the best interests of the juvenile requires that the parent or other responsible party undergo psychiatric, psychological, or other evaluation or treatment or counseling directed toward remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent or other responsible party. If the court finds that the best interests of the juvenile require the parent (or other responsible party) undergo evaluation or treatment, it may order that person to comply with a plan of evaluation or treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent or other responsible party upon that person's compliance with the plan of evaluation or treatment. The cost of such evaluation or treatment will be paid by the parent or other responsible party, unless the court finds that the individual is unable to pay for such evaluation or treatment. In such cases, the court may order the parent or other responsible party to receive evaluation or treatment currently available from the Tribal mental health program.

(d) The Judge may order the parent (or other responsible party) of a juvenile who has been adjudicated undisciplined or delinquent to attend parental responsibility classes if those classes are available on the Qualla Boundary or in the county or neighboring county where the parent or other responsible party resides.

(e) Failure of a parent (or other responsible party) who is personally served to participate in or comply with subsections (a), (b), (c) and (d) may be treated as criminal contempt of court punishable by up to a \$1,000 fine and 90 days' imprisonment. It shall be a defense to any such charge of contempt that the parent, or guardian or such other person or persons having custody and control of the juvenile made reasonable efforts to comply.

(Ord. No. 289, 7-17-00)

### **Sec. 7A-55. Dispositional order/contempt of court.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition. The terms of the disposition shall include the kind of disposition, the duration, the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) Upon motion of the court counselor or on the court's own motion, the court may issue an order directing a juvenile who has been adjudicated delinquent or undisciplined to appear and show cause why the juvenile should not be held in contempt for willfully failing to comply with an order of the court. In the case of a juvenile adjudicated delinquent, the court may amend the dispositional order to include additional alternatives outlined in section 7A-53. In the case of a juvenile adjudicated undisciplined who is held in contempt of court for the first time, the court may order the undisciplined juvenile confined in an approved detention facility for a period not to exceed 24 hours. The second time the undisciplined juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility not to exceed three days. The third time and all subsequent times the undisciplined juvenile is held in contempt, the court may order the undisciplined juvenile confined in an approved detention facility not to exceed five days. The timing of any confinement under this section shall be determined by the court in its discretion. In no event shall an undisciplined juvenile held in contempt pursuant to this section be confined for more than 14 days in one 12-month period. In addition hereto, the court may, in its discretion, order the placement of an undisciplined juvenile into the Cherokee Children's Home or other similar type facility for a period not to exceed three consecutive months.

(Ord. No. 289, 7-17-00)

### **Sec. 7A-56. Authority to modify or vacate.**

(a) Upon motion in the cause or petition and after notice, the Judge may conduct a review hearing to determine whether the order of the court is in the best interest of the juvenile and the Judge may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.

(b) In a case of delinquency, the Judge may reduce the nature or the duration of the disposition on the basis that it exceeds the statutory maximum, was imposed in an illegal manner or is unduly severe with reference to the seriousness of the offense, the culpability of the juvenile, or the disposition given to juveniles convicted of similar offenses.

(c) In any case where the Judge finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile or until terminated by order of the court.

### **Sec. 7A-57. Right to appeal.**

Upon motion of a proper party as defined in section 7A-58 review of any final order of the court in a juvenile matter under this section shall be before the Appellate Division. Notice of appeal shall be given in open court at the time of the hearing or in writing within ten days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

- (a) Any order finding absence of jurisdiction,
- (b) Any order which in effect determined the action and prevents a judgment from which appeal might be taken,
- (c) Any order of disposition after an adjudication that a juvenile is delinquent or undisciplined,
- (d) Any order modifying custodial rights.

**Sec. 7A-58. Proper parties for appeal.**

An appeal may be taken by the juvenile, the juvenile's parent, guardian or custodian/extended family member, the public or private agency. The Tribe's appeal is limited to the following:

- (a) Any final order in cases other than delinquency or undisciplined cases,
- (b) The following orders in delinquency or undisciplined cases:
  - (1) An order finding a Tribal law to be unconstitutional,
  - (2) Any order which terminated the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under Tribal law or by granting a motion to suppress.

**Sec. 7A-59. Disposition pending appeal.**

Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the Judge orders otherwise. For compelling reasons which must be stated in writing, the Judge may enter a temporary order affecting the custody or placement of the juvenile as he finds to be in the best interest of the juvenile or the Tribe.

**Sec. 7A-60. Disposition after appeal.**

Upon the affirmation of the order of adjudication or disposition of the court by the Appellate Division in the event of such appeal, the Judge shall have authority to modify or alter his original order or adjudication or disposition as he finds to be in the best interest of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within ten days thereafter as to why the modifying order should be vacated or altered.

**Sec. 7A-61. Confidentiality of records.**

(a) The Clerk of Court shall maintain a complete record of all juvenile cases filed in his office to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the Judge, except that the juvenile, his parent, guardian, custodian or other authorized representative of the juvenile shall have a right to examine the juvenile's record. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recordings of the hearing and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has

expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the Judge.

(b) The court counselor shall maintain a record of the cases of juveniles under supervision by court counselors which shall include family background informational reports of social, medical, psychiatric or psychological information concerning a juvenile; interviews with his family; or other information which the Judge finds should be protected from public inspection in the best interest of the juvenile.

(c) The records maintained pursuant to subsection (b) may be examined only by order of the Judge except that the juvenile shall have the right to examine them.

(d) Law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults except in proceedings when jurisdiction of a juvenile is transferred to Tribal court. Law enforcement records and files concerning juveniles shall be open only to the inspection of the prosecutor, court counselors, the juvenile, his parent, guardian or custodian.

(e) All records and files maintained by the Division of Youth Services shall be withheld from public inspection and shall be open only to the inspection of the juvenile, professionals in that agency who are directly involved in the juvenile's case and court counselors. The Judge authorizing commitment of a juvenile shall have the right to inspect and order the release of records maintained by the Division of Youth Services on that juvenile.

(f) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents.

(g) Nothing in the section shall preclude the necessary sharing of information among authorized agencies.

**Sec. 7A-62. Expunction of records of juveniles adjudicated delinquent and undisciplined.**

(a) Any person who has attained the age of 18 years may file a petition in the court where he was adjudicated undisciplined for expunction of all records of that adjudication.

(b) Any person who has attained the age of 18 years may file a petition in the court where he was adjudicated delinquent for expunction of all records. Such petition shall be filed no sooner than two years after termination of the court's jurisdiction over the petitioner. The petition may be granted in the court's discretion provided the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the Tribe or any state.

(c) The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior since the adjudication, that he has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the Tribe or any state.

(2) Verified affidavits of two persons, who are not related to the petitioner or to each



other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined.

The petition shall be served upon the prosecutor. The prosecutor shall have ten days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

(d) If the Judge, after hearing, finds that the petitioner satisfies the conditions set out in subsections (a) and (b), he shall order and direct the Clerk of Court and all law enforcement agencies to expunge their records of the adjudication including all references to arrests, complaints, referrals, petitions, and orders.

(e) The Clerk of the Court shall forward a certified copy of the order to the Chief of Police or other law enforcement agency.

(f) Records of a juvenile adjudicated delinquent or undisciplined being maintained by a court counselor/intake counselor shall be retained or disposed of by the court.

(g) Records of juveniles adjudicated delinquent or undisciplined being maintained by personnel at a residential facility operated by the Division of Youth Services shall be retained or disposed of as provided by this section.

(Ord. No. 289, 7-17-00)

#### **Sec. 7A-63. Effect of expunction.**

(a) Whenever a juvenile's record is expunged, with respect to the matter in which the record was expunged, the juvenile who is the subject of the record and his parent may inform any person or organization including employers, banks, credit companies, insurance companies and schools that he was not arrested, he did not appear before the court and he was not adjudicated delinquent or undisciplined.

(b) Notwithstanding subsection (a), in any criminal or delinquency case if the juvenile is the defendant and chooses to testify or if he is not the defendant but is called as a witness, the juvenile may be ordered to testify with respect to the fact that he was adjudicated delinquent.

#### **Sec. 7A-64. Notice of expunction.**

Upon expunction of a juvenile's record the Clerk of the Court shall send a written notice to the juvenile at his last known address informing him that the record has been expunged and with respect to the matter involved, the juvenile may inform any person that he has no record. The notice shall inform the juvenile further that if the matter involved is a delinquency record, the juvenile may inform any person that he was not arrested or adjudicated delinquent except that upon testifying in a criminal or delinquency proceeding, he may be required by a Judge to disclose that he was adjudicated delinquent.

(Res. No. 232, 7-31-1984; Ord. No. 439, 5-8-1985; Ord. No. 540, 7-6-1989)

#### **Sec. 7A-65. Curfew.**

(a) A curfew is imposed upon all persons under the age of 16 from 9:00 p.m. to 6:00 a.m., who are prohibited from being upon any public road or public place on the Cherokee Reservation during those hours, unless:

(1) Such minor person is accompanied by a parent, guardian or other adult who stands in the position of a parent to the minor, or

(2) Such minor person is attending or going directly to or from some legitimate group, school, church, or Community Club meeting or activity.

(b) The Cherokee Police Department shall take into custody any minor person who shall violate this curfew and hold the minor until they may be returned to their parent or guardian.

(Res. No. 830, 12-10-1964)

**Sec. 7A-66. Emergency foster care.**

(a) The Cherokee Court shall have authority to exercise emergency placement of children residing on the Cherokee Indian Reservation into emergency foster care homes for a period of up to 72 hours.

(b) The Social Service Committee shall have authority to license emergency foster care homes. Licensing procedures and standards shall be established in the "Emergency Foster Care Operating Standards and Minimum Licensing Procedures Manual" approved and adopted by the Tribal Council.

(c) The Cherokee Emergency Foster Care Program shall be directed by the Cherokee Children's Home Board.

(Res. No. 362, 8-14-1975; Res. No. 276, 8-6-1982; Res. No. 277, 8-6-1982)

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## Chapter 14: Criminal Law\*

**\*Editor's note:** Ord. No. 117, adopted March 3, 2000, completely repealed former Ch. 14 and replaced it with the similar provisions of Ch. 14 as currently set out herein. For a detailed history of former Ch. 14, please refer to the Code Comparative Table.

**Cross references:** Criminal procedure, ch. 15; alcohol, ch. 18; firearms, ch. 144.

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### ARTICLE I. IN GENERAL

**Sec. 14-1. Reserved.**

**Sec. 14.1.1. Application to persons subject to criminal jurisdiction of the Cherokee Court.**

(a) The following criminal offenses and penalties contained herein shall apply to all members of any federally recognized Indian tribe who violate the provisions of this chapter within the territorial jurisdiction of the Eastern Band of Cherokee Indians. That territorial

jurisdiction shall include all lands held in trust for the Eastern Band of Cherokee or its members and all other lands owned by the Eastern Band of Cherokee.

(b) In addition to the penalties contained herein, the court may order a defendant who is found guilty to pay restitution to the victim(s) of the crime. An order of restitution shall be subject to enforcement as a debt to the Tribe, along with any fine imposed by the court, and the restitution shall be distributed by the court to the victim(s) of the crime.

(c) For offenses that allow exclusion as a punishment, such punishment shall only be imposed in the discretion of the Tribal Council in accordance with Chapter 2 of the Cherokee Code.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-1.2. Application to persons not subject to criminal jurisdiction.**

Other persons who enter the territorial jurisdiction of the Eastern Band of Cherokee Indians are expected to comply with the laws of the Eastern Band even if they are not subject to the criminal jurisdiction of the court. If the Tribe is restricted by federal Indian law from prosecuting such a person criminally, then the following civil remedies shall apply to any act by such a person that would otherwise constitute a crime under this chapter or any other criminal law applicable in the Tribe's territory:

(1) If any victim has suffered actual damages as a result of the person's actions, then he or she may bring a civil action, at his or her own expense, against the person in the Cherokee Court for actual and punitive damages, and any other relief permitted by law.

(2) If the person holds a lease, license, permit or other authorization to operate within the Tribe's territory, then that lease, license, permit or authorization may be terminated, after notice, hearing, and a finding that the violation occurred by the committee or agency that issued the lease, license, permit or authorization. Any such termination may be appealed to the Tribal Council, but such an appeal shall not be heard unless the person files a written notice of appeal with the Tribal Operations Program within 30 days after the committee or agency decision.

(3) The Tribal Council may order the exclusion of any such person for any length of time that the council determines appropriate to protect the welfare of the Eastern Band, including permanent exclusion, after notice and a hearing pursuant to Chapter 2.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-1.3. Three strikes rule.**

(a) Any member of the Eastern Band who has been convicted on three separate occasions of any drug offense, or any offense for which exclusion is allowed whether or not that punishment has been imposed, shall forfeit his or her right to receive per capita distributions of net gaming proceeds. This section shall apply only to offenses that occur after the effective date of this section. The Cherokee Court shall notify the Tribal Finance Office of any person to whom this section applies.

(b) Such per capita distributions shall be paid to a responsible person for support of the convicted person's minor children, if any, to the Tribe to cover any debt owed by the

defendant to the Tribe, or to the convicted person's victim(s) for restitution, until such amounts are paid in full.

(c) If no amounts are payable under subsection (b), then a convicted person to whom this section applies shall not be used in calculating the shares for per capita distribution.

(Ord. No. 117, 3-3-2000)

**Sec. 14-1.4. Exclusion.**

For those offenses that allow exclusion as a punishment, exclusion may be imposed only by Tribal Council in accordance with Chapter 2 of the Cherokee Code.

(Ord. No. 117, 3-3-2000)

**Sec. 14-1.5. Equal application of laws.**

(a) All persons, regardless of race, age, or sex will comply and be subject to the laws of the Eastern Band of Cherokee Indians whenever they are within the boundaries of Qualla Boundary and its territories.

(b) All persons, regardless of race, age, or sex will be subject to all of the same charges, convictions, and fines that enrolled members of the Eastern Band are subject to.

(c) The Cherokee Police Department shall have the right to issue citations to non members, as well as members.

(d) The Cherokee Court system shall have the right to hear cases, impose fines and penalties on non members, as well as members.

(e) Tribal jurisdiction on all persons shall be equal and nondiscriminatory towards anyone, regardless of race, age, or sex as long as they are visiting or living or doing business on the lands of the Eastern Band of Cherokee Indians.

(f) The intent of this ordinance shall be carried out by the Chief of the Cherokee Police Department, the Chief Justice of the Tribal Court, and the Legal Department.

(Ord. No. 667, 7-12-2001)

*Inchoate Crimes*

**Sec. 14-2.1. Attempt.**

(a) It shall be unlawful to engage in conduct within the territorial jurisdiction of the Eastern Band of Cherokee Indians constituting a substantial step toward commission of any offense under Tribal, federal, or state law applicable to the jurisdiction in which any part of the offense was to be completed with the kind of culpability otherwise required for the commission of the offense.

(b) It shall be unlawful to engage in conduct anywhere constituting a substantial step toward the commission of any Tribal, federal or state offense within the territorial jurisdiction of the Eastern Band of Cherokee Indian while acting with the kind of culpability otherwise required for the commission of the offense.

(c) Attempts shall be punishable by the same penalties as the completed crime.

(Ord. No. 117, 3-3-2000)

**Sec. 14-2.2. Criminal conspiracy.**

(a) It shall be unlawful to, with one or more persons, engage in or cause the performance of conduct with the intent to commit any offense punishable by Tribal, federal or state law applicable to the jurisdiction in which the conduct is agreed to be performed, if any one person commits an overt act in pursuance of the conspiracy.

(b) It shall be unlawful to agree anywhere with one or more persons to engage or cause the performance of conduct with the intent to commit any Tribal, federal or state offense within the territorial jurisdiction of the Eastern Band of Cherokee Indian, and any one person commits an overt act in pursuance of the conspiracy.

(c) Conspiracy to commit an offense carries the same possible punishment as the completed offense.

(Ord. No. 117, 3-3-2000)

**Sec. 14-2.3. Solicitation.**

(a) It shall be unlawful within the territorial jurisdiction of the Eastern Band of Cherokee Indian to entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable under the laws of the jurisdiction where the conduct was to be performed.

(b) It shall be unlawful anywhere to entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable by Tribal, federal or state laws within the territorial jurisdiction of the Eastern Band of Cherokee Indian.

(c) Solicitation shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**ARTICLE II. CRIMES AGAINST PUBLIC PEACE**

**Sec. 14-5.1. Reserved.**

**Sec. 14-5.2. Communicating threats.**

(a) A person is guilty of a misdemeanor if without lawful authority:

(1) He willfully threatens to physically injure the person or damage the property of another,

(2) The threat is communicated to the other person, orally, in writing, or by any other means,

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out.

(b) A violation of this section is punishable by a fine of not more than \$500.00 or imprisonment of not more than six months, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-5.3. Telephone harassment.**

(a) A person is guilty of the offense of telephone harassment if he unlawfully:

(1) Uses in telephonic communications any words or language of a profane, vulgar, lewd, lascivious or indecent character, nature or connection.

(2) Uses in telephonic communication any words or language threatening to inflict bodily harm to any person or physical injury to the property of any person or for the purpose of extorting money or other things of value from any person.

(3) Telephones another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number.

(4) Makes a telephone call and fails to hang up or disengage the connection with the intent to disrupt the service of another.

(5) Telephones another and knowingly makes any false statement concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct of the person telephoned, or of any member of his family or household with the intent to abuse, annoy, threaten, terrify, harass or embarrass.

(6) Knowingly permits any telephone under his control to be used for any purposes prohibited by this section

(b) A violation of this section is punishable by a fine of not more than \$500.00 or imprisonment of not more than one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-5.4. Filing a false emergency report.**

(a) A person is guilty of filing a false emergency report if he willfully:

(1) Makes or causes to be made, any telephonic communication through any police or emergency telephone systems, including false, misleading or unfounded reports; or

(2) Knowingly make any false statements concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct for the purpose of interfering with the operation of these emergency systems; or

(3) Hinders or obstructs any peace officer in the performance of his duty.

(b) A violation of this section is punishable by a fine of not more than \$500.00 or imprisonment of not more than one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-5.5. Stalking.**

(a) Definition of terms:

(1) *Harass* means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

(2) *Course of conduct* means the pattern of conduct composed of a series of acts over time, however short, evidencing a continuity of purpose.

(3) *Credible threat* means a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person.

(b) A person commits the offense of stalking if the person willfully on more than one occasion follows, harasses or is in the presence of another person without legal purpose.

(c) A person commits the offense of aggravated stalking if the person willfully on more than one occasion follows, harasses or is in the presence of another person without legal purpose, and:

(1) Makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury; or

(2) Commits the offense when there is a court order in effect prohibiting similar behavior; or

(3) Commits the offense within five years of a prior conviction for this offense; or

(4) The person stalked is a minor under 16 years of age.

(d) Penalty:

(1) A violation of subsection (b) of this section shall be punished by a fine of \$500.00, imprisonment for up to one year, or both.

(2) A violation of subsection (c) of this section shall be punished by fine of \$5,000.00, imprisonment for up to one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-5.6. Reserved.**

**Sec. 14-5.7. Littering.**

(a) No person, firm or corporation shall intentionally, carelessly or recklessly throw, scatter, spill or place or intentionally, carelessly or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or upon private property within the territory of the Eastern Band of Cherokee Indians.

(b) This section shall not apply to lands or property that is designated by the Eastern Band for the disposal of garbage and refuse where the public is authorized to use such property

for such purpose. Neither shall it apply to utilization of a litter receptacle.

(c) Whenever litter is blown, scattered, spilled, thrown or placed from a vehicle or water craft, the operator thereof shall be presumed to have committed such offense.

(d) The word "litter" as used in this section shall mean any rubbish, waste material, cans, refuse, garbage, trash, debris, dead animals or discarded materials of every kind and description. The word "vehicle" shall mean any motorized means of grounds transportation. The word "water craft" shall mean any boat or vessel used for transportation upon water.

(e) A violation of this section shall be punishable by a fine of not more than \$200.00 and any subsequent offense shall be punishable by a fine of \$500.00 or one year in jail, or both.

(Ord. No. 271, 8-5-1982; Ord. No. 117, 3-3-2000)

#### **Sec. 14-5.8. Fireworks.**

(a) The wholesale and retail sale of fireworks (pyrotechnics) or the use thereof is prohibited on the Cherokee Indian Reservation.

(b) Violation of this section by any person or business holding a trader's license granted under the authority of Title 25 of the Code of Federal Regulation shall be cause for cancellation of the license.

(c) Persons subject to the criminal jurisdiction of the Cherokee Court who violate this section shall be punished by a fine of not more than \$100.00 or imprisonment of not more than thirty (30) days or both.

(Res. No. 209, 7-8-1976; Ord. No. 117, 3-3-2000)

#### **Sec. 14-5.9. Laser devices.**

(a) For purposes of this section, the term "laser" means light amplification by stimulated emission of radiation.

(b) It is unlawful intentionally to point a laser device at a law enforcement officer, or at the head or face of another person, while the device is emitting a laser beam.

(c) Persons subject to the criminal jurisdiction of the Cherokee Court who violate this section shall be punished by a fine of not more than \$100.00 or imprisonment of not more than 30 days, or both.

(d) This section does not apply to a law enforcement officer who uses a laser device in discharging or attempting to discharge the officer's official duties. This section does not apply to a health care professional who uses a laser device in providing services within the scope of practice of that professional nor to any other person who is licensed or authorized by law to use a laser device or uses it in the performance of the person's official duties.

(e) This section does not apply to laser tag, paintball guns, and other similar games and devices using light emitting diode (LED) technology.

(Ord. No. 117, 3-3-2000)



**Sec. 14-5.10. Doing business without a license.**

(a) It shall be unlawful to commence or carry on any business, trade, profession, or calling, the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.

(b) Doing business without a license shall be punishable by a fine not to exceed \$250.00, by a term of imprisonment not to exceed one month, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-5.11. Abusing a corpse.**

(a) It shall be unlawful to purposely and unlawfully remove, conceal, dissect, assault or destroy a corpse or any part of a corpse; or to disinter a corpse that has been buried or otherwise interred.

(b) Abusing a corpse shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a term of not less than one year not more than five years, or any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-5.12. Violation of privacy.**

(a) It shall be unlawful, except as authorized by law to:

(1) Trespass on property with intent to subject anyone to eavesdropping or other surveillance, or to visually observe another, in a private place;

(2) Install in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in such place, or use any such unauthorized installation;

(3) Install or use outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside without the consent of the person or persons entitled to privacy there; or

(4) Divulge without consent of the sender or receiver the existence or content of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(b) Definitions:

(1) *Eavesdrop* means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical or other device. Such eavesdropping or other surveillance shall include, but not be limited to, unauthorized access to computers, data processing equipment or any electronic or manual data storage or record keeping equipment or other such storage devices.

(2) *Private place* means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

(3) *Violation of privacy* shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Secs. 14-5.13--14-5.15. Reserved.**

**Sec. 14-5.16. Noise offenses.**

(a) *Generally.* It shall be unlawful for any person to willfully make, cause to be made or continue any loud, raucous or disturbing noise. A loud, raucous or disturbing noise is any sound which, because of its volume level, duration or character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities. The term "loud, raucous or disturbing noise" shall be limited to noises heard upon the public streets, in a public park, school or public building or upon the grounds thereof; in church or hospital or upon the grounds thereof; on a parking lot open to members of the public; or in an occupied residential unit which is not the source of the noise or upon the grounds thereof.

(b) *Specifically prohibited acts.* The following specific acts are declared to be loud, raucous or disturbing noises in violation of this article, but this enumeration shall not be deemed to be exclusive:

(1) *Blowing horns.* The sounding of any horn, whistle or signal device on any automobile, motorcycle, bus or other vehicle or railroad train except as a danger signal or as required by law, or the sounding of such device intermittently or continuously for a period in excess of 60 seconds.

(2) *Radios, amplifiers, phonographs, group gatherings, etc.* Singing, yelling, or the using, operating or permitting to be played, used or operated any radio, amplifier, musical instrument, phonograph, interior or exterior loudspeakers, or other device for the producing or reproducing of sound in such manner as to cause loud, raucous or disturbing noise.

(3) *Pets and animals.* Allowing any animal, including dogs, cats, and birds, in a person's possession or control to howl, bark, meow, squawk or make any other unreasonably loud, raucous, jarring, or disturbing sounds so as to be a nuisance to persons within the area of audibility. This section shall not apply to hunting dogs while in the actual process of hunting.

(4) *Motor vehicles.* All noises coming from motor vehicles not properly equipped with standard mufflers and noise reducing equipment or not in proper operating condition.

(5) *Fireworks and firearms.* The explosion of any fireworks unless under a written permit obtained from the proper authority and between the hours of 9 a.m. and 10:30 p.m. Monday through Saturday; or the discharge of any firearm within 300 feet of any residence, other than one's own residence.

(c) *Exemptions.* The following uses and activities shall be exempt from the noise regulations set forth in this chapter:

- (1) A bell or chime from any building clock, school or church.
- (2) Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in an emergency situation; provided, however, that burglar alarms not terminating within 30 minutes after the responsible person has been notified shall be unlawful.
- (3) Warning devices required by any applicable local or federal safety regulations.
- (4) Agricultural and horticultural operations conducted in a reasonable manner.
- (5) Noise caused by any type of construction equipment while it is being used for the purpose for which it was designed and purchased.
- (6) The operation of an automobile race track, except between the hours 11:30 p.m. and 12:00 noon.
- (7) Any community or school sponsored athletic event, except between the hours of 11:30 p.m. and 7:00 a.m.
- (8) Nothing herein shall be construed to hold a landlord liable, responsible or violation of this section unless the landlord sponsors or participates in the activity that violates a provision of this section.

(d) *Penalties.* Violations of this section shall constitute a misdemeanor and, upon conviction, a violator shall be punishable by a fine of up to \$500.00 and/or imprisonment for not more than thirty (30) days.

(e) *Injunctions.* In addition to other civil remedies provided by this chapter, a violation of this section is declared to be a public nuisance, and may be subject to abatement by a restraining order or injunction issued by the Cherokee Court on motion or petition of any person.

(Ord. No. 565, 3-12-01)

**Secs. 14-5.17--14-5.19. Reserved.**

**Sec. 14-5.20. Cruelty to animals.**

(a) It shall be unlawful purposely or knowingly to:

- (1) Torture or seriously overwork an animal;
- (2) Fail to provide necessary food, care, or shelter for an animal in one's custody;
- (3) Abandon an animal in one's custody;
- (4) Transport or confine an animal in a cruel manner;
- (5) Kill, injure, or administer poison to an animal without legal privilege to do so; or
- (6) Cause one animal to fight with another.

(b) Cruelty to animals shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both. It is a defense to prosecution under this section that the conduct of the actor toward the animal was an accepted veterinary in

practice or directly related to a bona fide experimentation for scientific research, provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel.

(c) Conviction under this section may result in confiscation of cruelly treated animals belonging to the accused and it shall be proper for the court in its discretion to order a final determination of the custody of the confiscated animals.

(Ord. No. 117, 3-3-2000)

**Secs. 14-5.22--14-5.29. Reserved.**

*Protection of Family*

**Sec. 14-5.30. Abandonment and failure to support spouse and children.**

(a) For purposes of this section:

(1) *Supporting spouse* means a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent or from whom such other spouse is substantially in need of maintenance and support.

(2) *Dependent spouse* means a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.

(b) A supporting spouse is guilty of this offense if the supporting spouse either:

(1) Willfully abandons a dependent spouse without providing that spouse with adequate support; or

(2) While living with a dependent spouse, willfully neglects to provide adequate support for that dependent spouse.

(c) Any parent who shall willfully neglect or refuse to provide adequate support for that parent's child, whether natural or adopted, and whether or not the parent abandons the child, shall be guilty of this offense. Willful neglect or refusal to provide adequate support of a child shall constitute a continuing offense and shall not be barred by any statute of limitations until the youngest living child of the parent shall reach the age of 18 years.

(d) Abandonment and failure to support spouse and children shall be punishable by a fine of not less than \$250.00 nor more than \$5000.00, with said fine used for the benefit of the abandoned or unsupported spouse or child.

(Ord. No. 117, 3-3-2000)

**ARTICLE III. PROPERTY CRIMES**

**Sec. 14-10--14-10.8. Reserved.**

**Sec. 14-10.9. Criminal mischief to property.**

A person is guilty of the crime of criminal mischief to property if he or she:

(1) Purposely or recklessly damages tangible personal property of another; or,

(2) In the employment of fire, explosives, or other dangerous means, negligently damages personal property of another; or

(3) Purposely or recklessly tampers with tangible personal property of another so as to endanger person or property; or

(4) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(5) Criminal mischief shall be punishable by a fine not to exceed five thousand dollars (\$5,000.00), by a term of imprisonment not to exceed one (1) year, or both.

(Ord. No. 871, 8-9-2001)

**Sec. 14-10.10. Cutting timber, removal of rock, trapping animals.**

(a) No person, firm, or corporation shall enter upon lands assigned or leased to another and damage, injure, cut, trim, or remove any tree, shrub, flower, or plant without the knowledge and written consent of the lawful owner of the land through assignment or lease.

(b) No person, firm, or corporation shall enter upon lands assigned or leased to another and remove any earth, rocks or minerals without the knowledge and written consent of the lawful owner of the land through assignment or lease.

(c) No person, firm or corporation shall enter upon lands assigned or leased to another to trap wild animals without the knowledge and written consent of the lawful owner of the land through assignment or lease.

(d) No person, firm, or corporation shall enter upon land held, used or reserved by the Tribe and damage, injure, cut trim or remove any tree, shrub, flowering plant, earth, rocks or minerals, or trap any wild animals without the knowledge and written consent of the Tribe through a license, use permit or council resolution.

(e) Each violation of this section shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.11. Injuring real property.**

(a) It shall be unlawful to willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, without lawful authority.

(b) Injuring real property shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.12. Tampering with public property.**

(a) It shall be unlawful to:

(1) Steal, deface, mutilate, alter, falsify, or remove all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office, or with any public officer, or to permit another to do so;

(2) Knowingly injure, deface or remove any signal, monument or other marker placed or erected as part of an official survey of the Eastern Band of Cherokee Indians or Federal government without authority to do so; or

(3) Intentionally deface, obliterate, tear down, or destroy any copy or transcript or extract from any law or any proclamation, advertisement, or notice set up or placed by any public officer or court, without authority to do so and before the expiration of the time for which the same was to remain posted.

(b) Tampering with public property shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.13. Injuring public property.**

(a) It shall be unlawful to:

(1) Intentionally break down, pull down or otherwise injure or destroy any jail or other place of confinement;

(2) Intentionally and without authority dig up, remove, displace or otherwise injure or destroy any public roadway, highway or bridge or private road or other public building or structure;

(3) Remove or injure any milepost, guidepost or road or highway sign or marker or any inscription on them while such is erected along a road or highway; or

(4) Knowingly and without authority to do so, remove, injure, deface, or destroy any public building or structure, or any personal property belonging to the Eastern Band of Cherokee Indians, or any other government or government agency.

(b) Injuring public property shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.14. Injuring telephone, wires or other telephone equipment.**

(a) It shall be unlawful for any person to unnecessarily disconnect the wire or in any other way render any telephone equipment, telephone line, or any part of such line, unfit for use in transmitting messages, or to unnecessarily cut, tear down, destroy or in any way render unfit for the transmission of messages any part of the wire of a telephone line.

(b) Injuring telephone, wires or other telephone equipment shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one (1) year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.15. First degree trespass.**

(a) *Offense.* A person commits the offense of first degree trespass if, without authorization, he enters or remains:

(1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or

(2) In a building of another.

(b) First degree trespass shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.16. Second degree trespass.**

(a) *Offense.* A person commits the offense of second degree trespass if, without authorization, he enters or remains on the property of another:

(1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or

(2) That is posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the property.

(b) Second degree trespass shall be punishable by a fine not to exceed \$1,000.00, by a term of imprisonment not to exceed 30 days, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.17. Domestic criminal trespass.**

(a) Any person who enters the property occupied by a present or former spouse or by a person with whom the person charged has lived as if married, after being forbidden to do so or remains after being ordered to leave by the lawful occupant, shall be guilty of a misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

(1) A judicial order of separation;

(2) A court order directing the person charged to stay away from the premises occupied by the complainant;

(3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or

(4) Separate places of residence for the complainant and the person charged.

(b) Domestic criminal trespass shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.18--14-10.29. Reserved.**

**Sec. 14-10.30. Robbery with a dangerous weapon.**

(a) Any person who unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there

is a person or persons in attendance, at any time, either day or night, while having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of robbery with a dangerous weapon.

(b) Robbery with a dangerous weapon shall be punishable by a fine of not less than \$500.00 not more than \$5,000.00, by imprisonment for not less than three months nor more than one year, by exclusion for a period of not less two years nor more than ten years, or by any combination of them. Should the commission of the offense result in the death or serious bodily injury to any person, a sentence of exclusion may be imposed for any period not exceeding life in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-10.31. Robbery.**

(a) Any person who unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of robbery.

(b) Robbery shall be punishable by a fine of not less than \$250.00 nor more than \$5,000.00, by imprisonment for not less than three months nor more than one year, by exclusion for a period of not less than one year nor more than five years, or by any combination of them.

(Ord. No. 117, 3-3-2000)

#### **Secs. 14-10.32--14-10.39. Reserved.**

#### **Sec. 14-10.40. Burglary.**

(a) It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, office, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer or semitrailer, mobile home, or any similar enclosed structure of another without consent with the intent to steal or commit any offense punishable by imprisonment. If a person is present within such structure, it shall be known as burglary in the first degree; if no person is present in such structure, it shall be known as burglary in the second degree.

(b) Burglary in the first degree shall be punishable by a fine of not less than \$500.00 not more than \$5,000.00, by imprisonment for not less than three months nor more than one year, by exclusion for a period of not less two years nor more than ten years, or by any combination of them. Should the commission of the offense result in the death or serious bodily injury to any person, a sentence of exclusion may be imposed for any period not exceeding life in addition to the punishment authorized above.

(c) Burglary in the second degree shall be punishable by a fine of not less than \$250.00 nor more than \$5,000.00, by imprisonment for not less than three months nor more than one year, by exclusion for a period of not less than one year nor more than five years, or by any combination of them.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-10.41. Breaking and entering.**



(a) It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, office, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer or semitrailer, mobile home, trunk, drawer, box, coin operated machine, or similar structure, object, device of another without consent, with the intent to:

- (1) Cause annoyance or injury to any person therein;
- (2) Cause damage to any property therein;
- (3) Commit any offense therein, not punishable by imprisonment;
- (4) Cause, or does actually cause, whether intentionally or recklessly, fear for the safety of another.

(b) Breaking and entering shall be punishable by a fine of not less than \$250.00 nor more than \$5,000.00, by imprisonment for a period not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.50. Arson in the first degree.**

(a) It shall be unlawful to knowingly and willfully start a fire or cause an explosion with the purpose of:

- (1) Destroying or damaging any building, dwelling, occupied structure or other property of another exceeding \$1,000.00 in value; or
- (2) Destroying or damaging any property, by the owner, to collect insurance for such loss.

(b) Arson in the first degree shall be punishable by a fine of not less than \$500.00 nor more than \$5,000.00, by imprisonment for a term of not less than six months nor more than one year, or any combination of them.

(c) Should the commission of this offense result in the death of or serious bodily injury to any person, a sentence of exclusion may be imposed for any period not exceeding life in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.51. Arson in the second degree.**

(a) It shall be unlawful to knowingly or recklessly, carelessly, or negligently, without regard to the consequences, start a fire or cause an explosion which:

- (1) Endangers human life or safety; or
- (2) Damages or destroys the property of another.

(b) Arson in the second degree shall be punishable by a fine of not less than \$250.00 nor more than \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.52. Arson in the third degree.**

(a) It shall be unlawful after having started any fire, even though started safely for a lawful purpose, to fail to either:

(1) Take reasonable measures to put out or control the fire; or

(2) To give prompt alarm, if the fire is spreading in such manner that it may endanger the life or property of another.

(b) Arson in the third degree shall be punishable by a fine of not less than \$250.00 nor more than \$5,000.00, by imprisonment for a term not exceeding one year, or both. (Ord. No. 117, 3-3-2000)

**Sec. 14-10.60. Larceny.**

(a) It shall be unlawful to take or carry away any tangible or intangible personal property by fraud or stealth with the intent to deprive the owners thereof. If the value of the property taken or carried away exceeds \$1,000.00, it shall be known as grand larceny.

(b) Larceny shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding six months, or both.

(c) Grand larceny shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both. A sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above. (Ord. No. 117, 3-3-2000)

**Sec. 14-10.61. Receiving or possessing stolen property.**

(a) It shall be unlawful to possess, receive, buy, or conceal any personal property that has been stolen or otherwise obtained from its true owner in violation of this Code with intent to deprive the true owner thereof.

(b) Receiving stolen property shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) If the value of the property exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above. (Ord. No. 117, 3-3-2000)

**Sec. 14-10.62. Theft of property lost, mislaid, or delivered by mistake.**

(a) It shall be unlawful to fail to take reasonable measures to restore property to a person entitled thereto, with the intent to deprive the owner thereof, when it is known or reasonably suspected that the property has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient.

(b) Theft of property lost, mislaid, or delivered by mistake shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) If the value of the property exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above. (Ord. No. 117, 3-3-2000)

**Sec. 14-10.63. Theft of services.**

(a) It shall be unlawful to obtain services known to be available only for compensation by deception, threat, force or any other means with the intent to avoid due payment thereof.

(b) Theft of services shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) If the value of the service rendered exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-10.64. Unauthorized use of a vehicle.**

(a) It shall be unlawful to take, drive or operate another's motor vehicle, motorcycle, bicycle, or wheeled conveyance without the consent of the owner, with the intent to temporarily deprive the owner of its use or possession.

(b) Unauthorized use of a vehicle shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) If the vehicle sustains damages while in the custody, possession, or under the control of the person violating this section, the violator shall be required to make double restitution of the amount of the actual damage to the vehicle.

(Ord. No. 117, 3-3-2000)

**ARTICLE IV. ALCOHOLIC BEVERAGES**

**Sec. 14-15. Reserved.**

**Sec. 14-15.1. Public intoxication.**

(a) No person may be prosecuted solely for being intoxicated in a public place. A person intoxicated in a public place but not disruptive may be rendered assistance as provided in subsection (c).

(b) Any person arrested for being intoxicated and disruptive in a public place deemed by the arresting officer to be in need of shelter or health care as provided for in subsection (c), may be transported to an appropriate facility by the officer and issued a citation for being intoxicated and disruptive in a public place.

(c) An officer may render assistance to any person found intoxicated in a public place by taking any of the following actions:

(1) The officer may direct or transport the intoxicated person to their home.

(2) The officer may direct or transport the intoxicated person to the home of a friend or relative willing to accept them.

(3) The officer may direct or transport an intoxicated person in need of clothing or

shelter but unable to provide for him or her self to an appropriate facility authorized for this purpose by the Tribal Council.

(d) An intoxicated person directed or transported to a shelter or health-care facility may be detained only until they are sober or for a maximum of 24 hours. An intoxicated person may elect to remain at the facility for a longer period if the facility is able to accommodate them.

(e) The officer may use reasonable force to restrain the intoxicated person if necessary to protect himself, the intoxicant or others. No officer shall be held civilly or criminally liable on account of reasonable measures taken under authority of this section.

(f) An intoxicated person who is incarcerated under this section may pay the \$20.00 jail fee within ten days of the period of incarceration. If the \$20.00 fee is not paid in that time frame, the intoxicated person may be brought to court, and court costs may be added to the jail fee to cover the administrative expenses.

(Ord. No. 117, 3-3-2000)

### **Sec. 14-15.2. Sale of alcoholic beverages.**

(a) A person shall be guilty of a misdemeanor if he sells any alcoholic beverage on the Cherokee Indian Reservation unless such sale is in conformance with a Tribal ordinance authorizing the sale of alcoholic beverages.

(b) A violation of this section is punishable by a fine of not more than \$500.00 or imprisonment of not more than one year, or both.

(c) Persons who violate this section but are not subject to the criminal jurisdiction of the Cherokee Court shall be cited and charged in the United States Courts.

(Ord. No. 117, 3-3-2000)

### **Sec. 14-15.3. Transportation of alcoholic beverages.**

(a) It shall be unlawful for a person to transport fortified wine, malt beverages or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. It shall be unlawful for person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any fortified or unfortified wine, malt beverage or spirituous liquor. Violation of this section shall constitute a criminal offense punishable by a fine of \$25.00 to \$500.00, imprisonment for not more than 30 days.

(b) Taxis. It shall be unlawful for a person operating a for-hire passenger vehicle to transport fortified or unfortified wine, malt beverages or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than five liters of fortified wine or spirituous liquor or combination of the two may be transported by each passenger.

(c) Definitions. For purposes of this section, the following definitions shall apply:

(1) *Open container*. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section.

(2) *Passenger area of a motor vehicle* shall mean the area designated to seat the driver and passengers and an area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or

similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area.

(3) *Alcoholic beverages* shall mean any beverages containing at least one-half of one per cent alcohol by volume, including malt beverages unfortified wine, fortified wine, spirituous liquor and mixed beverages.

(4) *Fortified wine* shall mean any wine made by fermentation from grapes, fruits, berries, rice or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice or honey that is contained in the base wine and which has an alcoholic content of not more than 24 percent alcohol by volume.

(5) *Malt beverage* shall mean beer, lager, malt liquor, ale, porter and any other brewed or fermented beverage containing at least one-half of one percent and not more than six percent alcohol by volume.

(6) *Mixed beverages* shall mean a drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.

(7) *Spirituous liquor or liquor* shall mean distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(8) *Unfortified wine* shall mean wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar and that has an alcoholic content of not more than 17 percent by volume.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-15.4. Drinking alcoholic beverages in publicplaces.**

(a) It shall be unlawful for a person to consume fortified or unfortified wine, malt beverages or spirituous liquor in the open air or inside a parked vehicle in the following areas of the Cherokee Indian Reservation;

(1) In a school or church parking lot.

(2) In a parking lot adjacent to a tribal or federal government building or facility or in a parking area adjacent to a private business, which is open to the public.

(b) Violation of this section shall constitute a criminal offense punishable by a fine of not less than \$25.00 nor more than \$500.00 or imprisonment for not more than 30 days, or both.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-15.5. Intoxicated and disruptive in public.**

(a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

(1) Blocking or otherwise interfering with traffic on a highway or public vehicular area; or

(2) Blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building; or

(3) Grabbing, shoving, pushing or fighting others or challenging others to fight; or

(4) Cursing or shouting at or otherwise rudely insulting others; or

(5) Begging for money or other property.

(b) Intoxicated and disruptive in public shall be punishable by a fine not to exceed \$250.00, by a term of imprisonment not to exceed three months, or both.

(c) Upon a second or subsequent conviction under this section, a punishment of a fine not to exceed \$500.00 or a term of imprisonment not to exceed six months, or both may be imposed.

(Ord. No. 117, 3-3-2000)

**Sec. 14-15.6. Providing alcoholic beverages to/possession of/consumption of alcoholic beverages by/persons under 21 years old.**

(a) *Providing to.* It shall be unlawful for any person to sell or give malt beverages, unfortified wine, fortified wine, spirituous liquor or mixed beverages to anyone less than 21 years of age.

(1) Violation of this subsection (a) shall constitute a criminal offense punishable by a fine not to exceed five hundred dollars (\$500.00) or a term of imprisonment not to exceed six months, or both.

(b) *Purchase, attempt to purchase, possession, or consumption.* It shall be unlawful for a person less than 21 years of age to purchase, to attempt to purchase, to possess, or to consume malt beverages, unfortified wine, fortified wine, spirituous liquor, or mixed beverages.

(1) Violation of this subsection (b) shall constitute a criminal offense. Persons who violate this subsection who are between 16 and 21 years of age shall be subject to the following:

a. *First offense.* Fifty dollar fine and costs. Defendant shall be placed on six to 12 months probation, with the terms of probation to include 24 hours of community service work, that the defendant obtain a substance abuse assessment, and that the defendant complete any recommended treatment plan.

b. *Second offense.* One hundred dollar fine and costs. Defendant shall be placed on six to 12 months probation, with terms of probation to include 48 hours of community service work, and if defendant has not had a substance abuse assessment, to obtain this assessment and complete any recommended treatment plan.

c. *Third offense.* Two hundred fifty dollar fine and costs. Defendant shall be placed on six to 12 months probation, with terms of probation to include 72 hours of community service work, and if defendant has not had a substance abuse assessment, to obtain this assessment and complete any recommended treatment plan.

d. *Subsequent offenses.* Imprisonment not to exceed six months and a \$500.00 fine, or both.

(2) Violation of this subsection (b) by a person who is under 16 years of age shall subject such person to the jurisdiction of the juvenile court and to the dispositional alternatives outlined in Section 7A-53 of the Juvenile Code.

(c) *Aiding and abetting.* It shall be unlawful for any person to aid or abet another in violation of subsection (a) or (b) of this section.

(1) Violation of this subsection (c) shall constitute a criminal offense. Persons 16 years of age and older who violate this subsection shall be punished by a fine not to exceed \$500.00 or a term of imprisonment not to exceed 6 months, or both.

(2) Violation of this subsection (c) by persons under 16 years of age shall subject such persons to the jurisdiction of the juvenile court and to the dispositional alternatives outlined in Section 7A-53 of the Juvenile Code.

(d) *Fraudulent use of identification.* It shall be unlawful for any person to obtain or attempt to obtain alcoholic beverages in violation of subsection (b) of this section by using or attempting to use:

(1) A fraudulent or altered driver's license; or

(2) A fraudulent or altered identification document other than a driver's license; or

(3) A driver's license issued to another person; or

(4) An identification document other than a driver's license issued to another person.

Violation of this subsection (d) shall constitute a criminal offense. Persons 16 years of age and older who violate this subsection shall be punished by a fine not to exceed \$500.00 or a term of imprisonment not to exceed six months, or both.

Violation of this subsection (d) by persons under 16 years of age shall subject such persons to to the jurisdiction of the juvenile court and to the dispositional alternatives outlined in Section 7A-53 of the Juvenile Code.

(e) *Allowing use of identification.* It shall be unlawful for any person to permit the use of his driver's license or any other identification document of any kind by any person who violates or attempts to violate subsection (b) of this section.

Violation of this subsection (e) shall constitute a criminal offense punishable by a fine not to exceed \$500.00 or a term of imprisonment not to exceed six months, or both. (Ord. No. 117, 3-3-2000; Ord. No. 286, 7-17-2000; Ord. No. 871, 8-9-2001)

## **ARTICLE V. SEXUAL ASSAULT**

**Sec. 14-20. Reserved.**

**Sec. 14-20.1. Taking indecent liberties with children.**

A person shall be guilty of taking indecent liberties with children if they either:

(1) Willfully take or attempt to take any improper or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commit or attempt to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

(3) For purposes of this section, indecent liberties shall include any sexual contact of the genitalia, anus, groin, breast, inner thigh or buttocks which do or may abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of any person.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-20.2. Aggravated sexual abuse.**

A person shall be guilty of aggravated sexual abuse if he or she:

(1) Knowingly causes another person to engage in a sexual act by using force against that other person; or

(2) Knowingly causes another person to engage in a sexual act by threatening or placing that other person in fear that any person will be subject to death, serious bodily injury, or kidnapping; or

(3) Knowingly renders another person unconscious and thereby engages in a sexual act with that other person; or

(4) Knowingly administers to another person by force or threat of force or without the knowledge or permission of that person a drug, intoxicant or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct and engages in a sexual act with that other person; or

(5) Engages in a sexual act with another person who has not attained the age of 13 years.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-20.3. Sexual abuse.**

A person shall be guilty of sexual abuse if he or she:

(1) Knowingly causes another person to engage in a sexual act by threatening or placing that other person in fear; or

(2) Knowingly engages in a sexual act with another person and that other person is:

a. Incapable of appraising the nature of the conduct; or

b. Physically incapable of declining participation in or communicating unwillingness to engage in the sexual act.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-20.4. Sexual abuse of minor or a ward.**



A person shall be guilty of sexual abuse of a minor or a ward if he or she:

(1) Engages in a sexual act with another person who has not attained the age of 16;  
or

(2) Knowingly engages in a sexual act with another person who is in official detention and under the custodial, supervisory or disciplinary authority of the person so engaging.

(Ord. No. 117, 3-3-2000)

**Sec. 14-20.5. Reserved.**

**Sec. 14-20.6. Punishment.**

Any person subject to the criminal jurisdiction of the Eastern Cherokee Court of Indian Offenses or any successor Cherokee tribal court who shall be convicted of any offense defined by this section shall be subject to punishment by imprisonment for up to 12 months or by fine of up to \$5,000.00, or both, for each offense, at the discretion of the court.

(Ord. No. 117, 3-3-2000)

**Sec. 14-20.7. Repealed.**

**ARTICLE VI. CRIMES AGAINST PUBLIC SAFETY**

**Sec. 14-25. Reserved.**

**Sec. 14-25.1. Toxic waste disposal.**

(a) The storage, burial or disposal of any nuclear refuse, by-product, waste or radioactive material or any chemicals or other toxic refuse, by-products or waste material within the trust lands or any other lands of the Eastern Band of Cherokee Indians is absolutely prohibited.

(b) Persons violating this section shall be punished by mandatory imprisonment for one year for each violation together with a mandatory fine of \$5,000.00 for each violation. Persons not subject to the criminal jurisdiction of the Cherokee Court who violate this section shall be subject to civil actions for actual and punitive damages. All non-members determined in violation of this section shall be subject to civil actions for actual and punitive damages. All non-members determined in violation of this section by civil proceedings in the Cherokee Court may be banished from the Cherokee Indian Reservation and shall be required to forfeit all right to enter Cherokee trust lands. Persons violating this section shall be required to bear the expenses of the removal and clean-up of all such materials.

(c) The provisions of this section shall not apply to the maintenance and use of x-ray or other radioactive materials for medical treatment by the Cherokee Indian Hospital, physicians or dentists on the Cherokee Indian Reservation.

(Ord. No. 117, 3-3-2000)

**Sec. 14-25.2. Drugs.**

(a) In order to insure consistence in the application and enforcement of criminal laws pertaining to the sale, distribution, and/or possession of illegal drugs, narcotics, and/or drug

paraphernalia on the Cherokee Indian Reservation and in surrounding areas, the Tribe does adopt the laws of the State of North Carolina General Statutes, Secs. 90-86--90-113.8, and 90-113.20--90-113.24, as well as any amendments. All such laws shall be applied by the Cherokee Court against persons subject to the criminal jurisdiction of the Cherokee Court. All such laws shall be enforced by Cherokee Police, North Carolina Highway Patrol officers and by federal law enforcement officers with all non-Cherokee violators cited into the court of competent jurisdiction.

(b) The penalty for drug offenses under the jurisdiction of the Cherokee Court of Indian Offenses or any successor court shall be the penalty imposed by the North Carolina General Statutes, not to exceed \$5,000.00, a term of imprisonment not to exceed one year, or any combination of them.

(c) An additional sentence of exclusion for a period not to exceed 20 years may also be imposed.

(Ord. No. 117, 3-3-2000; Ord. No. 390, 10-27-2000)

### **Sec. 14-25.3. Leaving unused well open and exposed.**

(a) It shall be unlawful for any person, firm or corporation, after discontinuing the use of any well, to leave said well open and exposed; said well, after the use of same has been discontinued, shall be carefully and securely filled: Provided, that this shall not apply to wells on farms that are protected by curbing or board walls.

(b) Leaving an unused well open and exposed shall be punishable by a fine not to exceed \$250.00, by a term of imprisonment not to exceed three months, or both.

(Ord. No. 117, 3-3-2000)

### **Sec. 14-25.4. False reports and alarms.**

(a) It shall be unlawful to initiate or circulate a report or warning of a fire, bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of any building, place or assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort by an official or volunteer agency organized to deal with emergencies.

(b) False reports shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

### **Secs. 14-25.5--14-25.9. Reserved.**

### **Sec. 14-25.10. Rioting.**

(a) It shall be unlawful to simultaneously, with two or more other persons, engage in tumultuous violent conduct in a public place which endangers person or property, and thereby knowingly or recklessly create a substantial risk of causing public alarm; or to assemble with two or more persons with the purpose of engaging soon thereafter in the above described conduct.

(b) Rioting shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-25.11. Failure to disperse.**

(a) It shall be unlawful to refuse or knowingly fail to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing an enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of the investigation of the commission of an accident, fire, offense or suspected offense.

(b) Failure to disperse shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-25.12. Disorderly conduct.**

(a) It shall be unlawful to purposely cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, by:

(1) Engaging in fighting, or threatening to engage in violent or tumultuous behavior;  
or

(2) Making unreasonable noise or offensively coarse utterances, gestures, or displays, or addressing abusive language to any person present; or

(3) Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(4) Seizing or otherwise taking control of a public building without specific authorization or refusing to vacate the building after being ordered to do so by:

a. The chief administrative officer of the institution or the officer's representative;

b. A teacher or school resource officer when the building is an educational institution;

c. A fireman or public health officer; or

d. A law enforcement officer acting within the officer's scope of authority; or

(5) Obstructing entrance and exit from a public building or interfering with normal use by blocking, etc., after being forbidden to do so by the chief administrative officer of the institution or the officer's representative or, by a teacher or school resource officer when the building is an educational institution; or

(6) Disrupting, disturbing or interfering with the teaching of students at any public or private educational institution or engaging in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto.

(b) "Public" means affecting or likely to affect persons in a place to which the public or substantial group of the public has access and includes, but it not limited to, streets, highways, schools, hospital, office buildings, transport facilities, businesses open to the

public, and places of entertainment or amusement, and the common areas of apartment houses.

(c) Disorderly conduct shall be punishable by a fine not to exceed \$250.00, by a term of imprisonment not to exceed three months, or both.

(d) Upon a second or subsequent conviction under this section, a punishment of a fine not to exceed \$500.00 or a term of imprisonment not to exceed six months, or both may be imposed.

(e) Upon a second or subsequent conviction under this section, an additional sentence of exclusion for a period not to exceed two years may be imposed.

(Ord. No. 117, 3-3-2000; Ord. 228, 6-21-2000; Ord. No. 673, 4-6-2001)

**Sec. 14-25.13. Harassment.**

(a) It shall be unlawful, with the purpose to annoy or alarm another, to insult, taunt, or challenge another in a manner likely to provoke a violent or disorderly response or to make repeated communications anonymously or at extremely inconvenient hours or in offensively coarse language.

(b) Harassment shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-25.14. Public nuisance.**

(a) It shall be unlawful to do any act, or fail to perform any duty, without lawful authority to do so, which act or omission either:

(1) Unreasonably and substantially annoys and injures or endangers the comfort, repose, health, or safety of three or more persons; or

(2) Offends public decency; or

(3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for use or passage any lake, stream, or campground, pow-wow ground, public park, square, street, highway, or road; or

(4) In any way unreasonably renders three or more persons insecure in life or the use of property.

(b) Public nuisance shall be punishable by a fine not to exceed \$250.00, by a term of imprisonment not to exceed three months, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-25.15. Disrupting a public or religious assembly.**

(a) It shall be unlawful to intentionally prevent or disrupt a lawful meeting or religious assembly, by doing any act tending to obstruct or interfere with it physically; or by making any utterance, gesture or display designed to outrage the sensibilities of the group or

prevent the assembly from conducting its business.

(b) Disrupting a public or religious assembly shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

## **ARTICLE VII. CRIMES AGAINST CHILDREN**

### **Sec. 14-30. Reserved.**

#### **Sec. 14.30.1. Contributing to the delinquency, undiscipline, neglect, or abuse of minors.**

(a) Any person shall be guilty of contributing to the delinquency, undiscipline, neglect, or abuse of a minor who knowingly or willfully causes, encourages, or aids any juvenile to be in a place or condition, or to commit an act whereby the juvenile could be:

(1) Adjudicated "delinquent" or "undisciplined" (as defined by chapter 7A of the Tribal Code); or

(2) Determined to be "abused" (as defined by NCGS 7B-101 and any amendments, until such time as the Tribe adopts its own code to deal with abuse). North Carolina law currently defines an abused juvenile to be any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following by, with, or upon the juvenile: first-degree rape; second degree rape; first-degree sexual offense; sexual act by a custodian; crime against nature; incest; preparation of obscene photographs, slides, or motion pictures of the juvenile; employing or permitting the juvenile to assist in a violation of obscenity laws; dissemination of obscene material to the juvenile; displaying of disseminating material harmful to the juvenile; first and second degree sexual exploitation of the juvenile; promoting the prostitution of the juvenile; taking indecent liberties with the juvenile, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs or approves of delinquent acts involving moral turpitude committed by the juvenile; or

(3) Determined to be "neglected" (as defined by NCGS 7B-101 and any amendments until such time as the Tribe adopts its own code to deal with neglect issues). North Carolina law currently defines a neglected juvenile to be a juvenile who:

- a. Does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or
- b. Who has been abandoned; or
- c. Who is not provided necessary medical care; or
- d. Who is not provided necessary remedial care; or
- e. Who lives in an environment injurious to the juvenile's welfare; or
- f. Who has been placed for care or adoption in violation of law; or

(4) In violation of any Tribal, federal or North Carolina criminal law.

(b) Violation of this section shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

#### **Sec. 14-30.2. Selling cigarettes to minors.**

If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes or tobacco in the form of cigarettes, or cut tobacco in any form which may be used or intended to be used as a substitute for cigarettes, whether such cigarettes or tobacco are real, simulated, fake or novelties, to any minor under the age of 18 years, or if any person shall aid, assist or abet any other person in selling such articles or novelties to any minor, he or she shall be punished by a fine of not more than \$500.00, or imprisonment for not more than one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

#### **Sec. 14-30.3. Compulsory school attendance.**

Any person who shall, without good cause, neglect or refuse to send his or her children or any children under his or her care to school shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to imprisonment not to exceed one year or a fine of \$500.00, or both. For purposes of this section, children are defined as any person under the age of 16.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

#### **Sec. 14-30.4. Exposing children to fire.**

(a) It shall be unlawful for any person to leave any child under the age of 12 years locked or otherwise confined in any dwelling, building, enclosure or vehicle and go away from such dwelling, building, enclosure or vehicle without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire.

(b) Exposing children to fire shall be punishable by a fine not to exceed \$250.00, by a term

of imprisonment not to exceed three months, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

**Sec. 14-30.5. Child abuse in the first degree.**

(a) It shall be unlawful for any person to:

(1) Intentionally inflict any serious physical injury upon or to any child under 18 or intentionally commit an assault upon the child which results in any serious physical injury; or

(2) Commit, permit, or encourage any act of prostitution with or by any child under 18; or

(3) Commit, permit, or encourage any sexual act with or by any child under 18.

(b) Child abuse in the first degree is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Child abuse in the first degree shall be punishable by a fine of not less than \$500.00 and not more than \$5,000.00, by imprisonment for not less than three months nor more than one year, by exclusion for a period of not less than two years nor more than ten years, or by any combination of them. Should the commission of the offense result in the death or serious bodily injury to any person, a sentence of exclusion may be imposed for any period not exceeding life in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

**Sec. 14-30.6. Child abuse in the second degree.**

(a) It shall be unlawful for any person to inflict physical injury, or to allow physical injury to be inflicted, or to create or allow to be created a substantial risk of physical injury, upon or to any child under 18 by other than accidental means.

(b) Child abuse in the second degree is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Child abuse in the second degree shall be punishable by a fine of not less than \$250.00 not more than \$5,000.00, by imprisonment for not more than one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

**Sec. 14-30.7. Transporting a child outside the territory of the Eastern Band of Cherokee Indians with intent to violate custody order.**

(a) When any federal court, tribal court or state court in the United States shall have awarded custody of a child under the age of 18 years, it shall be unlawful for any person with the intent to violate the court order to take or transport, or cause to be taken or transported, any such child from any point within the territory of the Eastern Band of Cherokee Indians, to any point outside the territory of the Eastern Band of Cherokee Indians or to keep any such child outside the territory of the Eastern Band of Cherokee Indians.

(b) Keeping a child outside the limits of the territory of the Eastern Band of Cherokee Indians in violation of a court order for a period in excess of 72 hours shall be prima facie evidence that the person charged intended to violate the order at the time of taking.

(c) Transporting a child outside the territory of the Eastern Band of Cherokee Indians with intent to violate custody order shall be punishable by a fine of not less than \$250.00 and not more than ve \$5,000.00, by imprisonment for not more than one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

**Sec. 14-30.8. Failing to pay minors for doing certain work.**

(a) It shall be unlawful for any person having a contract with any corporation, company or person for the manufacture or change of any raw material by the piece or pound, who shall employ any minor under the age of 18 to assist in the work upon the faith of and by color of such contract, with intent to cheat and defraud such minor, and, having secured the contract price, to willfully fail to pay the minor when he shall have performed his part of the contract work, whether done by the day or by the job.

(b) Failing to pay minors for doing certain work shall be punishable by a fine of not less than \$100.00 not more than \$5,000.00, by imprisonment for not more than one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

**Sec. 14-30.9. Disseminating and exhibiting harmful material or performances to minors.**

It shall be unlawful for any person or business entity to knowingly exhibit, display or disseminate any material which is harmful to minors (under 21 year old) in any place of public accommodation where minors are or may be present and where minors are able to view the material.

(1) A person or business entity commits this offense if, having custody, control or supervision of such material, he, she or it does any of the following:

a. Displays the material so that it is open to view by minors as part of the general public. Material is not considered "displayed" if the material is placed behind "blinder racks" that cover the portions of the material that is harmful to minors, is wrapped, is placed behind a counter, or is located so that the portion that is harmful to minors is not open to view by the minors;

b. Sells, delivers or provides or offers or agrees to sell, deliver or provide any writing, picture, record or other representation or embodiment of material considered to be harmful to minors; or

c. Presents or directs a play, dance or other performance which is displayed and considered to be harmful to minors or participates in that portion thereof which makes it harmful to minors; or

d. Publishes, exhibits or otherwise makes available to minors anything considered to be harmful; or

e. Allows a minor to review or peruse material that is considered to be



harmful; or

f. Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track or any matter or material of whatever form which is a representation, embodiment, performance, or publication which is considered to be harmful to minors.

(2) For purposes of this section, material considered to be harmful to minors is any material or performance that depicts sexually explicit nudity, sexual activity or sadomasochistic abuse and, taken as a whole, has the following characteristics.

a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient, shameful or morbid interest of minors; and

b. The average adult person applying contemporary community standards would find that the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.

(3) As used in this section, "material" means:

a. Any pictures, drawings, video recordings, films, sculpture or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse; or

b. Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in section (3)a. above, or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; or

c. Any performance, including any play, motion picture, dance or other exhibition performed before an audience which depicts nudity, sexual conduct or sadomasochistic abuse.

(4) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(5) As used in this section, "sexual conduct" means any of the conduct described below, whether actual or simulated (i.e., conduct which gives the appearance of being sexual conduct) or whether the conduct is performed alone or between members of the same or opposite sex or between humans and animals:

a. Sexual intercourse, oral copulation, anal intercourse, anal oral copulation, bestiality, sexual sadism, penetration of the vagina or rectum by any object in a lewd or lascivious manner; or

b. Masturbation, whether done with another human or an animal;

- c. Exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer;
- d. Touching, in an act of apparent sexual stimulation or sexual abuse of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female; or
- e. Excretory functions performed in a lewd or lascivious manner.

(6) As used in this section, "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) As used in this section, "sado-masochistic abuse" means flagellation, torture, bondage, beatings, or oxygen deprivation by or upon a nude person or a person clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained.

(8) Each violation of this section shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 369, 8-9-2000)

## **ARTICLE VIII. WEAPONS OFFENSES**

### **Sec. 14-34.1. Educational property.**

(a) The following definitions apply in this section:

(1) *Educational property.* Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any board of education, school, college or university.

(2) *Student.* A person enrolled in school, college or university, or a person who has been suspended or expelled within the last five years from a school, college or university, whether the person is an adult or minor.

(3) *Switchblade knife.* A knife containing a blade or blades which open automatically by the release of a spring or a similar contrivance.

(4) *Weapon.* Any gun rifle, pistol, or other firearm of any kind, a knife, or any dynamite cartridge, bomb, grenade, mine, powerful explosive as defined in North Carolina law, BB gun, air rifle, air pistol, bowie knife, dark, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp- pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, of educational property.

(b) It shall be a criminal offense for any person to possess or carry, whether openly, or concealed, any weapon on educational property.

(c) It shall be a criminal offense for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any weapon on educational property.

(d) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.

(2) Armed forces personnel, officer and soldiers of the militia and national guard, law enforcement personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined under North Carolina Law.

(Ord. No. 117, 3-3-2000)

**Sec. 14-34.2. Other assemblies.**

(a) It shall be unlawful for any person to carry any gun, rifle, or pistol into any assembly where a fee has been charged for admission thereto, or into any establishment in which alcoholic beverages are consumed. Any person violating the provisions of this section shall be guilty of a criminal offense.

(b) This section shall not apply to the following:

(1) The owner or the lessee of the property or business establishment;

(2) A person participating in the event, if he is carrying a gun, rifle, or pistol with the permission of the owner, lessee or person or organization sponsoring the event; and

(3) Armed forces personnel, officer and soldiers of the militia and national guard, law enforcement personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties.

(Ord. No. 117, 3-3-2000)

**Sec. 14-34.3. Punishment.**

Persons subject to the criminal jurisdiction of the Cherokee Court who violate the provisions of section 14-34.1 or 14-34.2 of this article shall be subject to punishment by a fine of up to \$1,000.00, imprisonment for not more than one year for each offense, or both.

(Ord. No. 117, 3-3-2000)

**Secs. 14-34.4--14-34.9. Reserved.**

*General Weapons Offenses*

**Sec. 14-34.10. Weapons offense.**

(a) It shall be unlawful to:

(1) Have a dangerous weapon in one's actual possession while being addicted to any narcotic drug; or after having been declared mentally incompetent; or while being intoxicated or otherwise under the influence of alcoholic beverages or any other intoxicating substance, drug, or medicine; or while possessing the intent to

unlawfully assault another; or while under the age of 16 years, and without the consent of his or her parent or guardian; or

(2) Carry a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge any kind of firearm from a motor vehicle without lawful authority to do so; or to discharge a firearm from, upon or across any public highway without lawful authority to do so.

(b) Definitions:

(1) *Dangerous weapon* means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.

(2) *Firearms* means pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force. A firearm or other weapon shall be deemed "loaded" when there is an unexpended cartridge, shell or projectile in the firing position, except in the case of pistols and revolvers in which case they shall be deemed "loaded" when an unexpended cartridge, shell or projectile is in such position as could be fired by one or more pulls of the trigger.

(3) *Weapons offense* shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year of both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-34.11. Aggravated weapons offense.**

(a) It shall be unlawful to carry a dangerous weapon concealed on the person or to threaten to use or exhibit a dangerous weapon in a dangerous and threatening manner, or use a dangerous weapon in a fight or quarrel; or to possess a shotgun or rifle having a barrel or barrels of less than 16 inches in a length or an altered or modified shotgun or rifle less than 24 inches overall length.

(b) Aggravated weapons offense shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for a period of not less than one nor more than five years, or by any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-34.12. Dangerous devices.**

(a) It shall be unlawful to:

(1) Deliver or cause to be delivered to any express, railway company or common carrier, or place on the mail or deliver to any person, or throw or place on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the threatened person is informed of the nature thereof and its placement is for some lawful purpose; or

(2) Knowingly construct or contrive any dangerous device, or with the intent to

injure another in his person or property, have a dangerous device in one's possession.

(b) For purposes of this section, a "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or flammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

(c) Dangerous devices shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-34.13. Blowguns.**

(a) The wholesale and retail sale, or possession of blowguns is prohibited on the Cherokee Indian Reservation.

(b) The wholesale and retail sale, or possession of darts or projectiles having a metal tip for use in a blow gun is prohibited on the Cherokee Indian Reservation.

(c) Violation of this section by any person or business holding a trader's license granted under the authority of Title 25 of the Code of Federal Regulations shall be cause for cancellation of the license.

(d) Persons subject to the criminal jurisdiction of the Cherokee Court who violate this section shall be punished by a fine of not more than \$100.00 or imprisonment of not more than 30 days, or both.

(e) "Blowgun" is defined as any hollow tube of metal, plastic, wood, or composite material designed or used for the purpose of propelling a projectile by the force of breath, but does not include those blowguns made of bamboo with wood and thistle darts that are sold as Native American heritage or craft items.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-34.14. Spring-loaded knives.**

(a) It shall be unlawful for any person including tribal law-enforcement officers to possess, offer for sale, hold for sale, sell, give, loan, deliver, transport, manufacture or go armed with any spring-loaded projectile knife, a ballistic knife, or any weapon of similar character. Except that it shall be lawful for a law-enforcement agency to possess such weapons solely for evidentiary, education or training purposes.

(b) Persons subject to the criminal jurisdiction of the Cherokee Court who violate this section shall be punished by a fine of not more than \$100.00 or imprisonment of not more than 30 days, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-34.15. Purchase or possession of firearms, etc. by person subject to domestic violence order.**

(a) It is unlawful for any person to purchase, attempt to purchase, or possess any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to any federal, tribal, or state jurisdiction, prohibiting the person from purchasing or possessing a firearm.

(b) Violation of this section shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-34.16. Confiscation and disposition of deadly weapons.**

Upon conviction of any offense involving the use of a deadly weapon, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge:

(1) By ordering the weapon returned to its rightful owner, but only when such owner:

- a. Is a person other than the defendant;
- b. Was unlawfully deprived of such weapon without his consent;
- c. Has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction; and
- d. Is entitled to possession of the weapon as determined by the presiding judge.

(2) By ordering such weapon turned over to the chief of police of the Cherokee Tribal Police Department or his duly authorized agent to be destroyed. The chief of police shall maintain a record of the destruction thereof.

(3) By ordering the weapon, if the weapon has a legible unique identification number, turned over to the Cherokee Tribal Police Department for the official use of such agency, but only upon the written request by the chief of police. The Cherokee Tribal Police Department shall maintain a record and inventory of all such weapons received.

(Ord. No. 117, 3-3-2000)

**ARTICLE IX. CRIMES OF BODILY INJURY**

**Sec. 14-40. Reserved.**

**Sec. 14-40.1. Domestic violence.**

(a) *Purpose.* The purpose of the domestic violence criminal ordinance is to recognize that the crime of domestic violence is an extremely serious crime against society, the Tribe, and

the family, and to provide the victim of domestic violence the maximum protection from further violence which the law can provide. Furthermore, the purpose of this section is to recognize that the strength of the Tribe is founded on healthy families, and that the safety of victims of domestic violence must be ensured by immediate intervention by law enforcement, prosecution, education, counseling, and other appropriate services.

It is the intent of the Eastern Band of Cherokee Indians Tribal Council that the official response to cases of domestic violence is that violent crime will not be excused or tolerated. Furthermore, it is the explicit intent of the Eastern Band of Cherokee Indians Tribal Council that domestic violence be prosecuted without requiring that the alleged victim and perpetrator be married, share a residence, or be presently involved in a relationship.

(b) *Definition.* The crime of domestic violence occurs when a person commits one of the following acts against an intimate partner or against a member of such intimate partner's family or household, or against an animal of such intimate partner:

(1) Attempting to cause or causing physical harm, bodily injury, or assault to an intimate partner or to a member of such intimate partner's family or household, or to an animal of such intimate partner;

(2) Placing an intimate partner or a member of the intimate partner's family or household in fear of the infliction of physical harm, bodily injury or assault;

(3) Willfully attempting to cause or causing emotional distress to an intimate partner or to a member of such intimate partner's family or household;

(4) Causing an intimate partner or a member of such intimate partner's family or household to engage involuntarily in sexual activity by force, threat of force, or duress; or

(5) Committing any willful violation of a court order intended to protect the intimate partner or a member of such person's family or household;

(6) Committing one of the following offenses, as defined by the Eastern Band of Cherokee Indians Criminal Code, against an intimate partner or against a family member, household member, or animal of such intimate partner:

- a. Injuring real property (§ 14-10.11);
- b. Injuring telephone, wires or other telephone equipment (§ 14-10.14);
- c. Criminal trespass (§§ 14-10.15, 14-10.16, and/or 14-10.17);
- d. Burglary (§ 14-10.40);
- e. Breaking and entering (§ 14-10.14);
- f. Criminal mischief (§ 14-10.9);
- g. Arson (§§ 14-10.50, 14-10.51, and/or 14-10.52);
- h. Assault (§§ 14-40.10, 14-40.11, 14-40.12);
- i. Maiming (§ 14-40.14);

- j. Discharging a firearm into an occupied building (§ 14-40.15);
- k. Harassment; telephone harassment (§§ 14-25.13 and/or 14-5.3);
- l. Kidnapping (§ 14-40.30);
- m. False imprisonment (§ 14-40.31);
- n. Custodial interference (§ 14-40.32);
- o. Homicide (§§ 14-40.40 and/or 14-40.41);
- p. Sex offenses - including rape, taking indecent liberties with children, aggravated sexual abuse, sexual abuse, sexual abuse of minor or ward (§§ 14-20.1, 14-20.2, 14-20.3, 14-20.4);
- q. Stalking (§ 14-5.5);
- r. Communicating threats (§ 14-5.2);
- s. Harassment (§§ 14-5.3 and/or 14-25.13);
- t. Weapons law violations (§§ 14-34.10, 14-34.11, 14-34.12, 14-34.13, and/or 14-34.14);
- u. Cruelty to animals (§ 14-5.20);

The commission of one of the above-referenced crimes against an intimate partner or against a member of such party's family or household, or against an animal of such party shall trigger the application of this ordinance.

*(c) Intimate partner/family member.*

(1) Intimate partner means:

- a. A current or former spouse;
- b. Persons who have a dating relationship or have been in a dating relationship. For purposes of this section, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.
- c. Persons who have engaged in an ongoing sexual relationship; or
- d. Persons who have a child in common, or who are expecting a child together.

(2) Intimate partner's family includes: Any immediate family relationship that an intimate partner, as defined above, may have. Such relationship may include, a relationship between parent/child, siblings, grandparents/grandchild, step-



parent/step-child, foster parent/foster child, or any relationship where circumstances have created a close family-type relationship, such as cousins raised as siblings.

(d) *Causing physical harm or bodily injury* means causing physical pain, serious illness, or an impairment of a physical condition.

(e) *Causing apprehension of bodily injury* means any physical act, including the utterance of verbal threats, which causes a person or animal to reasonably fear serious bodily injury or death.

(f) *Causing emotional distress* means engaging in conduct that would cause a reasonable person emotional distress and does in fact cause emotional distress to the person. Examples of conduct which may cause emotional distress include, but are not limited to, the following:

(1) Creating a disturbance at a person's place of employment or school;

(2) Repeatedly telephoning a person's place of employment or residence;

(3) Repeatedly following a person in a public place or places;

(4) Repeatedly keeping a person under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by the person or by peering in the person's windows;

(5) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child or making a threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or

(6) Threatening physical force, confinement or restraint.

(g) *Willful violation of court order*. For purposes of this section, willful violation of a court order is defined as any violation of any term contained in a lawful order issued by a properly constituted judicial authority pursuant to a criminal or civil case in tribal, federal, or state court where said order:

(1) Enjoins the perpetrator from threatening to commit or committing acts of domestic violence against a current or former intimate partner, or against a family or household member of a current or former intimate partner, or against an animal of a current or former intimate partner;

(2) Prohibits the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with a current or former intimate partner, or against a family or household member of a current or former intimate partner, or against an animal of a current or former intimate partner;

(3) Removes and/or excludes the perpetrator from the residence of a current or former intimate partner or of a family or household member, and a reasonable area surrounding the residence;

(4) Requires the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by a current or former

intimate partner, or by a family or household member of a current or former intimate partner;

(5) Prohibits the perpetrator from using or possessing a firearm or other weapon specified by the Court; or

(6) Grants temporary custody of a minor child to the person protected by the order.

For purposes of this section, a lawful order is defined as any order of protection, no contact order, pretrial release condition, condition of probation or parole, consent order, injunction, or other similar order that is issued by an Indian tribe, the United States of America, or a state, as long as the issuing court has jurisdiction over the parties and the matter under the law of the tribe, the U.S. or the state and reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by tribal, federal, or state law, and in any event, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

The tribe maintains criminal jurisdiction under this section for willful violations of a court order, even if the Cherokee Court lacked jurisdiction to issue the original order which was violated.

(h) *Duties of Cherokee law enforcement officers.* Cherokee law enforcement officers who respond to calls involving action which could constitute the crime of domestic violence under this section shall use all reasonable means to protect the alleged victim(s) and prevent further violence. All calls regarding domestic violence shall be responded to immediately. Cherokee law enforcement officers shall also adhere to the requirements set forth in Chapter 50B of this Code. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authorized authority if the law enforcement officer acts in good faith so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

(1) *Who may report.* Any person with knowledge that the crime of domestic violence is occurring, or is imminent, may report such information to the Cherokee Police Department.

(2) *Mandatory arrest.*

a. *Violation of order.* A law enforcement officer must arrest within 24 hours and charge a person with the appropriate crime if the officer has probable cause to believe that person has willfully violated a court order, as defined in this section.

b. *Commission of domestic violence crime.* A law enforcement officer must arrest within 24 hours and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed or is committing the offense of domestic violence, even if a warrant has not been issued and the offense was committed outside the presence of the officer. If the conditions for arrest are present, the officer shall arrest the alleged perpetrator of domestic violence regardless of whether the alleged victim signs a complaint and whether the arrest is against the expressed wishes of

the alleged victim. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed an offense. The law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party. In addition, the law enforcement officer shall not consider the use or abuse of alcohol or controlled substance by either party in making a determination as to whether the crime of domestic violence has been committed. Further, the law enforcement officer shall not make an arrest based on who hit who first, but shall consider the dynamics of domestic violence. In determining whether a person is the primary aggressor, the officer must consider:

1. The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
2. The relative severity of the injuries inflicted on each person, or serious threats creating reasonable fear of bodily injury;
3. The degree to which one of the persons has acted with deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or to a member of the person's family or household;
4. The likelihood of future injury to each person;
5. Whether one of the persons acted in self-defense.

(3) *Familial relationships of law enforcement.* In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall note the relationship on the case report. The supervisor reviewing the report shall review the report for accuracy and will ensure that the appropriate action has been taken.

(4) *Authority to seize weapons.* Incident to an arrest for a crime of domestic violence, as defined herein, a law enforcement officer:

- a. Must seize all weapons that are alleged to have been involved or threatened to be used in the commission of the crime;
- b. Must seize any weapon that is in plain view of the officer or was discovered pursuant to a consensual search if an existing order or condition of release prohibits the use or possession of a firearm or other weapon;
- c. Must seize any weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

(5) Report to domestic violence program. Whenever a police officer investigates an alleged act of domestic violence, regardless of whether an arrest is made, the officer shall make a written incident report of the alleged abuse and submit that report to

the Eastern Band of Cherokee Indians' Domestic Violence Program within 48 hours for purposes of program coordination. When the law enforcement officer does not make an arrest after investigating a complaint of domestic violence, or arrests two or more persons for a crime involving domestic violence, the written report must set forth the grounds for not arresting, or for arresting both parties. In addition, all reports, regardless of who is arrested or not arrested, must contain:

- a. A description of the circumstances of the persons and their surrounding environment when the officer responded to the call;
- b. A description of the injuries or harm inflicted upon either or both persons; and
- c. Summaries of the comments from the persons describing the circumstances leading to the call for law enforcement.

*(i) Duties of Tribal Prosecutor.*

(1) Within 120 days following enactment of this section, the Tribal Prosecutor will develop and implement written policies and procedures for the prosecution of the crime of domestic violence which will advance effective prosecution of the crime and maximize the protection and safety of the victims of domestic violence and their families. These policies and procedures will include the following:

- a. A prosecutorial policy that the employment, economic, educational, physical and/or mental health and political status of the alleged perpetrator and victim will not factor into determinations regarding domestic violence crimes;
- b. A "no drop" policy that prohibits victims from withdrawing charges;
- c. A process describing the utilization of advocates during every phase of criminal justice proceedings;
- d. The prosecutor will not dismiss a domestic violence case without prior consultation and review with the arresting officer and advocate;
- e. The prosecutor will expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the reservation for safety;
- f. The victim may, but shall not be required to act as the primary witness. In instances requiring "victimless" prosecution, the prosecution is required to enlist any and all evidentiary avenues, including photographs, other witness, medical records, testimony from law enforcement, history of past abuse, excited utterances, etc.

(2) The Prosecutor shall notify the alleged victim of the following rights:

- a. The right to be informed of all hearing dates and continuances;
- b. The right to provide the court with a victim-impact statement and an assessment of the likelihood of future harm;

c. The right to be present at sentencing and to address the court at such time;

d. If the alleged perpetrator is eligible for probation, the right to advise the court of conditions of probation required to assure the safety of the alleged victim; and

e. If the domestic violence resulted in damage to or loss of property, the ability to ask the court to order restitution for those losses.

(3) The prosecutor shall notify the alleged victim of domestic violence when the prosecutor declines to prosecute a case, or when the prosecutor dismisses the criminal charges, or when the prosecutor enters into a plea agreement.

(4) The prosecutor shall be educated in the psycho-social aspects of domestic violence, including the fear and self-doubt that could lead an alleged victim to find it difficult to testify against the defendant. Alleged victims shall be treated with dignity, respect and sensitivity.

(5) The prosecutor shall inform an alleged victim of the victim's right to petition for a civil Order for Protection under Chapter 50B of the Cherokee Code, and shall assist in the preparation of this petition, regardless of whether or not criminal charges are brought against an alleged perpetrator.

(j) *Bond and pretrial release.*

(1) No person arrested for a crime of domestic violence or violation of an order for protection shall be released from detention until after the expiration of 72 hours from arrest, notwithstanding the ability to post a cash or surety bond or the failure of the prosecutor to file a criminal complaint. In all cases in which the defendant is charged with the crime of domestic violence, a judge or magistrate must review the facts of the arrest and determine whether:

a. The person poses a credible threat of violence, repeated harassment or bodily injury to the alleged victim or to the victim's family or household;

b. Is a threat to public safety; and

c. Is reasonably likely to appear in court.

(2) In making the determination required by subsection (j)(1), the court will consider whether the arrested person's pattern of violent or threatening behavior towards a victim or victim's family or household member is chronic, and whether the seriousness of the behavior has been escalating, indicating a heightened danger of severe or lethal injury to the victim.

(3) Before releasing a person arrested for or charged with a crime involving domestic violence, the court must make findings on the record, concerning the determination made in accordance with subsection (j)(1) and may impose conditions of release or bail on the defendant to protect the alleged victim of domestic or family violence and to ensure the defendant's appearance at a subsequent court hearing. The conditions may include, but are not limited to, an order:

- a. That the defendant stay away from the home, school, business or place of employment of the alleged victim and/or other members of the victim's household or family;
- b. That the defendant refrain from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, household members of the victim, family members of the victim, either directly or indirectly;
- c. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim, as well as household members, family, and animals of the alleged victim;
- d. That the defendant refrain from removing, damaging property belonging to the victim, household members of the victim, and the victim's family;
- e. That the defendant be prohibited from using or possessing a firearm or other weapon specified by the court;
- f. That the defendant report within ninety-six (96) hours to a tribal health program for a domestic violence evaluation and comply with all treatment recommendations. If alcohol and/or drugs is indicated, the defendant shall also be prohibited from possessing or consuming alcohol or controlled substances and will be required to complete a chemical dependency evaluation conducted by a tribal chemical dependency program and comply with treatment recommendations. A copy of the order will be faxed to the appropriate tribal program to ensure compliance with this provision.
- g. To remain within the jurisdiction of the Cherokee Tribal Court at all times;
- h. Any other conditions required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.

(4) Once these conditions of release are imposed, the court shall:

- a. Issue a written order for conditional release;
- b. Immediately distribute a copy of the order to the tribal Prosecutor's office and to the Cherokee Police Department;
- c. Provide the Cherokee Police Department with any available information concerning the location of the defendant to ensure that the safety of the victim, as well as members of the victim's household and family are protected;
- d. Use all reasonable means to immediately notify the victim of the alleged crime of the defendant's release from custody and furnish the victim with an official copy of all conditions of release. The location of the victim is confidential and law enforcement, the prosecutor, and court are prohibited from divulging it, except in accordance with subsection (n) below.

(k) *Court-ordered and court-referred mediation prohibited.* The court shall not order defendants and victims of the crime of domestic violence into mediation or any other type of couples counseling, alternative justice, restorative justice, peace-making, circle sentencing,

or any other mediation type of situation that would put the victim in the position of dealing directly with the defendant, even if the victim has the right to refuse to participate.

*(l) Privileges.*

(1) In a criminal proceeding under this section, where a spouse is the victim of the alleged crime of domestic violence, the privilege of confidential communications between spouses cannot be asserted by the defendant.

(2) In a criminal proceeding where the spouse is the victim of an alleged crime of domestic violence, the testimonial privilege of confidential communications cannot be asserted to protect the defendant.

(3) The victim/advocate privilege. A victim of domestic violence may refuse to disclose and may prevent any volunteer or employee of a program for victims of domestic violence from disclosing the content of oral communications and written records and reports concerning the victim.

a. This privilege may be waived only by the victim. The waiver must be in writing and must identify what specific information may be disclosed, to whom, and for what purpose. Such waiver is not valid after 30 days or after the victim revokes the waiver.

b. This privilege does not relieve a person from the duty to report child abuse or neglect or from providing evidence about child abuse or neglect in tribal, federal or state court pursuant to civil or criminal proceedings.

c. The provision on confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim.

*(m) Diversion, deferred sentencing prohibited.* The court shall not approve a diversion or deferred sentencing recommendation for a defendant of domestic violence, except upon a plea of guilty or no contest with sentencing continued until completion of a batterer's treatment program.

*(n) Location of victim.* The court shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence. Provided, that the court shall order a criminal defense attorney not to disclose to his client the victim's location.

*(o) Penalties.* Any person subject to the criminal jurisdiction of the Cherokee Court who shall be convicted of the crime of domestic violence shall be subject to punishment by imprisonment for up to 12 months, by a fine of up to \$5,000.00, or any combination of these penalties. A court may not sentence a person convicted of the crime of domestic violence to community service in lieu of jail. Further, the court may not order residential confinement in the home of the victim. The use of alcohol or any controlled substance in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence. The fact that the perpetrator was under the influence at the time of the offense shall not be used by law enforcement, the prosecution, or the court to mitigate the severity of the violence.

*(p) Conditions of probation or parole.* In determining whether a defendant convicted of domestic violence should be placed on probation or parole, the court must consider the safety and protection of the victim and any member of the victim's family or household. After reviewing the facts and determining that the defendant poses a credible threat of

violence, repeated harassment or bodily injury to the alleged victim or family or household of the victim, the court will make findings of fact and will condition any probation or parole upon compliance upon certain conditions, including but not limited to the following:

(1) That the defendant stay away from the home, school, business or place of employment of the victim and/or other members of the victim's household or family;

(2) That the defendant refrain from harassing, annoying, telephoning, contacting or otherwise communicating with the victim, household members of the victim, or family members of the victim;

(3) That the defendant refrain from assaulting, beating, molesting, or wounding the victim, as well as household members, family, and animals of the alleged victim;

(4) That the defendant refrain from removing or damaging property belonging to the victim, household members of the victim, and the victim's family;

(5) That the defendant be prohibited from using or possessing a firearm or other weapon specified by the court;

(6) That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge or magistrate;

(7) That the defendant continue with any treatment recommendations of a tribal health program for a domestic violence as ordered as a condition of pretrial release. If alcohol and/or drugs is indicated, the defendant shall also be prohibited from possessing or consuming alcohol or controlled substances and will be required to complete a chemical dependency evaluation conducted by a tribal chemical dependency program and comply with treatment recommendations. A copy of the order will be transmitted to the appropriate tribal program to ensure compliance with this provision.

(8) Any other conditions required to protect the safety of the victim or the safety of household members, family or animals of the victim.

(q) *Revocation of bond, probation, parole.* The court, together with the Tribal Prosecutor, will establish policies and procedures for responding to reports of noncompliance with any conditions of a bond, probation or parole imposed pursuant to subsections (g), (j), and (p).

(r) *Child discipline.* Nothing within this section shall be construed to prohibit the reasonable, lawful actions of a parent to discipline a child in their custody.

(s) *Protections of this section.* The provisions of subsections (h), (i), (j), (k) and (l) of this section will be extended to the victim of any crime which would qualify as domestic violence under this section, regardless of whether the defendant was charged with domestic violence or another crime under this Chapter.

(t) *Exclusion.* All persons who are subject to the civil jurisdiction of the Cherokee Court who are guilty of committing domestic violence shall be subject to exclusion from Tribal territory pursuant to Chapter 2 of the Cherokee Court.

(u) *Willful violation of the prohibition on possessing a firearm.* No person convicted of the crime of domestic violence in any state or tribal jurisdiction may ever possess a firearm



once they have been convicted, irrespective of the sentence received. Willful violation of this prohibition will subject the defendant to a period of confinement not less than 30 days and not to exceed one year and a fine of not less than \$1,000.00, but not more than \$5,000.00, plus costs.

(v) *Order of protection, Chapter 50B.* No provision or penalty enumerated in this section is meant to infringe upon the right of an alleged victim to file an Order of Protection against the perpetrator under the provisions of Chapter 50B of the Cherokee Code.

(w) *Ethics; familial relationships of law enforcement, prosecution and judges.* All public servants shall be expected to perform their duties and proceed in accordance with this code no matter what the employment, education, social and political status of the alleged perpetrator and/or victim. Public servants shall be held to the highest professional standards in response to the crime of domestic violence.

(x) *Severability.* In the event of a court finding of invalidity of any clause or section of this article, such invalid clause or section shall be severed from the remaining body of the article, and the remainder of this article shall remain in full force and effect.

(y) *Prior inconsistent laws repealed.* Any existing laws which are inconsistent with his ordinance are specifically repealed.

(Ord. No. 117, 3-3-2000; Ord. No. 870, 8-9-2001)

#### **Secs. 14-40.2--14-40.8. Reserved.**

#### **Sec. 14-40.9. Assault in the first degree.**

(a) It shall be unlawful to wrongfully, purposely, knowingly, or recklessly:

- (1) Inflict serious injury upon another person or use a deadly weapon;
- (2) Assault a female, by a male person at least 18 years of age;
- (3) Assault a child under the age of 12 years;
- (4) Assault an officer or employee of the Eastern Band of Cherokee Indians, or other government officer, when the officer or employee is discharging or attempting to discharge his official duties; or
- (5) Assault a school bus driver, school bus monitor, or school employee.

(b) Assault in the first degree shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a term of not less than one year nor more than ten years or any combination of them.

(Ord. No. 117, 3-3-2000; Ord. No. 871, 8-9-2001)

**Editor's note:** Ord. No. 871, adopted August 9, 2001, amended the Code by renumbering former § 14-40.10 as § 14-40.9.

#### **Sec. 14-40.10. Assault in the second degree.**

(a) It shall be unlawful to wrongfully, purposely, knowingly, or recklessly:

- (1) Attempt to cause or cause bodily injury to another;

(2) Cause bodily injury to another with a weapon;

(3) Attempt by a show of force or violence to put another in fear of imminent bodily injury with the apparent ability to do so; or

(4) Recklessly endanger another by an act or omission to act which threatens to cause serious bodily injury to another, whether or not such harm actually occurs.

(b) Assault in the second degree shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000; Ord. No. 871, 8-9-2001)

**Editor's note:** Ord. No. 871, adopted August 9, 2001, amended the Code by renumbering former § 14-40.11 as § 14-40.10.

**Sec. 14-40.11. Assault in the third degree.**

(a) A person is guilty of the crime of assault in the third degree if he or she touches or strikes another person in an offensive manner without his or her consent.

(b) Assault in the third degree shall be punishable by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment of not more than thirty (30) days, or both.

(Ord. No. 871, 8-9-2001)

**Sec. 14-40.12. Patient abuse and neglect.**

(a) It shall be unlawful for any person to physically abuse a patient of a health care facility or a resident of a residential care facility, when the abuse is the result of an intentional or grossly negligent act or omission which causes serious bodily injury or death.

(b) Patient abuse and neglect shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a term of not less than one year nor more than life, or any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.13. Domestic abuse, neglect, and exploitation of disabled or elder adults.**

(a) *Abuse.* A person is guilty of abuse if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, with malice aforethought, knowingly and willfully: (i) assaults, (ii) fails to provide medical or hygienic care, or (iii) confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury.

(b) *Neglect.* A person is guilty of neglect if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, wantonly, recklessly, or with gross carelessness: (i) fails to provide medical or hygienic care, or (ii) confines or restrains the disabled or elder adult in a place or under a condition that is unsafe, and as a result of the

act or failure to act the disabled or elder adult suffers mental or physical injury.

(c) *Exploitation*. A person is guilty of exploitation if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting, and knowingly, willfully and with the intent to permanently deprive the owner of property or money: (i) makes a false representation, (ii) abuses a position of trust or fiduciary duty, or (iii) coerces, commands, or threatens, and, as a result of the act, the disabled or elder adult gives or loses possession and control of property or money.

(d) *Definitions*. The following definitions apply in this section:

(1) *Caretaker*. A person who has the responsibility for the care of a disabled or elder adult as a result of family relationship or who has assumed the responsibility for the care of a disabled or elder adult voluntarily or by contract.

(2) *Disabled adult*. A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).

(3) *Domestic setting*. Residence in any residential setting except for a health care facility or residential care facility as these terms are defined in G.S. 14-32.2.

(4) *Elder adult*. A person 60 years of age or older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.

(e) *Domestic abuse, neglect, and exploitation of disabled or elder adults* shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a term of not less than one year nor more than ten years or any combination of them.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-40.14. Maiming.**

(a) It shall be unlawful to wrongfully, purposely, or knowingly deprive a human being of a member of his body or render it useless, or to cut out or off, disable or disfigure any part of the body of another.

(b) Maiming shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a term of not less than one year nor more than life, or any combination of them.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-40.15. Discharging a firearm into occupied property.**

(a) It shall be unlawful for any person to willfully or wantonly discharge or attempt to discharge any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second, or a firearm, into any building, structure, vehicle, aircraft, watercraft, or other conveyance.

(b) Discharging a firearm into occupied property shall be punishable by a fine not to exceed

\$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a term of not less than one year nor more than life, or any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.16. Elder abuse and neglect.**

(a) It shall be unlawful for any person to abuse or neglect an elderly person by:

(1) Intentional or negligent infliction of bodily injury; or

(2) Unreasonable confinement, intimidation, cruel punishment or treatment resulting in physical harm, pain, or mental anguish of the elder.

(b) For purposes of this section, "elderly person" includes any person who is at least 60 years of age, or an incapacitated adult over 18 years of age.

(c) Elder abuse and neglect shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion of not less than one year nor more than life, or any combination of them.

(Ord. No. 117, 3-3-2000)

**Secs. 14-40.17--14-40.29. Reserved.**

**Sec. 14-40.30. Kidnapping.**

(a) It shall be unlawful to intentionally and wrongfully remove another from his place of residence, business, or from the vicinity where he is found, or to unlawfully confine or conceal another for a substantial period, for any of the following purposes:

(1) To hold for ransom or reward, or as a shield or hostage;

(2) To facilitate commission of any offense, or flight thereafter;

(3) To inflict bodily injury on or to terrorize the victim or another; or

(4) To interfere with the performance of any Eastern Band of Cherokee Indian governmental or political function.

(b) A removal, restraint, or confinement is wrongful within the meaning of this section if it is accomplished by force, threat, or deception, or, in the case of a child under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian, or other person responsible for general supervision of his welfare.

(c) Kidnapping shall be punishable by a fine of not less than \$500.00 not more than \$5,000.00, by imprisonment for not less than three months nor more than one year, by exclusion for a period of not less two years nor more than ten years, or by any combination of them. Should the commission of the offense result in the death or serious bodily injury to any person, a sentence of exclusion may be imposed for any period not exceeding life in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.31. False imprisonment.**

(a) It shall be unlawful to knowingly, and without lawful authority, restrain or imprison another so as to interfere with his liberty.

(b) False imprisonment shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.32. Custodial interference.**

(a) It shall be unlawful to knowingly and without lawful authority:

(1) Take, entice, conceal, or detain a child under the age of 16 from his parent, guardian, or other lawful custodian; or

(2) With the intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction; or

(3) With the intent to deprive another person of their lawful visitation or custody rights; or

(4) Intentionally take, entice or detain an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, without good cause and with knowledge that there is not legal right to do so.

(b) Custodial interference shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.33. Criminal coercion.**

(a) It shall be unlawful to intentionally and wrongfully restrict another's freedom of action to his detriment by threatening to:

(1) Commit any criminal offense;

(2) Accuse anyone wrongfully of a criminal offense;

(3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(4) Unlawfully take or withhold action as an official, or cause an official to take or withhold action.

(b) It is an affirmative defense to criminal coercion, except for subsection (a)(1) above, that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other in a lawful manner to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action.

(c) Criminal coercion shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one (1) year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.40. Homicide in the first degree.**

(a) It shall be unlawful to:

(1) Purposely, knowingly, and wrongfully cause the death of another human being;  
or

(2) Cause the death of another human being due to the commission or attempted commission of a felony or offense punishable by exclusion.

(b) Homicide in the first degree shall be punishable by a fine of \$5,000.00, by a term of imprisonment not to exceed one year; exclusion for a period not less than ten years nor more than life; or any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.41. Homicide in the second degree.**

(a) It shall be unlawful to:

(1) Recklessly or negligently with disregard of the possible consequence of one's conduct to cause the death of another human being; or

(2) Cause the death of another human being by operating a motor vehicle in a reckless, negligent, or careless manner, or while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle.

a. A blood alcohol content in excess of .08 shall create a rebuttable presumption that the person was under the influence of an alcoholic beverage.

b. For purposes of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft, or snowmobile.

(b) Homicide in the second degree shall be punishable by a fine of \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a period of not less than one year nor more than life; or any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.42. Causing a suicide.**

(a) It shall be unlawful to intentionally cause a suicide by force, duress, or deception.

(b) Causing a suicide shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, exclusion for a period of not less than one year nor more than 20 years; or any combination of them.

(Ord. No. 117, 3-3-2000)

**Sec. 14-40.43. Aiding or soliciting a suicide.**

(a) It is unlawful to intentionally aid or solicit another to attempt to commit suicide.

(b) Punishment:

(1) Aiding or soliciting a suicide shall be punishable by a fine not to \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(2) If the defendant's conduct has actually caused or contributed substantially to a suicide, or attempted suicide, then exclusion for a period of not more than ten years may also be imposed.

(Ord. No. 117, 3-3-2000)

**ARTICLE X. SEXUAL OFFENDER REGISTRATION PROGRAM**

**Sec. 14-50. Reserved.**

**Sec. 14-50.1. Purpose.**

The Eastern Band of Cherokee Indians recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. Further, the Eastern Band of Cherokee Indians recognizes that local law enforcement officers' efforts to protect our community, conduct investigations, and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the Tribe's jurisdiction. Release of information about sex offenders will further the governmental interest of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this article to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders to register with local law enforcement agencies and to require the exchange of relevant information about sex offenders among law enforcement agencies and to authorize the access to necessary and relevant information about sex offenders to others as provided in this article.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.2. Definitions.**

The following definitions apply in this article:

(1) *Division* means the Division of Criminal Statistics of the Department of Justice.

(2) *Penal institution* means a detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction, or a county jail.

(3) *Release* means discharged or paroled.

(4) *Reportable offense* means conviction of, adjudicated or committed for a violation, solicitation, conspiracy or attempt to commit a violation of the following:

a. Cherokee Tribal Code: Section 14-20.1 (Taking indecent liberties with children); Section 14-20.2 (Aggravated sexual abuse); Section 14-20.3 (Sexual abuse); Section 14-20.4 (Sexual abuse of minor or ward); Section 14-30.5 (Child abuse in the first degree); Section 14-80.2 (Incest); Section 14-80.4 (Indecent exposure);

b. Any offense against a minor prohibited by North Carolina Statutes, all sexually violent offenses prohibited by North Carolina Statutes, including NCGS. 14-27.2 (first degree rape); NCGS 14-27.3 (Second degree rape); NCGS 14-27.4 (First degree sexual offense); NCGS 14-27.5 (Second degree sexual offense); NC GS 14-27.6 (Attempted rape or sexual offense); NCGS 14-27.7 (Intercourse and sexual offense with certain victims); NCGS 14-178 (Incest between near relatives); NCGS 14-190.6 (Employing or permitting minor to assist in offenses against public morality or decency); NCGS 14-190.16 (First degree sexual exploitation of a minor); NCGS 14-190.17 (second degree sexual exploitation of a minor); NCGS 14-190.17A (Third degree sexual exploitation of a minor); NCGS 14-190.18 (Promoting prostitution of a minor); NCGS 14-190.19 (Participating in prostitution of a minor); NCGS 14-202.1 (Taking indecent liberties with children);

c. 18 U.S.C. 2241 (Aggravated Sexual Abuse); 18 U.S.C. 2242 (Sexual Abuse); 18 U.S.C. 2243 (Sexual Abuse of a Minor or Ward); 18 U.S.C. 2244 (Abusive Sexual Contact); 18 U.S.C. 2251 (Sexual Exploitation of Children); 18 U.S.C. 2252 (Certain Activities Relating to Material Involving Sexual Exploitation of Minors); 18 U.S.C. 2252A (Certain Activities Relating to Material Constituting or Containing Child Pornography); 18 U.S.C. 2260 (Production of Sexually Explicit Depictions of a Minor for Importation into the United States).

d. A reportable offense shall also include all convictions or adjudications or commitments for the above offenses by any tribal, federal, or state jurisdiction, which if committed on the Cherokee Reservation or within the State of North Carolina, would have been a sex offense as defined by Chapter 14 of the Eastern Band of Cherokee Code or the North Carolina General Statutes or the United States Code as described above.

e. All delinquency findings or adjudications of minors for offenses listed in subsections (4)a.--d. above, in any jurisdiction shall also be a reportable offense.

f. Individuals who have been released from a mental health facility or from a prison's mental health facility for treatment for any mental disorder, mental illness, mental disease, defect, or has been found not guilty or not responsible by reason of mental disease or defect for any offenses enumerated in subsections (4)a.--d. of this section. In the event that such individual is deemed legally incompetent, it shall be the responsibility of the guardian to register the individual as required by this article.

g. Reportable offenses must have occurred any time after March 7, 1991.

(5) Reserved for future codification.

(6) *Sexually violent person* is defined as a person who has been convicted of a reportable offense as defined in this chapter, has been adjudicated delinquent for a reportable offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of



mental disease, defect, or illness, and who is a danger to the community because he or she suffers from a mental disorder that make it substantially probable that the person will engage in acts of sexual violence.

(7) *Vulnerable adult* is defined as a person who is vulnerable to assault either because of the infirmities of aging or mental incompetence.

(8) *Chief of police* shall mean the top law enforcement officer with the Cherokee Police Department.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

### **Sec. 14-50.3. Registration.**

A person who is a resident and who has a reportable offense shall be required to maintain registration with the chief of police. If the person moves to the Cherokee Reservation from outside this jurisdiction the person shall register within ten days of establishing residence in the territory of the Eastern Band of Cherokee Indians or whenever the person has been present in the territory of the Eastern Band of Cherokee Indians for 15 days, whichever comes first. If the person is a current resident of territory of the Eastern Band of Cherokee Indians, the person shall register:

(1) Within ten days of release from a penal institution; or

(2) In the event an individual is convicted of a reportable offense but not sentenced to a term of incarceration in any penal institution, correctional facility, detention center, mental health facility or jail, but is required to serve a term of probation, supervised release, or conditional release, the individual shall immediately register with the Cherokee Police Department if he or she intends to reside in the Cherokee territory.

(3) In the event that an individual is released from a mental health facility or from a prison's mental health facility for treatment as enumerated in subsection 14-50.2(4)f., such individual must register with the Cherokee Police Department within 10 days of release from the facility.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

### **Sec. 14-50.4. Duration of registration requirements.**

(a) If a person has one reportable offense, he or she shall register for ten years following release from a prison, jail, correctional facility, detention center, mental health institution or release from parole or probation as enumerated in section 14-50.3.

(b) If a person has more than one reportable offense from any court of competent jurisdiction referred to in this article, he or she shall be required to register for the remainder of the individual's natural life.

(Ord. No. 117, 3-3-2000)

### **Sec. 14-50.5. Information to be provided to the Cherokee Police Department.**

(a) The Cherokee Police Department shall maintain a registry of all persons subject to this article. The registry shall contain the following information:

- (1) The person's name, including any aliases used by the person;
- (2) Information sufficient to identify the person, including date of birth, gender, race, height, weight, hair and eye color, markings (including scars, tattoos, and other distinguishing features);
- (3) The offense for which the person was convicted, adjudicated or committed, the conviction, adjudication or commitment statute, the county and state of conviction, adjudication or commitment, Tribal court of conviction, adjudication or commitment, U.S. District court of conviction, adjudication or commitment, the date of conviction adjudication or commitment, and the sentence imposed;
- (4) The person's fingerprints;
- (5) The person's driver's license, social security number and or any government issued identification number;
- (6) The Federal Bureau of Investigation number, U.S. Marshal number, state identification number, if any;
- (7) Enrollment number, if any;
- (8) Photograph.
- (9) All of the following that are applicable:
  - a. The date the person was placed on probation, supervision, conditional release, or other type of supervision;
  - b. The date the person was or is to be released from confinement, whether on parole or otherwise, or discharged or terminated from a sentence or commitment.
  - c. The date the person entered the reservation.
  - d. The address at which the person will be residing.
  - e. The name of the supervising agency if applicable, the office telephone number, address, and the agent assigned for supervision.
  - f. A description of any motor vehicle that the person owns or that is registered in the person's name. The information provided under this paragraph shall include a description of the vehicle, including make, model, license number, and any other identifying information.
  - g. The name and the address of the place at which the person is or will be employed.
  - h. The name and location of any school in which the person is or will be enrolled.
  - i. The most recent date on which the information in the registry was updated.

(b) All registrants will be required to provide information whenever there is any change in residence, school, employment, use of vehicle, and/or change in name. This update must be received no later than five calendar days after the change has occurred.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.6. Frequency of registration.**

(a) The covered individuals shall be subject to annual registration on the anniversary date of the initial registration.

(b) The covered individuals shall provide written notice of changes of the registration information to the Cherokee Police Department within five days of the change.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.7. Duties of the Cherokee Police Department.**

(a) The Cherokee Police Department shall maintain the registry information in an orderly manner. Such duties may be delegated to a specific division of the department.

(b) The registry may be expunged by the Cherokee Police Department in the event that the convicted sex offender provides authenticated court documents that the conviction was overturned, reversed, set aside, or vacated.

(c) If a registered sex offender moves to another jurisdiction, the Cherokee Indian Police Department shall inform the local law enforcement of the new jurisdiction of the change of residency.

(d) The Police Department shall notify the individual of the need for the annual update at least 20 calendar days before the anniversary date.

(e) If a sex offender is excluded from the reservation pursuant to this article the Police Department shall:

(1) Escort the individual to the boundary of the reservation and remove him or her.

(2) Serve notice on other jurisdictions as in subsection (c) of this section.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.8. Registered sex offenders requirements.**

Registered sex offenders shall:

(1) Avoid contact with children under 18 and vulnerable adults. Registered sex offenders shall refrain from living in any home or residence where a child under 18 years or a vulnerable adult lives. (Exceptions may apply when the registered sex offender is himself under 18). Registered sex offenders shall not be licensed nor permitted to work in the care of children or vulnerable adults.

(2) In the event a registered sex offender seeks employment which may involve some contact with children or vulnerable adults, (for example, in a fast food restaurant), or in the event a registered sex offender seeks to participate in a volunteer activity which may involve some contact with children under 18 or

vulnerable adults, the sex offender must first notify the employer or director of the volunteer activity of his/her sex offender status prior to beginning such employment or volunteer activity.

(3) Sex offenders who attend schools with children under 18 or with vulnerable adults shall notify school administrators of his/her sex offender status. This must be done prior to enrollment, or, if the sex offender is already enrolled, notification must be done prior to attending any classes or school functions.

(4) Enter and complete a mental health program specifically related to sexual offender therapy and abide by all policies and procedures of the sex offender treatment program.

(5) Refrain from the use of illegal substances.

(6) Participate in Alcoholic Anonymous and Narcotics Anonymous, as recommended by mental health professionals.

(7) Provide written documentation of compliance with subsections (4) and (6) of this section to the Cherokee Indian Police Department every six months.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.9. Tribal prosecutor's enforcement power.**

(a) The Tribal prosecutor shall be responsible for enforcing the penalty provisions of this chapter.

(b) The Chief may appoint a special prosecutor to enforce this provision of the Eastern Cherokee Code.

(c) A special prosecutor must be appointed if the Tribal prosecutor is a member of the immediate family of the party accused.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.10. Failure to register and/or comply with sex offender requirements.**

(a) It shall be a crime for a sexual offender to fail to register with the Cherokee Police Department, to intentionally offer false information to the Cherokee Police Department or fail to comply with any other requirements of the Tribe's sexual offender registration program, including those requirements set out in section 14-50.8.

(b) The penalty for violation of this section shall be as follows:

(1) For the first offense the offender shall be fined \$2,500.00, and imprisoned a minimum of 30 days, subject to a maximum term of imprisonment of up to six months.

(2) For the second and any subsequent offense the offender shall be fined \$5,000.00 and imprisoned for a minimum term of six months in jail, subject to a maximum term of one year in jail, in addition to the provisions of section 14-50.11.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000; Ord. No. 587, 2-26-01)

**Sec. 14-50.11. Exclusion for failure to register or comply with sex offender requirements.**

(a) A sexual offender who is a Tribal member and who fails to register or maintain registry updates and changes, or fails to comply in any way with the requirements of this article, including the requirements of section 14-50.8, on two or more occasions shall be subject to exclusion from the Cherokee Indian Reservation, if at a hearing before the Tribal council, the Tribe's attorney proves by clear and convincing evidence that the individual is a sexually violent person, and any two of the following four provisions:

(1) It is substantially likely that the individual will re-offend.

(2) The individual shows no remorse.

(3) The individual fails to comply with provisions of the laws of the Eastern Band of Cherokee.

(4) The individual has not shown any progress in sex offender treatment groups or therapy.

(b) The hearing shall be public.

(c) The Tribe shall have the right to hire an independent psychologist or psychiatrist to prosecute this action.

(d) If the Tribal council is satisfied that the individual is a sexually violent person the individual shall be subject to all the terms of exclusion, as enumerated in the Cherokee Code.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.12. Rights of tribal members subject to petition for exclusion for failure to register or for failure to comply with sex offender requirements.**

The individual shall have a right to:

(1) Be represented by counsel, at their own expense.

(2) Remain silent.

(3) Present and cross-examine witnesses.

(4) Have the hearing recorded.

(5) Public hearing.

(6) 45-days' written notice of the proceedings. Such notice shall be served personally. If the Tribal attorney is unable to serve notice on the individual within 20 days, the prosecutor may use publication notice in the Cherokee One Feather.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.13. Non-tribal members who fail to register or who fail to comply with sex offender requirements.**

A non-tribal member who fails to register or maintain registry changes and updates, or fails to comply with any other requirements included in this article, including failure to comply with the requirements of section 14-50.8, shall be subject to a forfeiture not to exceed five thousand dollars, revocation of all licenses and privileges on the Eastern Cherokee Indian Reservation, and exclusion from the reservation pursuant to chapter 2 of this Code.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.14. Duration of exclusion.**

(a) An individual excluded from the reservation pursuant to this provision shall have the opportunity to petition for restoration of status of Tribal member and/or residency after ten years.

(b) The petition for restoration of status of tribal member and/or residency shall contain information to a preponderance of the evidence that the individual is no longer sexually violent and presents no danger to the community. Hearing on a petition for restoration of status shall be at the Tribal council's discretion.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.15. Access to registration information.**

(a) All information (except items listed in subsections 14-50.5(a)(4)--(7) and information relating to juvenile delinquency adjudications) obtained by the Cherokee Police Department pursuant to section 14-50.5 is public record. This information shall be available for public inspection and may be published in local newspapers and posted in public places from time to time. The Cherokee Police Department shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this article.

(b) Registry information which pertains to juveniles who have been adjudicated to be delinquent shall only be provided to appropriate school officials or, upon written request, to certain groups, entities, organization, or corporations that utilizes volunteers or employees in working with, caring for, supervising or protecting children or vulnerable adults.

(c) The Cherokee Police Department will share all registry information with law enforcement agencies from other jurisdictions.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.16. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this amendment are specifically repealed.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

**Sec. 14-50.17. Severability.**

If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.

(Ord. No. 117, 3-3-2000; Ord. No. 391, 10-27-2000)

## **ARTICLE XI. FRAUD, FORGERY, EMBEZZLEMENT, FALSE PRETENSES**

### **Sec. 14-60. Reserved.**

#### **Sec. 14-60.1. Deceptive business practices.**

(a) It shall be unlawful, in the course of business, to intentionally:

(1) Use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) Sell, offer, or expose for sale, or deliver less than the represented quality or quantity of any commodity or service;

(3) Take or attempt to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) Sell, offer, or expose for sale adulterated or mislabeled commodities. For purposes of this section, the following terms shall be defined accordingly:

a. *Adulterated* means varying from the standard of composition or quality prescribed by law or commercial usage.

b. *Mislabeled* means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage.

(5) Make a substantial false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services;

(6) Make a false or misleading written statement for the purpose of obtaining property or credit; or

(7) Make a false or misleading written statement for the purpose of promoting the sales of securities, or omit information required by law to be disclosed in written documents relating to securities.

(b) Deceptive business practices shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) It is an affirmative defense to deceptive business practices that the defendant's conduct was not knowingly or recklessly deceptive.

(d) Upon a second or subsequent offense, exclusion for a period of not more than ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-60.2. Extortion.**

(a) It shall be unlawful to take, receive, or control the use or disposition of property of another with the intent to deprive him of the possession or use thereof by threatening to:

- (1) Cause bodily harm to any person;
- (2) Commit any offense;
- (3) Unlawfully injure or destroy any property;

(4) Expose any personal information or secret, tending to expose any person to hatred, contempt, or ridicule, or to impair his business or reputation, except by institution of legal proceedings to recover the debt demanded or proper reports to bona fide credit agencies; or

(5) Unlawfully take or withhold official action.

(b) Extortion shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) If the value of the property extorted exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-60.3. Blackmail.**

(a) It shall be unlawful for any person, with the intent to extort or gain from such person any chattel, money or valuable security, to knowingly send or deliver any letter or writing which:

- (1) Contains threats or menaces; or
- (2) Shall accuse, or threaten to accuse any other person of any crime punishable by law with death or by imprisonment in prison.

(b) Blackmail shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-60.4. Fraudulent use of a credit, debit or bank card.**

(a) It shall be unlawful to use a credit, debit or bank card for the purpose of obtaining property or services with knowledge that:

- (1) The card was stolen;
- (2) The card has been revoked or canceled; or
- (3) For any other reason his use of the credit, debit or bank card is unauthorized by either the issuer or the person to whom the card has been issued.

(b) Fraudulent use of a credit, debit or bank card shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both. Restitution shall be required.



(Ord. No. 117, 3-3-2000)

**Secs. 14-60.6--14-60.9. Reserved.**

**Sec. 14-60.10. Forgery.**

(a) It shall be unlawful to alter any writing of another without his authority, or to make, complete, execute, authenticate, issue, or transfer any writing so that it purports to be the act of another who did not authorize that act, with the intent to defraud or injure anyone. "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

(b) Forgery shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, by a sentence of exclusion for a period of not less than one year nor exceeding five years, or any combination of them. Upon a second or subsequent conviction for forgery, a sentence of exclusion for a period of not less than five years nor exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.11. Criminal simulation.**

(a) It shall be unlawful to make, alter, or utter or attempt to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess, with intent to defraud anyone.

(b) Criminal simulation shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.12. Fraudulent handling of recordable instruments.**

(a) It shall be unlawful to destroy, remove or conceal any will, deed, mortgage, security instrument, any record of the Eastern Band of Cherokee Indians for which the law provides public recording, including documents of the Cherokee Tribal Council that require legislative action, or to knowingly record a false or forged instrument, with the intent to deceive or injure anyone, or to conceal wrong doing.

(b) Fraudulent handling of recordable instruments shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, by sentence of exclusion for a period not less than one year nor exceeding five years, or any combination of them. Upon a second or subsequent conviction for fraudulent handling of recordable instruments, a sentence of exclusion for a period not less than five years nor exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.13. Tampering with records.**

(a) It shall be unlawful to falsify, destroy, remove, or conceal any writing or record, with the intent to deceive or injure anyone or to conceal any wrong doing.

(b) Tampering with records shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both a fine and imprisonment, or by a sentence of exclusion for a term not less than one year nor exceeding five years, or any combination of the above punishments. Upon a second or subsequent conviction for tampering with records, a sentence of exclusion for a period not less than five years nor exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Secs. 14-60.14--14-60.19. Reserved.**

**Sec. 14-60.20. Embezzlement.**

(a) It shall be unlawful to wrongfully or fraudulently appropriate for a person's own use, or the use of another, property of another with which the person has been entrusted.

(b) Embezzlement shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a term not exceeding one year, or both.

(c) If the value of the property embezzled exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Secs. 14-60.21--14-60.29. Reserved.**

**Sec. 14-60.30. False pretenses.**

(a) It shall be unlawful to obtain, take, or receive any property of another by means of a trick or deception, or false or fraudulent representation, statement, or pretense with the intent to deprive owner thereof.

(b) False pretenses shall be punishable by a fine not exceeding \$5,000.00, or by imprisonment or a term not exceeding one year, or both.

(c) If the value of the property gained by false pretenses exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.31. Securing execution of documents by deception.**

(a) It shall be unlawful to intentionally, and by deception, cause another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

(b) Securing execution of documents by deception shall be punishable by a fine of not exceeding \$5,000.00, by imprisonment for a period not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.32. Worthless checks.**

(a) It shall be unlawful for any person, firm, or corporation to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

(b) It shall be unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make utter or issue and deliver to any person, firm or corporation any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting of the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, such bank or depository with which to pay the same upon presentation.

(c) The word "credit " as used in this section shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft.

(d) Any person, firm or corporation subject to the criminal jurisdiction of the Cherokee Court violating any provision of this section shall be guilty of a criminal offense and upon conviction shall be punishable by a fine of up to \$500.00 or imprisonment up to one year, or both, at the discretion of the court.

(e) For the purposes of this section, an issuer is presumed to know that the check or order would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after notice of that refusal is sent to the issuer by certified mail to the address written or printed on the check or draft.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.33. Obtaining property in return for worthless check, draft or order.**

(a) It shall be unlawful for any person, with intent to cheat and defraud another, to obtain money, credit, goods, wares or any other thing of value by means of a check, draft, or order of any kind upon any bank, person, firm or corporation, and where the person has not provided for the payment or acceptance of the same, and the same be not paid upon presentation.

(b) Obtaining property in return for a worthless check, draft, or order shall be punishable by a fine not to exceed \$500.00 or imprisoned up to one year, or both, at the discretion of the court. The giving of the aforesaid worthless check, draft or order shall be prima facie evidence of an intent to cheat and defraud.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.34. Obtaining property or services from slot machines, etc., By false coins or tokens.**

(a) It shall be unlawful for any person to operate, or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated any automatic vending machine, slot machine, coin-box telephone or other receptacle designed for the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee or licensee, of such machine, coin-box telephone or receptacle.

(b) It shall be unlawful for any person to take, obtain or receive from or in connection with any automatic vending machine, slot machine, coin-box telephone or other receptacle designed for the use or enjoyment of property or service, any goods, monies, or services without depositing in and surrendering to such machine, coin- box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle.

(c) Obtaining property or services from slot machines, etc., by false coins or tokens shall be punishable by a fine not exceeding \$5,000.00, or by imprisonment or a term not exceeding one year, or both.

(d) If the value of the property gained by the use of false coins or tokens exceeds \$1,000.00, a sentence of exclusion for a period not exceeding ten years may be imposed in addition to the punishment authorized above.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.35. Manufacture, sale, or gift of devices used for cheating slot machines.**

(a) It shall be unlawful for any person, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any automatic vending machine, slot machine, coin-box telephone or other receptacle, to manufacture for sale, sell, or give away, any slug, device or substance whatsoever intended or calculated to be placed or deposited in any such automatic vending machine, slot machine, coin- box telephone or other such receptacle.

(b) Manufacture, sale, or gift of devices used for cheating slot machines shall be punishable by a fine not exceeding \$5,000.00, or by imprisonment or a term not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.36. Defrauding innkeeper or campground owner.**

(a) No person shall, with intent to defraud, obtain food, lodging, or other accommodations at a hotel, inn, boardinghouse, eating house, or campground.

(b) Obtaining such lodging, food, or other accommodation by false pretense, or by false or fictitious show of pretense of baggage or other property, or absconding without paying or offering to pay therefor, or surreptitiously removing or attempting to remove such baggage, shall be prima facie evidence of such fraudulent intent, but this section shall not apply where there has been an agreement in writing for delay in such payment.

(c) Defrauding innkeeper or campground owner shall be punishable by a fine not exceeding \$5,000.00, or by imprisonment or a term not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.37. Defrauding creditors.**

(a) It shall be unlawful to:

(1) Destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with the intent to hinder enforcement of that interest;

(2) Deal with property with the intent to defeat or obstruct the operation of any law relating to the administration of property for the benefit of creditors;

(3) Knowingly falsify any writing or record relating to the property; or

(4) Knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

(b) Defrauding creditors shall be punishable by a fine of not exceeding \$5,000.00, by imprisonment for a period not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.38. Making a false credit report.**

(a) It shall be unlawful to knowingly make a materially false or misleading statement to obtain property or credit for oneself or another or to keep some other person from obtaining credit.

(b) Making a false credit report shall be punishable by a fine not exceeding \$5,000.00, by imprisonment for a period not exceeding one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-60.39. [Reserved].**

**ARTICLE XII. PERJURY AND OBSTRUCTING JUSTICE**

**Sec. 14-70. Reserved.**

**Sec. 14-70.1. Perjury in the first degree.**

(a) It shall be unlawful for any person, in any official proceeding, to make a false statement

under oath or equivalent affirmation, or swear or affirm the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law to be decided by the Court.

(c) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being verified shall be deemed to have been duly sworn or affirmed.

(d) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(e) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(f) Perjury in the first degree shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

### **Sec. 14-70.2. Perjury in the second degree.**

(a) It shall be unlawful for any person, with the purpose to mislead a public servant in performing his official function, to:

- (1) Make any written false statement which he does not believe to be true;
- (2) Purposely create a false impression in a written application for any benefit by omitting information necessary to prevent statements therein from being misleading;
- (3) Submit or invite reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (4) Submit or invite reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(b) A person is guilty of perjury in the second degree if he makes a false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(c) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or

affirmed.

(d) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(e) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(f) Perjury in the second degree shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.3--14-70.9. Reserved.**

**Sec. 14-70.10. Tampering with witnesses.**

(a) It shall be unlawful, while believing that an official proceeding or investigation is pending or is about to be instituted, to attempt to induce or otherwise cause a person to:

- (1) Testify or inform falsely;
- (2) Withhold any testimony, information, document, or thing, or evidence;
- (3) Elude legal process summoning him to testify or supply evidence;
- (4) Absent himself from any proceeding or investigation to which he has been legally summoned;
- (5) To harm another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
- (6) To solicit, accept or agree to accept any benefit in consideration for doing any of the things specified in this section.

(b) Tampering with witnesses shall be punishable by a fine not to exceed five thousand dollars \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.11. Tampering with evidence.**

(a) It shall be unlawful, while believing that an official proceeding or investigation is pending or is about to be instituted, to:

- (1) Alter, destroy, conceal or remove any record, document, or thing with the intent to impair its verity or availability in such proceeding or investigation; or
- (2) Make, present, or use any record, document, or thing knowing it to be false with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

(b) Tampering with evidence shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.12. Tampering with public records.**

(a) It shall be unlawful to:

(1) Knowingly make a false entry in, or false alteration of, any record, document or thing belonging to, received by or kept by the Eastern Band of Cherokee Indians or any government for information or record, or required by law to be kept by others for information of the Eastern Band of Cherokee Indians or government;

(2) Make, present or use any record, document, or thing knowing it to be false and with the purpose that it be taken as a genuine part of information or records referred to in subsection 1 above; or

(3) Purposely and unlawfully destroy, conceal, remove or otherwise impair the truth or availability of any such record, document or thing belonging to or received or kept by the Eastern Band of Cherokee Indians or any government.

(b) Tampering with public records shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.13. Impersonation a public servant.**

(a) It shall be unlawful to falsely pretend to hold a position in the public service with the purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(b) Impersonating a public servant shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.14. Obstructing governmental functions.**

(a) It shall be unlawful to:

(1) Use force, violence, intimidation, or engage in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(2) Purposely obstruct, impair, or prevent the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with



law without affirmative interference with governmental functions.

(3) Obstructing governmental functions shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.15. False arrest.**

(a) It shall be unlawful for any public officer or person pretending to be a public officer to, under the pretense or color of any process or other legal authority, arrest or detain a person against his will, except where such person reasonably believed he is authorized by law to do so.

(b) False arrest shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.16. Refusing to aid an officer.**

(a) It shall be unlawful to knowingly or recklessly refuse to aid a law enforcement officer or fire fighter in the performance of his official duties when called upon by the officer to do so.

(b) Refusing to aid an officer shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.17. Obstructing justice.**

(a) It shall be unlawful, with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, to:

(1) Harbor or conceal the other;

(2) Provide or aid in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape;

(3) Conceal or destroy evidence of the offense, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence;

(4) Warn the other of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law;

(5) Volunteer false information to a law enforcement officer for the purpose of preventing the apprehension of another; or

(6) Obstruct by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another person.

(b) Obstructing justice shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both, unless the recipient of any of the above aid has been sentenced to exclusion, in which case a conviction under this section may result in

both parties being banished for a term up to the original sentence of exclusion, plus a fine up to \$5,000.00.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.18. Providing contraband.**

(a) It shall be unlawful to provide any person in official detention with alcoholic beverages, drugs, weapons, implements of escape, or any other thing or substance which the actor knows is improper or unlawful for the detainee to possess.

(b) Providing contraband shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.19. Resisting lawful arrest.**

(a) It shall be unlawful to create a substantial risk of bodily harm to anyone or employ means of resistance justifying or requiring force to overcome the resistance for the purpose of preventing a law enforcement officer from effecting an arrest or detention of any person.

(b) Resisting arrest shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.20. Escape.**

(a) It shall be unlawful to:

(1) Remove oneself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or period;

(2) Knowingly procure, make, or possess anything which may facilitate escape while being held in official detention;

(3) Aid another person to escape official detention; or

(4) Knowingly provide a person in official detention with anything which may facilitate such a person's escape.

(b) "Official detention" means arrest, detention in any facility for custody of persons under charge or convicted of a crime, or any other detention for law enforcement purposes, but "official detention" does not include supervision of probation or parole, or constraint incident to release on bail.

(c) Escape shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.21. Bail jumping.**

(a) It shall be unlawful to fail without just cause to appear in person after having been released on bail or on one's own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense.

(b) Bail jumping shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.22. Failure to obey a lawful order of the court.**

(a) It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by any court of the Eastern Band of Cherokee Indians, or any officer thereof, or otherwise issued according to law, without just cause.

(b) This section shall apply to failure to appear as a party in a civil action, when such appearance has been ordered by the court.

(c) Failure to obey a lawful order of the court shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.23. Unlawful obtaining of services by excluded person.**

(a) It shall be unlawful for any person under sentence of exclusion during the term of such exclusion, to:

(1) Attempt to secure or to unlawfully secure any tribal benefit or service; or

(2) Apply for or attempt to claim any right, privilege or immunity by virtue of membership in the Eastern Band of Cherokee Indians except as provided by law.

(b) Unlawful obtaining of services by an excluded person shall be punishable by a fine of \$5,000.00, and by imprisonment for a term not to exceed one year, and by exclusion for a term equal to the original term of exclusion which was violated.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.24. Aiding the unlawful obtaining of services by excluded person.**

(a) It shall be unlawful for any person to aid or assist a person under the sentence of exclusion to:

(1) Attempt to secure or to unlawfully secure any tribal benefit or service; or

(2) Apply for or attempt to claim any right, privilege or immunity by virtue of membership in the Eastern Band of Cherokee Indians except as provided by law.

(b) Aiding the unlawful obtaining of services by an excluded person shall be punishable by a fine of \$5,000.00, and by imprisonment for a term not to exceed one year, and by exclusion for a term equal to the exclusion term originally imposed upon the banished person for which aid or assistance was attempted or secured.

(Ord. No. 117, 3-3-2000)

**Secs. 14-70.25--14-70.29. Reserved.**

**Sec. 14-70.30. Bribery.**

(a) It shall be unlawful to ask for, give or accept any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, given with a wrongful or corrupt intent to influence unlawfully the person to whom it is given.

(b) Bribery shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.31. Improper influence in official matters.**

(a) It shall be unlawful to:

(1) Threaten unlawful harm to any person with intent to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter;

(2) Threaten harm to any public servant or relative of a public servant with the intent to influence the public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial, legislative, or administrative proceeding;

(3) Threaten harm to any public servant or official or relative of either with the intent to influence him to violate his duty; or

(4) Privately address any public servant who has or will have an official discretion in a judicial or administrative proceeding and making thereby any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction, or for any other reason.

(c) Improper influence in official matters shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.32. Improper gifts to public officials.**

(a) It shall be unlawful to knowingly confer, offer or agree to confer benefit to a public

servant with the intent to induce an exercise of their discretion in an unlawful manner, or to determine official impartiality.

(b) This section shall not apply to:

(1) Fees prescribed by law to be received by public servant, or any benefit for which the recipient gives lawful consideration or to which he is otherwise entitled;

(2) Gifts or other benefits conferred on account of kinship, traditional ceremonies, or other personal, professional or business relationship independent of the official status of the receiver; or

(3) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality. A trivial benefit is one that does not exceed \$25.00 in value.

(c) Improper gifts to public servants shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this Section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.33--14-70.39. Reserved.**

**Sec. 14-70.40. Unofficial misconduct.**

(a) It shall be unlawful to exercise or attempt to exercise any of the functions of a public office when one has not been elected or appointed to office.

(b) Unofficial misconduct shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.41. Oppression in office.**

(a) It shall be unlawful when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, with knowledge that such conduct is illegal, to:

(1) Subject another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or infringement of personal or property rights; or

(2) Deny or impede another in the exercise or enjoyment of any rights, power, or immunity.

(b) Oppression in office shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.42. Misusing tribal money or property.**

(a) It shall be unlawful for a person charged with the receipt, safekeeping, transfer or disbursement of Tribal monies or property to:

(1) Without lawful authority appropriate the money or property or any portion of it to his own use or use of another;

(2) Lend the money or property or any portion thereof without authority;

(3) Fail to keep the money or property in his possession until lawfully disbursed or paid out according to law or returned to the custody of the tribe;

(4) Deposit the money in an unauthorized bank or with a person not lawfully authorized to receive such;

(5) Knowingly keep any false account, or make a false entry or erasure in any account of or relating to the money;

(6) Fraudulently alter, falsify, conceal, destroy, or obliterate any such account;

(7) Knowingly refuse or omit to pay over or return on lawful demand by competent authority any Tribal monies or property in his hands;

(8) Knowingly omit to transfer money or property when transfer is required by proper authority;

(9) Make a profit for himself or another when not lawfully entitled to such, or in an unlawful manner, out of Tribal monies or property;

(10) Fail to pay over to the proper account or authority any fines, forfeitures, or fees received by him;

(11) Otherwise handle Tribal money or property in a manner not authorized by law for his own benefit; or

(12) Handle Tribal money or property in a reckless manner as a result of which a risk of loss of such money or property is significant.

(b) "Tribal money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, received or held by the Eastern Band of Cherokee Indians or any other government, or any account or money held by the Eastern Band of Cherokee Indians or government for any individual group.

(c) "Tribal property" includes personal property, equipment, tools, vehicles, real property, evidences of indebtedness or their equivalent, belonging to, received or held by the Eastern Band of Cherokee Indians or any other government, or any account or money held by the Eastern Band of Cherokee Indians or government for any individual or group.

(d) Misusing Tribal money or property shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less

than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.43. Compensation for past official behavior.**

(a) It shall be unlawful to solicit, accept or agree to accept any financial benefit as compensation for having given, as a public servant, a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or offer, confer or agree to confer compensation, acceptance of which is prohibited by this section.

(b) Compensation for past official behavior shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.44. Official unlawful action.**

(a) It shall be unlawful, being a public servant, and with the intent to materially benefit himself or another or to harm another, to:

(1) Knowingly commit an unauthorized act which purports to be an act of his office, or knowingly refrain from performing a non-discretionary duty imposed on him by law; or

(2) Knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public:

a. Acquire or divest himself of a valuable interest in any property, transaction or enterprise which may be affected by such action or information; or

b. Speculate or wager on the basis of such action or information, and knowingly aid another to do any of the foregoing.

(b) Official unlawful action shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

**Sec. 14-70.45. Special influence.**

(a) It shall be unlawful to solicit, receive, or agree to receive any financial benefit as consideration for exerting special unlawful influence upon a public servant, in order to influence that public servant to violate the law or to exercise his discretion in a particular fashion or procuring another to do so; or to offer, confer, or agree to confer any financial

benefit receipt of which is prohibited by this section.

(b) Special influence shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for not less than five years nor more than ten years, or any combination of them. For a second or subsequent conviction under this section, exclusion may be imposed for not less than ten years nor more than life.

(Ord. No. 117, 3-3-2000)

### **ARTICLE XIII. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY**

#### **Sec. 14-80. Reserved.**

#### **Sec. 14-80.1. Prostitution.**

(a) It shall be unlawful to:

- (1) Be an inmate or resident of a house of prostitution or otherwise engage in sexual activity as a business or for hire;
- (2) Loiter in or within view of a public place for the purpose of being hired to engage sexual activity;
- (3) Engage in or offer or agree to engage in any sexual activity with another person for a fee;
- (4) Pay or offer or agree to pay another person a fee for the purpose of engaging in an act of sexual activity;
- (5) Enter or remain in a house of prostitution for the purpose of engaging in sexual activity;
- (6) Own, control, manage, supervise, or otherwise keep, alone or in association with another, a house of prostitution or a prostitution business;
- (7) Solicit a person to patronize a prostitute;
- (8) Procure or attempt to procure a prostitute for another;
- (9) Lease or otherwise permit a place controlled by the actor, alone or in association with others, to be used for prostitution or the promotion of prostitution;
- (10) Procure an inmate for a house of prostitution;
- (11) Encourage, induce, or otherwise purposely cause another to become or remain a prostitute.
- (12) Transport a person with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose;
- (13) Share in the proceeds of a prostitute pursuant to an understanding that one is to share therein, unless one is the child or legal dependent of a prostitute;



(14) Own, operate, manage, or control a house of prostitution; or

(15) Solicit, receive, or agree to receive any benefit for doing any of the acts prohibited by this section.

(b) Definitions:

(1) *House of prostitution* means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(2) *Inmate* means a person who engages in prostitution in or through the agency of a house of prostitution.

(3) *Public place* means any place to which the public or a substantial group thereof has access.

(4) *Sexual activity* means intercourse or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the gender of either participant.

(c) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence: its general reputation; the reputation of the persons who reside in or frequent the place; the frequency, timing, and duration of visits by non-residents. Testimony of a person against his spouse shall be admissible to prove an offense under this Section.

(d) Prostitution shall be punishable by a fine not to exceed \$500.00, by a term of imprisonment not to exceed six months, or both. Upon a second or subsequent conviction for prostitution, exclusion may also be imposed for a term not to exceed two years.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-80.2. Incest.**

(a) It shall be unlawful for parties to engage in intercourse or any other sexual act if the familial relationship between the parties is one of:

(1) Grandparent and grandchild; or

(2) Parent and child or stepchild or legally adopted child; or

(3) Siblings of half or whole blood; or

(4) Uncle and niece, and nephew and aunt.

(b) Incest shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both. Upon a second or subsequent conviction for incest, exclusion may also be imposed for a term not to exceed two years.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-80.3. Bigamy.**

(a) It shall be unlawful for any person, being married, to marry any other person during the

life of the former husband or wife.

(b) Nothing contained in this section shall extend to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to have been living within that time; nor to any person who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage; nor to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

(c) Bigamy shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-80.4. Indecent exposure.**

(a) It shall be unlawful for any person to willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, of the opposite sex, or to aid or abet in any such act, or to procure another to perform such act; or for any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly to hire, lease or permit the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act.

(b) "Private parts" for purposes of this section shall include the male or female genitals, the male or female buttocks, and the areola and nipple area of the female breasts.

(c) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(d) Indecent exposure shall be punishable by a fine not to exceed \$500.00, by a term of imprisonment not to exceed six months, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-80.5. Spreading venereal disease**

(a) It shall be unlawful to infect another person with venereal disease, if one knows or has reason to believe she/he is infected with a venereal disease.

(b) The court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

(c) Spreading venereal disease shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both.

(Ord. No. 117, 3-3-2000)

**Sec. 14-80.6. Knowingly engaging in conduct reasonably likely to transfer HIV.**

(a) It shall be unlawful for any person knowing that he or she has Acquired Immune Deficiency Syndrome (AIDS) or is a carrier of the human immunodeficiency virus (HIV) to engage in conduct reasonably likely to result in transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids; and

(1) The other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or

(2) The other person consented to the transfer but at the time of giving consent had not been informed by the person that the person transferring such blood or fluids had AIDS or was a carrier of HIV.

(b) The court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

(c) Knowingly engaging in conduct reasonably likely to transfer HIV shall be punishable by a fine of \$5,000.00 and imprisonment for not more than one year.

(Ord. No. 117, 3-3-2000)

#### **ARTICLE XIV. GANG ENFORCEMENT AND PREVENTION**

**Sec. 14-90. Reserved.**

**Sec. 14-90.1. Definitions.**

(a) *Criminal street gang* means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

(b) *Criminal street gang* member is a person who is a member of a criminal street gang as defined in subsection (a) and who meets two or more of the following criteria:

(1) Admits to criminal street gang membership.

(2) Is identified as a criminal street gang member by a parent or guardian.

(3) Is identified as a criminal street gang member by a documented reliable informant.

(4) Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.

(5) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

(6) Has been arrested more than once in the company of identified criminal street

gang members for offenses which are consistent with usual criminal street gang activity.

(7) Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.

(8) Has been stopped in the company of known criminal street gang members four or more times.

(c) *Pattern of criminal street gang activity* means the commission or attempted commission of, or solicitation or conspiracy to commit any combination of the following, on separate occasions within a three-year period:

(1) Two or more felonies defined under the laws of the state in which they occur or offenses defined under the Major Crimes Act, 18 U.S.C. § 1153; or

(2) Three or more misdemeanors defined under the laws of the state in which they occur or offenses defined in Cherokee Criminal Code; or

(3) A combination of one felony or Major Crimes Act offense and two misdemeanor or Cherokee Criminal Code offenses; or

(4) The comparable number of delinquent acts or violations of law which would be classified as above if committed by an adult.

(Ord. No. 117, 3-3-2000)

#### **Sec. 14-90.2. Criminal street gang activity; enhancement of penalties.**

Upon a finding in the Cherokee Court of Indian Offenses or any successor court at sentencing that the defendant is a member of a criminal street gang, the penalty for any offense in violation of the Cherokee Code of Offenses, or any delinquent act or violation of law which would be a violation of the Cherokee Code of Offenses if committed by an adult, may be enhanced if the offender was a member of a criminal street gang at the time of the commission of such offense. The burden of proof required for such findings allowing sentence enhancement shall be a "preponderance of the evidence," however, the burden of proof for a conviction of the underlying criminal offense remains "beyond a reasonable doubt." The enhancement will be sentencing at the maximum punishment for adults of one year imprisonment and a fine of \$5,000.00, to be used by Tribal Council to fund gang prevention or enforcement programs. In the case of juvenile offenders the disposition may include, but is not limited to:

(1) Probation for a period of six months to one year;

(2) Performance of community service hours;

(3) Restitution to victims/community members;

(4) Placement in behavior management facilities until completion/graduation from school or a court ordered program;

(5) Counseling; and,

(6) Placement in detention facilities for a period of time to be determined by the presiding judge.

(Ord. No. 117, 3-3-2000)

**Sec. 14-90.3. Soliciting, or recruiting criminal street gang membership.**

It shall be unlawful for a person to intentionally cause, encourage, solicit, or recruit another person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime. Adult persons subject to the provisions of this article shall be subject to punishment by imprisonment for up to one year and/or a fine of \$5,000.00 to be used by Tribal Council to fund gang prevention or enforcement programs. In the case of juvenile offenders the disposition may include, but is not limited to:

- (1) Probation for a period of six months to one year;
- (2) Performance of community service hours;
- (3) Restitution to victims/community members;
- (4) Placement in behavior management facilities until completion/graduation from school or a court ordered program;
- (5) Counseling; and,
- (6) Placement in detention facilities for a period of time to be determined by the presiding judge.

(Ord. No. 117, 3-3-2000)

**Sec. 14-90.4. Profits, proceeds, and instrumentalities of criminal street gang activities or recruitment; forfeiture.**

All profits, proceeds, and instrumentalities of criminal street gang activity or recruitment and all property used or intended or attempted to be used to facilitate the criminal activity or recruitment of any criminal street gang or of any criminal street gang member, are subject to seizure and forfeiture, with proceeds of said forfeiture to be used by Tribal Council to fund gang prevention or enforcement programs.

(Ord. No. 117, 3-3-2000)

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## Chapter 15: Criminal Procedure\*

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\***Cross references:** Civil procedure, ch. 1; criminal law, ch. 14; limitations, ch. 22.

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**Sec. 15-1. Search warrants.**

(a) Every judge of the Cherokee Court of Indian Offenses shall have authority to issue warrants for search and seizure of the premises and property of all Tribal members and all other persons subject to the jurisdiction of the court.

(b) No warrant of search and seizure shall be issued except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some

offense against the Tribe.

(c) No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and describes the articles or property to be seized and bears the signature of a duly qualified judge of the Cherokee Court.

(d) Service of warrants of search and seizure shall be made only by members of the Cherokee Indian Police.

(e) No member of the Cherokee Indian Police shall search or seize any property without a warrant unless he shall have reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense under the Code of Federal Regulations or under Tribal law.

(Res. No. 173, 3-19-1982)

### **Sec. 15-2. North Carolina Highway Patrol.**

(a) The North Carolina Highway Patrol is hereby authorized to patrol the roads and highways on the Cherokee Indian Reservation and to enforce the North Carolina traffic laws as adopted by the Eastern Band of Cherokee Indians.

(b) The North Carolina Highway Patrol is hereby authorized to enforce the North Carolina criminal laws against all persons who are not subject to the criminal laws of the Tribe or the criminal jurisdiction of the Cherokee Court.

(c) Nothing in this section is intended to grant or surrender jurisdiction to the Courts of the State of North Carolina nor to constitute any waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

(Res. No. 159, 6-17-1980)

### **Sec. 15-3. Cooperative law enforcement arrangements.**

(a) The Cherokee Chief of Police is hereby authorized to enter into mutual assistance arrangements with other municipal and county law enforcement agencies, provided that the head of the requesting law enforcement agency makes such a request in writing, or that the Cherokee Chief of Police makes such a request in writing to another municipal or county law enforcement agency in order to receive assistance.

(b) The Chief of Police is hereby authorized to permit officers of the Cherokee Police Department to work temporarily with officers of the requesting agency, including in an undercover capacity, and the Chief of Police may lend such equipment and supplies to requesting agency as he deems advisable.

(c) All such requests and authorizations shall be in accordance with N.C.G.S. 160A-288, Chapter 427 of the 1987 Session Laws of North Carolina and the inherent authority of the Tribe to govern itself and to enter into agreements with other governmental entities.

(d) While working with a requesting agency an officer shall have the same jurisdiction powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses.

(e) While on duty with the requesting agency, an officer shall be subject to the lawful operational commands of his superior officers in the requesting agency, but he shall, for personnel and administrative purposes, remain under the control of his own agency, including for purposes of pay. An officer shall furthermore be entitled to worker's compensation and the same benefits to the extent as though he were functioning within the normal scope of his duties.

(f) The Chief of Police is hereby authorized to enter into mutual assistance agreements with the other law enforcement agencies in accordance with such reasonable arrangements, terms and conditions as may be agreed upon between the respective heads of the law enforcement agencies.

(g) The Cherokee Chief of Police is hereby instructed to give an annual report to the Tribal Council on such agreements.

(Res. No. 538, 6-26-1989)

**Sec. 15-4. Probation Officer.**

(a) The position of Probation Officer and Work Detail Supervisor is hereby authorized and created.

(b) Such person shall maintain records for all persons convicted of misdemeanors in the Cherokee Court who are assigned to work detail as a part of their judgment and shall assign and supervise the work for all such persons.

(c) Persons assigned to work detail shall perform work for the benefit of the Tribe and community including, but not limited to: clean Police Department vehicles and grounds; clean and maintain the grounds, parking lot, and roadways to the Cherokee Hospital; clean and maintain roadsides throughout the Cherokee Indian Reservation; clean and maintain the grounds of the Cherokee Civic Center; cut and deliver wood to the elderly and invalids residing on the Reservation.

(d) The position of Probation Officer shall be funded through Community Service funds.

(Res. No. 187, 3-22-1982)

**Sec. 15-5. Pretrial release and adult rehabilitation program.**

(a) The Tribe shall administer a Pretrial Release and Adult Delinquent Rehabilitation Program under the supervision of the Community Services Committee of the Tribal Council.

(b) The program will assume jurisdiction over and responsibility for individuals released by courts of the United States and the State of North Carolina.

(c) The program shall be administered in accordance with guidelines approved by the Law Enforcement Assistance Administration.

(Res. No. 87, 1-8-1976)

**Sec. 15-6. Police manual.**

The Eastern Band of Cherokee Indians hereby adopts the "Cherokee Police Manual and Traffic Regulation Procedures" to regulate and govern the operation and personnel of the Cherokee Police Department.

(Res. No. 23, 10-20-1975)

#### **Sec. 15-7. Indian Civil Rights Act.**

The Eastern Band of Cherokee Indians adopts all the protections afforded in the Indian Civil Rights Act of 1968, 25 U.S.C. 1301--1303.

(Ord. No. 407, 11-7-1996)

#### **Sec. 15-8. Rules of criminal procedure.**

The Judicial Branch is authorized to develop and propose rules of criminal procedure for adoption by the Tribal Council. Until such rules are adopted by the Tribal Council, the Cherokee Court shall follow the rules set forth in 25 C.F.R. Part 11, Subpart C. To the extent that one or more of those rules is inconsistent with the Cherokee Code, the court shall follow the Cherokee Code.

(Ord. No. 117, 3-3-2000)

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## Chapter 16: Tribal Gaming\*

**\*Cross references:** Tribal casino gaming enterprise, ch. 16A; Tribal bingo enterprise, ch. 16B.

### **ARTICLE I. IN GENERAL**

#### **Sec. 16-1. Definitions.**

Unless a different meaning is set forth below, the terms used in this chapter shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701 et seq. (IGRA).

(a) *Applicant* means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any license described in or required by this chapter.

(b) *Application* means a request for the issuance or renewal of a license described in or required by this chapter.

(c) *Council or Tribal Council* means the Tribal Council of the Eastern Band of Cherokee Indians.

(d) *Chairman* means the Chairman of the National Indian Gaming Commission.



(e) *Class II Gaming* means Class II Gaming as defined at 25 U.S.C. 2703(7)(A), and any regulations promulgated thereunder.

(f) *Class III Gaming* means Class III Gaming as defined in 25 U.S.C. 2703(8), and any regulations promulgated thereunder.

(g) *Compact* means the Tribal State Compact including all renewals, amendments, appendices, exhibits and other attachments thereto between the Eastern Band of Cherokee Indians and the State of North Carolina providing for the conduct of Tribal Class III Gaming by the Eastern Band of Cherokee Indians.

(h) *Commission* means the Cherokee Tribal Gaming Commission.

(i) *Commissioner* means an individual member of the Cherokee Tribal Gaming Commission.

(j) *Fiscal year* means the period beginning at 12:01 a.m. on October 1 of each year and ending at midnight, September 30 of the following year.

(k) *Gaming* means any Class II Gaming or Class III Gaming activity, either individually or collectively, whether authorized or unauthorized.

(l) *Gaming device* means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, used remotely or directly in connection with any gaming which affects the result of a wager by determining or predicting the outcome of such game or the odds of winning or losing such game. The term shall be broadly construed to promote the purposes of this chapter and shall also include any devices, machines, components or contrivances which do or are capable of affecting, in any way, the playing of any gaming.

(m) *Supplier of gaming goods and services* means any person who manufactures, sells, leases, distributes, supplies or makes modifications to, any gaming device of the Tribe and all persons holding any direct or indirect financial interest in such gaming device supplier.

(n) *Gaming establishment* means any premises where gaming is operated or conducted on the Tribe's Reservation, and includes all buildings, improvements, appurtenances, equipment and facilities used or maintained in connection with such gaming.

(o) *Gaming operation* means any business enterprise owned by the Tribe, the revenues of which are primarily derived from gaming or from any gaming establishment.

(p) *Gross revenue*.

(1) *Gross revenue* means the total of all of the following, less the total of all cash paid out as losses to patrons and any items made deductible as losses by calculation of gross revenues:

(i) Cash received as winnings;

(ii) Cash received in payment for credit extended by a licensee to a

patron for the purpose of gaming; and

(iii) Compensation received for conducting any game in which the licensee is not a party to a wager.

(2) For the purposes of this definition, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses.

(3) The term does not include:

(i) Counterfeit money or tokens;

(ii) Coins of other countries which are received in gaming devices;

(iii) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or

(iv) Cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

(4) Calculation of gross revenues. Certain expenses are not deductible.

(i) In calculating gross revenue, any prizes, premiums, drawings, benefits or tickets which are redeemable for money or merchandise or other promotional allowance, except money or tokens paid at face value directly to a patron as the result of a specific wager and the amount of cash paid to purchase an annuity to fund winnings must not be deducted as losses from winnings.

(ii) In calculating gross revenue from gaming devices, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, but not travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.

(q) *Key employee* means:

(1) A person who performs one or more of the following functions:

(i) Bingo caller,

(ii) Counting room supervisor,

(iii) Chief of security,

(iv) Custodian of gaming supplies or cash,

(v) Floor manager,

(vi) Pit boss,

(vii) Dealer,

(viii) Croupier,

(ix) Approver of credit, or

(x) Custodian of gambling terminals or other devices operated by the management of any gaming operation, including persons with access to cash and accounting records for such devices;

(2) If not otherwise included, any other person whose total cash compensation from employment in any gaming operation exceed \$50,000.00 per year;

(3) If not otherwise included, the four most highly compensated persons in any gaming operation; or

(4) Any other employee of any gaming operation that the commission designates by its rules as a key employee.

(r) *License* means any authorization granted by the Commission, pursuant to this chapter, to any person which is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such license for the benefit of the licensee.

(s) *Licensee* means any person who has been issued a valid and current license pursuant to the provisions of this chapter.

(t) *Management contract* means any contract, agreement or other document, including all collateral agreements, establishing a relationship between the Tribal government and any person, pursuant to which such person has managerial responsibilities in or for any gaming operation.

(u) *Management entity or controlling shareholder* means:

(1) Any person having a direct financial interest in any management contract, including those persons who own five percent or more of any management entity's outstanding capital stock;

(2) When a trust is a party to a management contract, any beneficiary or trustee of such trust;

(3) When a partnership is a party to a management contract, any partner, general or limited, in such partnership;

(4) When a corporation is a party to a management contract, any person who is an officer or director of such corporation, or who holds five percent or more of the issued and outstanding capital stock of such corporation, either alone or in combination with a spouse, parent, child or sibling; or

(5) With respect to any nonnatural person with an interest in a trust, partnership or corporation that has an interest in a management contract, all

beneficiaries, trustees, partners, or directors of, and five percent stockholders of, such nonnatural person.

(v) *Management fee* means any monies paid from gaming revenue to any person pursuant to an NIGC approved contract to operate a gaming establishment. Such term shall not include monies paid for the operating expenses of such gaming establishment.

(w) *Net revenue* means gross revenue of any gaming operation minus amounts paid for, or paid out as prizes, winnings, and related operating expenses, excluding management fees.

(x) *NIGC* means the National Indian Gaming Commission.

(y) *Operating expense* means any expense incurred in the operation of gaming that is specifically designated as an operating expense in any management contract or which by operation of generally accepted accounting principles, consistently applied, is so treated.

(z) *Ordinance* means this chapter which is the Tribal Gaming Ordinance of the Eastern Band of Cherokee Indians, as amended from time to time, and any rules promulgated under this chapter.

(aa) *Patron* means any person who participates in gaming, or who is physically present on premises wherein or whereon gaming is conducted.

(bb) *Person* means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.

(cc) *Primary management officials* means:

(1) The person(s) having management responsibility over all or any part of any gaming operation;

(2) Any person who has authority:

(i) To hire and fire employees of a gaming operation; or

(ii) To establish working policy for a gaming operation;

(3) The chief financial officer or other person who has financial management responsibility for any gaming operation;

(4) Any person who is considered a controlling shareholder; or

(5) Any person the Commission designates by Commission rules as a primary management official.

(dd) *Reservation* means any lands, title to which is either held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians, or held by the Eastern Band of Cherokee Indians subject to restriction against alienation by the United States and over which the Eastern Band of Cherokee Indians exercise governmental authority.

(ee) *Rules* means any rules governing the conduct of games or the control of internal fiscal affairs of gaming operations as may be promulgated by the Commission established pursuant to this chapter.

(ff) *Secretary* means the Secretary of the United States Department of the Interior.

(gg) *Tribe* means, and *Tribal* shall refer to, the Eastern Band of Cherokee Indians.  
(Ord. No. 238, 7-24-1996)

**Sec. 16-1.01. Short title.**

This chapter shall be known and may be cited as the Eastern Cherokee Gaming Ordinance.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.02. Purpose.**

The Tribal Council of the Eastern Band of Cherokee Indians enacts this chapter in order to regulate all forms of gaming on the Tribe's Reservation.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.03. Public policy.**

(a) All gaming which is conducted within the Tribe's Reservation and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter.

(b) The Tribal Council hereby finds and declares it to be the public policy of the Tribe that:

(1) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and that gaming is free from criminal and corruptive elements.

(2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gaming devices.

(3) All management entities or controlling shareholders, primary management officials, key employees, gaming establishments and suppliers of gaming goods and services must therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Tribe.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.04. Class II Gaming authorized.**

Class II Gaming is hereby authorized to be conducted on lands within the Tribe's Reservation; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this chapter, the rules, and IGRA.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.05. Class III Gaming authorized.**

Class III Gaming is hereby authorized on lands within the Tribe's Reservation; provided, however, that Class III Gaming shall be conducted in accordance with the provisions of this chapter, the rules and IGRA.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.06. Location of gaming.**

The Commission shall ensure that (i) such gaming as it authorizes and licenses pursuant to this chapter is conducted on lands within the Tribe's Reservation, and (ii) such gaming is not otherwise specifically prohibited by federal law.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.07. Ownership of gaming.**

The Tribe shall have the sole proprietary interest in any gaming operation authorized by this chapter. The Tribe shall receive, at a minimum, not less than 70 percent of the net revenues from any gaming operation.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.08. Use of gaming revenue.**

(a) Net revenues from any form of gaming authorized under this chapter shall be used only for the following purposes: to fund Tribal government operations and programs; to provide for the general welfare of the Tribe and its members; to promote Tribal economic development; to make donations to charitable organizations or to help fund operations of local government agencies.

(b) The Tribe shall make per capita payments of 50 percent of net revenues to Tribal members from both Class II and Class III Gaming, and it shall authorize such payments only pursuant to article XIV of this chapter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.09. Unauthorized gaming.**

Any person who commits any act of unauthorized gaming on the Reservation or any other Tribal land shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.10. Conduct of games.**

All gaming shall be conducted by persons duly licensed by the Commission. No person licensed by the Commission shall engage in, conduct or condone any gaming that is not conducted in accordance with such rules governing the conduct of games as may be promulgated by the Commission under this chapter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-1.11. Applicability of chapter.**

Unless specifically indicated otherwise, all provisions of this chapter shall apply to both Class II Gaming and Class III Gaming including, but not limited to, all licensing and background investigation procedures.

(Ord. No. 238, 7-24-1996)

**ARTICLE II. TRIBAL GAMING COMMISSION\***

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\*Cross references: Tribal government, ch. 117.

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**Sec. 16-2.01. Establishment.**

The Cherokee Tribal Gaming Commission having been previously established under prior gaming ordinances shall continue to consist of three enrolled Tribal members. The Commission members currently serving in those positions shall, upon ratification of this chapter, continue in their capacity and shall then be subject to all terms, conditions, duties and responsibilities promulgated hereunder. All three members of the Commission shall be enrolled Tribal members. A Commissioner shall serve for seven years and may be removed from office prior to the end of the Commissioner's term by the Tribal Council only for cause and by a majority vote of the Council. Vacancies on the Commission shall be filled within 30 days by nominations and a majority vote of the Council. The Commission shall select annually, from its membership, a Commission Chair.

(Ord. No. 238, 7-24-1996)

**Sec. 16-2.02. Independence.**

In all matters within its purview and responsibilities, the Commission shall be and shall act independently and autonomously from the Principal Chief and Tribal Council. No prior or subsequent review by the Principal Chief or Tribal Council of any actions of the Commission shall be required or permitted, except as otherwise explicitly provided in this chapter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-2.03. Licensing of Commissioners.**

(a) Requirements; application. Nominees for the position of Commissioner must meet the requirements of articles IV and V of this chapter and must first obtain a license from the Council prior to assuming office. A Commissioner shall complete a license application and shall be subject to the same background investigation as a key employee under this chapter. Such background investigation shall be performed at the direction of the Council by a duly appointed agent of the Council. Upon completion of the background investigation, the Council shall, by majority vote, (i) either issue a license or (ii) notice the Commissioner for a hearing before the Council. All investigations and hearings under this section shall be conducted as provided in section 16-6 of this chapter, except that all hearings shall be conducted by and before the Council.

(b) Failure to meet license requirements or license violations. If the Tribal Council has reason to believe that a licensed Commissioner fails at any time to meet the license requirements under this chapter or that the Commissioner has violated this chapter, the rules, the compact, or the IGRA and regulations promulgated thereunder or any other applicable law, the Tribal Council shall direct an investigation to be conducted and may notice the Commissioner for a hearing before the Council. All investigations and hearings under this section shall be conducted as provided in sections 16-5 and 16-6 of this chapter, and a Commissioner shall have all of the rights and obligations given to a licensee or applicant therein, except that all hearings shall be conducted by and before the Council.

(Ord. No. 238, 7-24-1996)

**Sec. 16-2.04. Restrictions on Commissioners.**

No person shall serve on the Commission if such:

(a) Person's other employment or responsibilities conflict or could potentially conflict with the duties and responsibilities of a member of the Commission;

(b) Person is an employee of the gaming operation or the person's other employment or responsibilities create an impression or appearance of impropriety in the fulfillment of the duties and responsibilities of a member of the Commission; or

(c) Person is a:

(1) Member or officer of the Tribal Council; or

(2) Judge in any Tribal Court.

(Ord. No. 238, 7-24-1996)

**Sec. 16-2.05. No financial interest in gaming.**

No Commissioner shall have any direct or indirect financial interest in any gaming operation. For purposes of this section, indirect financial interest shall not include ownership of any mutual funds which hold stock in a publicly traded company but shall include direct ownership of such stock. No Commissioner may accept gratuities or any other thing of value from any licensee or applicant. Commissioners may not gamble in any Tribal gaming establishment.

(Ord. No. 238, 7-24-1996)

**Sec. 16-2.06. Compensation of Commissioners.**

Commissioners shall be compensated at a rate to be established annually by the Council. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

(Ord. No. 238, 7-24-1996)

**Sec. 16-2.07. Meetings.**



(a) *Regular meetings.* The Commission shall meet at least once a month at the Commission's main office or at any other designated meeting place.

(b) *Special meetings.* Special meetings shall be convened by the Commission Chair as necessary to carry out the official duties of the Commission. Notice of each special meeting shall be given by the Commission Chair by telephone or mail to each Commissioner. Notice shall be received at least 24 hours in advance of such meeting and shall include the date, time and place of the proposed meeting.

(c) *Emergency meetings.* An emergency meeting may be called by the Chair of the Commission with less than 24 hours' notice; provided, however, that the Chair of the Commission shall use best efforts to ensure that all Commissioners are notified of such meeting, with as much prior notice as possible under the circumstances.

(d) *Meetings open to the public.* All meetings of the Commission shall be open to the public; provided, however, that the Commission may, in its discretion, close any portion of any meeting to the public when discussing any information which the Commission deems confidential pursuant to the provisions of this chapter.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-2.08. Commission offices.**

The Commission shall maintain an administrative office. Such office shall serve as the Commission's main business office and shall be the site at which the Commission records and documents are maintained and stored on a permanent basis. No individual except a Commissioner or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission. No person may access such records except a Commissioner, a person duly authorized by the Commission or an attorney for the Commission.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-2.09. Quorum.**

A quorum of the Commission shall consist of three Commissioners. All decisions shall be made by a majority vote of a quorum of the Commission, unless indicated otherwise in this chapter.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-2.10. Organization.**

The Commission may organize itself into any functional division it deems necessary, and may alter such plan of organization as it deems expedient.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-2.11. Recordkeeping.**

The Commission shall maintain complete records regarding the following:

(a) Applications, financial statements, fingerprints, contracts, licenses, suspension and cancellation notices and correspondences of all applicants, including management entities or controlling shareholders, key employees, primary management officials, gaming establishments and suppliers of gaming goods and services (as required by section 16-8.01(g));

(b) Commission licenses;

(c) Meeting minutes from all Commission meetings;

(d) Compact compliance;

(e) Reports relating to customer disputes, complaints or other issues that affect the integrity of the gaming operation;

(f) Commission budget and expenditures;

(g) Council communications and correspondences;

(h) Gaming device list pursuant to section 16-4.11 of this chapter; and

(i) Any other records or documents the Commission deems necessary or appropriate.

(Ord. No. 238, 7-24-1996)

### **Sec. 16-2.12. Reports.**

The Commission shall make quarterly reports to the Council within 30 days after the end of each quarter. Such reports shall contain the following information:

(a) Number and types of licenses issued during the previous quarter;

(b) Information regarding license denials, suspensions or revocations;

(c) Report of any events of noncompliance, breach or violations of this chapter, the rules, the compact, IGRA, license or any other law or regulation; provided, however, that these reports are not the subject of or relating to a pending investigation being conducted by the Commission, or hearing before the Commission;

(d) A report of the Commission expenditures for the prior quarter;

(e) A summary of any Commission travel and training;

(f) All other information which the Commission deems relevant in order to keep the council informed and current on all gaming regulatory matters.

Nothing in this section shall authorize or permit the Commission to provide the Council with any information pertaining to a pending investigation being conducted by the Commission or hearing before the Commission. All such information shall be kept confidential. Any willful or careless breach of this provision shall present due cause for removal of the person from office and a penalty of up to \$5,000.00 for each offense. Claims of such disclosure shall be presented to the Commission within 60 days of the act complained of, or within 60 days the disclosure becomes known, whichever is later.

(Ord. No. 238, 7-24-1996)

### **Sec. 16-2.13. Budget.**

The Commission shall establish a budget for its operations. It shall acquire such furnishings, equipment, supplies, stationery, books and other items as it deems necessary or desirable to carry out its functions, and incur such other expenses, within the limit of funds available to it, as it deems necessary. Such Commission budget shall be funded as an operating expense of the gaming enterprise with two-thirds of one percent of the gross gaming revenue (win) but not more than \$1,200,000.00 in any 12-month period to be paid to the Commission. Any surplus remaining in the Commission's budget at the end of any budget year shall be refunded to the gaming enterprise. The Commission shall establish an internal budget which shall not exceed the cap earlier listed. If the Commission's budget needs exceed \$1,200,000.00 for any year, Commission shall seek or obtain additional funds from the Council.

(Ord. No. 238, 7-24-1996; Ord. No. 431, 10-25-2000)

### **Sec. 16-2.14. Powers.**

The Commission shall exercise all powers necessary to effectuate the purposes of this chapter and all other powers provided for in this chapter. The Commission shall have the power to promulgate rules pursuant to this chapter, for the operation of games and the control of internal fiscal affairs of gaming operations and the conduct of all business properly brought before the Commission. In all decisions, the Commission shall act to promote and ensure the integrity, security, honesty and fairness of the operation and administration of all gaming. In accordance with this chapter, the Commission shall have the power and authority to deny any application for license, to limit, cancel, revoke, terminate, condition, modify, suspend, or restrict any license, to make findings of suitability, and to impose fines or sanctions for any cause deemed reasonable by the Commission upon any licensee. The Commission shall conduct, or cause to be conducted, background investigations on all applicants and licensees. The Commission shall hold administrative licensing hearings under this chapter. The Commission shall have the power, upon duly recorded vote, to grant limited waivers of the Commission's sovereign immunity status, including the limited waiver of sovereign immunity contained in section 16-7.03 of this chapter. Within the limits of its budget, the Commission shall employ and fix the salaries of, or contract for the services of, such professional, technical and operational personnel and consultants as the execution of the Commission's duties may require.

(Ord. No. 238, 7-24-1996)

### **Sec. 16-2.15. Promulgation of gaming rules.**

The Commission may promulgate rules governing the conduct of all games authorized by the compact or IGRA, including rules governing the equipment, (chips, cards, tiles, etc.), used in such games. The rules of each authorized game offered at any duly licensed gaming establishment shall be posted in a conspicuous location in such gaming establishment.

(Ord. No. 238, 7-24-1996)

### **Sec. 16-2.16. Promulgation of auditing and internal control rules.**

The Commission may promulgate rules governing the control of internal fiscal affairs of gaming operations as provided in article VIII of this chapter.

(Ord. No. 238, 7-24-1996)

### **ARTICLE III. EXECUTIVE DIRECTOR**

#### **Sec. 16-3.01. Qualifications; salary.**

(a) The position of Executive Director of the Commission is hereby created. The Commission shall appoint the Executive Director, and the Executive Director shall serve at the will and pleasure of the Commission.

(b) No member of the Tribal Council, no person holding any elective office, nor any officer or official of any political party is eligible for the appointment of Executive Director.

(c) The Executive Director must have at least five years of responsible administrative experience in public or business administration or possess broad management skills and have an MBA, J.D., or other higher degree of education.

(d) The Executive Director shall devote his or her entire time and attention to the duties imposed under this article and the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit.

(e) The Executive Director shall not have a pecuniary interest in any businesses or company holding a license under this chapter or doing business with any person licensed under this chapter.

(f) The Executive Director is entitled to an annual salary in the amount specified by the Tribal Council.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-3.02. Authority.**

(a) The Executive Director shall furnish to the Commission such administrative and clerical services and such furnishings, equipment, supplies, stationery, books and all other things that the Commission may deem necessary or desirable in carrying out its functions.

(b) The Executive Director shall employ division directors that possess at least two years of training and experience in the fields of accounting, investigation, law enforcement, law or gaming.

(c) The Executive Director in pursuit of the attainment of the objectives and the purposes of this chapter may:

(1) Direct and supervise all administrative actions of the Commission.

(2) Sue on behalf of the Commission.

(3) Make, execute and effectuate any and all agreements or contracts, including contracts for the purchase of goods and services as are necessary.

(4) Employ the services of such person(s) as are considered necessary for the

purposes of consultation or investigation and fix the salaries of or contract for the services of such legal, professional, technical and operational personnel and consultants.

(5) Perform such other duties which he or she may deem necessary to effectuate the purposes of this chapter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-3.03. Files and records to be maintained by; confidentiality of information.**

(a) The Executive Director shall maintain a file of all applications for licenses under this chapter, together with a record of all actions taken with respect to those applications.

(b) The Commission and Executive Director may maintain such other files or records as they deem desirable.

(c) All information and data:

(1) Required by the Commission or the Executive Director to be furnished to them under this chapter or which may otherwise be obtained relative to the finances, earnings or revenue of any applicant or licensee;

(2) Pertaining to an applicant's criminal record, antecedents and background which have been furnished to or obtained by the Commission or the Executive Director from any source;

(3) Provided to the members of the Commission or the Executive Director or his employees by a governmental agency or an informer or on the assurances that the information will be held in confidence and treated as confidential; or

(4) Obtained by the Executive Director or the Commission from a supplier relating to the manufacturing of gaming devices or gaming goods;

is confidential and may be revealed in whole or in part only in the course of the necessary administration of this chapter or upon the lawful order of a court of competent jurisdiction.

(Ord. No. 238, 7-24-1996)

**Sec. 16-3.04. Removal from office.**

The Executive Director being hired by the Commission may be removed from office by the Commission upon a majority vote of the Commission after a showing of cause.

(Ord. No. 238, 7-24-1996)

**ARTICLE IV. LICENSE APPLICATIONS AND PROCEDURES**

**Sec. 16-4.01. Gaming license required.**

The Commission is hereby authorized to issue all licenses for the conduct of all gaming authorized under this chapter or any other license related to gaming which the Commission may, by rule require.

(a) *Persons*. The following persons must obtain licenses as a precondition to employment in or management of any gaming operation:

(1) Any management entity or controlling shareholder. Any person deemed a controlling shareholder must comply with the same licensing requirements as if such person were a primary management official; however, if any controlling shareholder is a nonnatural person, such controlling shareholder shall be subject to management entity licensing procedures;

(2) All primary management officials;

(3) All key employees;

(4) Suppliers of gaming goods and services. Any person who is a supplier of gaming goods and services must comply with the same licensing requirements as if such person were a primary management official; however, if any supplier is a nonnatural person, such supplier shall be subject to management entity licensing procedures; and

(5) Any other employee or class of employees as determined by Commission rules.

(b) *Gaming establishments*. Each place, facility, or location where gaming is conducted must obtain a separate facility license from the Commission.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-4.02. Standard for license.**

Licenses issued hereunder shall be issued according to requirements at least as stringent as those set forth at 25 C.F.R. §§ 556 and 558, and any amendments thereto, and also according to requirements, at least as stringent, as those set forth in the compact.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-4.03. Application for license.**

(a) No license shall be issued under this chapter except upon a sworn application filed with the Commission, in such form as may be prescribed by the Commission, containing a full and complete showing, at a minimum, of the following:

(1) Satisfactory proof that the applicant is of good character and reputation, and is financially responsible;

(2) If applicable, a complete description of the premises at which gaming will be conducted;

(3) Agreement by the applicant to abide by all conditions of the license, this chapter, the rules, the compact and IGRA;

(4) A separately sworn statement that the applicant has never been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:

(i) Any felony, other than a felony conviction for an offense under subsection (b), (c), or (d), within the preceding ten years; provided, however, that this record limitation to the preceding ten years shall not apply to any applicant which is a management entity or controlling shareholder,

(ii) Any gaming-related offense,

(iii) Fraud, misrepresentation or any other crimes of moral turpitude in any context, or

(iv) A violation of any provision of this chapter, the rules, or any other ordinance or rules of the Tribe or any state agency regulating or prohibiting gaming; and

(5) The applicant's fulfillment of all applicable requirements of IGRA, all provisions of this chapter, including, but not limited to, those in chapter 5, and the compact.

(b) No license shall be issued to any applicant who is determined by the Commission to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

(c) The issuance of licenses shall also be subject to the provisions of section 16-5 of this chapter regarding background investigations.

(d) The following notices shall be placed on the application form for a key employee, management entity, primary management official or supplier of gaming goods and services before such form is completed by an applicant:

(1) "In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Commission, the State of North Carolina, and/or the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, Tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to hire you in a primary management official or key employee position.

(2) "The disclosure of your social security number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(3) "A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (18 U.S.C. 1001)"

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-4.04. Required application forms.**

(a) Each individual applying for a license, whether as a primary management official or key

employee, and any person who is subject to a background investigation in connection with an entity application for a license, shall be required to complete the following forms:

- (1) Application for gaming license by individual, if applicable;
- (2) Personal history record, with attached personal financial questionnaire, including statement of assets and statement of liabilities;
- (3) Two complete fingerprint cards;
- (4) Request to release information - individual.

(b) Each individual in subsection (a) of this section applying for a license renewal shall supplement the personal history record and shall also be required to complete the following forms:

- (1) Application for gaming license by individual, if applicable;
- (2) Request to release information - individual.

(c) Each entity, including a management entity and supplier of gaming goods and services, applying for a license must complete the following forms:

- (1) Application for gaming license by entity;
- (2) Request to release information - entity.

(d) The Commission may request any additional forms or information from an applicant as it deems necessary or appropriate.

(e) Pursuant to the compact the Commission shall create an individual file for each applicant which includes the applicant's personal history record and all background information compiled by the Commission.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-4.05. Fingerprint cards required.**

All applicants for a license are required to submit fingerprint cards. The Tribal Gaming Commission is hereby identified as the enforcement agency to take fingerprints. Pursuant to 25 C.F.R. § 522.2(h), the Commission shall forward an applicant's fingerprint cards to the NIGC to be processed by the Federal Bureau of Investigation National Criminal Information Center. The Commission may submit an applicant's fingerprint card to any additional Tribal, local or state criminal history check system or center as the Commission or the Executive Director deem necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the applicant's personnel file.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-4.06. Withdrawal of application.**

An application may not be withdrawn without the permission of the Commission. An applicant may request to withdraw an application by submitting to the Commission a written request for withdrawal. The Commission retains the right, in its sole discretion, to grant or deny a request for withdrawal.



(Ord. No. 238, 7-24-1996)

**Sec. 16-4.07. Continuing duty to provide information.**

Applicants and licensees shall have a continuing duty to provide any materials, assistance or other information required by the Commission, and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided on the application changes or becomes inaccurate in any way, the applicant or licensee shall promptly notify the Commission or Executive Director of such changes or inaccuracies.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.08. Term of license; license fees; parameters of license.**

(a) Licenses, except provisional licenses (see section 4.12 provisional license), shall be for a term of one year, and shall expire on the anniversary of the effective date of such licenses.

(b) In order for the Tribe to recover the costs of complying with federal, Tribal, and state regulatory processes applicable to Class II Gaming and Class III Gaming, annual license fees shall be imposed:

(1) In the amount of \$7,500.00 annually on each party, other than the Tribe, to a management contract;

(2) On any persons required to obtain a license, in accordance with a fee schedule to be established by the Commission; and

(3) In addition to the license fees imposed pursuant to subsection (b)(1) and (2) of this section, the Commission may impose such fees on licensees as are reasonably related to costs of enforcement, including investigations and proceedings before the Commission, and which will in the aggregate be sufficient to enable the Tribe and the Commission to recover its reasonable costs of enforcing this chapter. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular licensee or applicant.

(c) Violations of any provision of this chapter or the rules, or relevant license provisions, by a licensee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Tribe and the inhabitants of the Reservation, and shall be deemed grounds for refusing to grant or renew a license, suspension or revocation of a license. Acceptance of a license, or renewal thereof by a licensee, constitutes an agreement on the part of the licensee to be bound by the provisions of this chapter and the rules as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Commission. It is the responsibility of the licensee to remain informed of the contents of this chapter, the rules and all other applicable regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations. A license issued hereunder is a privilege license and no right shall attach thereto.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.09. Conditions of license.**

All licensees shall comply with such reasonable conditions as may be fixed by the Commission including, but not limited to, the following conditions:

(a) Facility licensees.

(1) The licensee shall at all times maintain an orderly, clean and neat gaming establishment, both inside and outside the premises of the gaming establishment;

(2) The gaming establishment shall be subject to patrol by the Tribe's security and law enforcement personnel and, when authorized, local and state law enforcement, and the licensee shall cooperate at all times with such security and law enforcement officials;

(3) The gaming establishment shall be open to inspection by authorized Tribal officials at all times during business hours;

(4) There shall be no discrimination in any gaming operations by reason of race, color, sex or creed; provided, however, that nothing herein shall prevent the licensee from granting preferences to Native Americans as permitted by law; and

(b) Persons, management entities and suppliers of gaming goods and services licensed by the Commission shall comply with such conditions of the license as the Commission, in its reasonable discretion, may require.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.10. Facility license.**

The Commission may issue an annual facility license to a gaming establishment, if the gaming establishment:

(a) Is a sound physical structure with adequate and safe plumbing, electrical, heating, cooling and ventilation systems in place and operational;

(b) Has been inspected and approved for safety by a building and fire inspector designated by the Commission;

(c) Is adequate in all respects to accommodate the gaming intended to be carried on within the structure;

(d) Is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Commission;

(e) Meets all requirements of applicable federal, Tribal and state law; and

(f) Has paid all applicable license fees and costs.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.11. Certification of gaming devices.**

All gaming devices purchased, leased or otherwise acquired by the Tribe must, pursuant to section 6 of the compact, meet the technical equipment standards set forth therein. The Commission shall maintain a complete list of all gaming devices (whether or not such devices are in use) located at any gaming establishment.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.12. Provisional license.**

The Commission may issue provisional licenses pending the satisfactory completion of all background investigations and other requirements of this chapter, IGRA, or the compact, and, if applicable, pending expiration of the 30-day NIGC review period provided for at 25 C.F.R. § 558. In no event shall a provisional license be valid for greater than 90 days, subject to the issuance of another provisional license if such background investigations are not completed so long as no information to date has been received which would otherwise disqualify the applicant for a license.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.13. Provisional employment pending issuance of license and during temporary license period.**

As provided in section 16-4.12, primary management officials and key employees may be employed in gaming operations prior to the issuance of a license hereunder and during the period that a license shall be effective on a provisional basis, but such employment shall be provisional only and subject to the requirements of this section. Employment may begin prior to issuance of a license only if the Commission has made a preliminary finding of eligibility for employment in gaming operations, which shall require a preliminary determination that the primary management official or key employee in question is not a person whose prior activities, criminal record or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto. Provisional employment shall be terminated upon the occurrence of any of the following:

- (a) Denial of a relevant license by the Commission;
- (b) Unsatisfactory completion of a background investigation or NIGC review resulting in nullification of a provisional license, as described in section 16-5.10; or
- (c) To the extent required under 25 C.F.R. § 558 and, at the end of 30 days after the starting date of provisional employment, if at the end of such period no license has been issued hereunder or if a license issued hereunder remains effective only on a provisional basis, as provided in section 16-4.12; provided, however, that provisional employees terminated for the reason described in this subsection shall be qualified for reemployment upon the satisfactory completion of background investigations and NIGC reviews.

(Ord. No. 238, 7-24-1996)

**Sec. 16-4.14. Assignment or transfer.**

No license issued under this chapter may be assigned or transferred unless the proposed assignee or transferee would independently be qualified to hold the license proposed to be assigned or transferred and the Commission approves of such assignment or transfer.

(Ord. No. 238, 7-24-1996)

**ARTICLE V. BACKGROUND INVESTIGATIONS AND LICENSE DECISIONS**

**Sec. 16-5.01. Required background investigations.**

Background investigations shall be conducted by the Commission, or other agent retained by the Commission, under the supervision and direction of the Commission, on all persons specified in section 16-4.01 of this chapter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.02. Standards for background investigations.**

All background investigations shall be conducted to ensure that gaming operations shall not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of such gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 C.F.R. §§ 556 and 558, the compact, and this article. Background investigations shall be conducted in a manner which takes all reasonable steps to ensure the confidentiality of the information generated by the investigation as well as that submitted by the applicants. Any willful or careless breach of this requirement may result in a penalty ranging from censure, suspension removal from office and a fine of up to \$5,000.00. The Commission shall have jurisdiction to hear and decide upon any such claims.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.03. Information required for background investigations.**

(a) Each person subject to a background investigation under section 16-5.01 of this chapter shall be required to provide, subject to the Privacy Act of 1974, at a minimum, and in such form as designated in section 16-4.04, or as may be prescribed by the Commission or the Executive Director, all of the following information:

- (1) Full name, other names used, social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) Currently and for the previous ten years, all business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under subsection (a)(2) of this section;
- (4) Current business and residence telephone numbers;
- (5) A description of any existing and previous business relationships with any Native American Indian Tribe including, but not limited to, a description of the amount and type of ownership interest in those businesses;
- (6) A description of any existing and previous business relationships with gaming including, but not limited to, a description of the amount and type of ownership interest in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to any gaming or gambling, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten years of the date of the application, the name and address of the court involved and the date and disposition;

(10) For each criminal charge (excluding misdemeanor traffic charges, but including any DWI, reckless or careless driving charges), whether or not there is a conviction, if such criminal charge is within ten years of the date of the application and is not otherwise listed, the type of criminal charge, the name and address of the court involved and the date and disposition of such charge;

(11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A current photograph;

(13) Any other information the Commission deems relevant; and

(14) Fingerprints consistent with the provisions of section 16-4.05.

(b) Background investigations conducted by the Commission must be sufficient to make the determination described in section 16-5.08(a). In conducting a background investigation, the Commission or its agents, shall make every reasonable effort to maintain the confidentiality of the identity of each person interviewed in the course of the investigation. Willful or careless violations of this requirement are subject to penalty ranging from censure, suspension, removal from office and a fine of up to \$5,000.00.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-5.04. Completion of investigation.**

Upon completion of the investigation, the Commission may either (i) grant a license to the applicant, or (ii) notice the applicant for a hearing under article VI of this chapter. The Commission may notice the applicant for a hearing at any time during the investigation.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-5.05. Issuance of license.**

The Commission, after a hearing conducted under article VI of this chapter, may, subject to the requirements of section 16-5.09, issue a license only after it has determined that the following minimum requirements have been met:

(a) The applicant has fully completed all required application forms and has provided the Commission with all other information that the Commission has requested;

(b) The applicant meets all of the licensing requirements of this chapter;

(c) The applicant meets all of the licensing requirements and criteria contained in the compact;

(d) The Commission has reviewed the applicant's criminal history record and deems the applicant's criminal history to be satisfactory to hold a license; and

(e) All applicable license fees and costs have been paid.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.06. Denial of a license application.**

The Commission, after a hearing conducted pursuant to article VI of this chapter, may deny an applicant a license only after it has determined that the minimum requirements contained in section 16-5.04 have not been met by the applicant or the applicant's application, or if the Commission determines that the applicant is a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.07. Cancellation or suspension.**

Licensees and applicants shall be legally responsible for any violation of this chapter, any relevant license provisions, the rules, the compact or IGRA. Any license issued hereunder may be canceled, limited, revoked, suspended, terminated or modified by the Commission, after a hearing as provided in article VI, for the breach of any of the provisions of the license, this chapter, or rules. In addition:

(a) Unless otherwise stated in this chapter or the rules, a licensee's attorney has the right to be present and to participate in any proceeding concerning the cancellation, limitation, revocation, suspension, termination or modification of a license;

(b) A license may be summarily suspended, without a prior hearing, only upon notice to that effect from the NIGC; and

(c) All decisions of the Commission regarding the cancellation, limitation, revocation, suspension, termination or modification of licenses shall be final, unless appealed as provided in article VI of this chapter. No gaming shall be conducted by the licensee after cancellation, even during the pendency of an appeal.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.08. Eligibility determination and procedures for forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission.**

(a) The Commission shall review an applicant's prior activities, criminal record, reputation,

habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the gaming operation shall not employ that person.

(b) When a key employee or primary management official commences work at a gaming operation, the Commission shall within a reasonable period of time forward to the NIGC a completed application for employment for such key employee or primary management official, and shall conduct all necessary background investigations. The Commission shall make the eligibility determination referred to in subsection (a) of this section.

(c) A report shall be submitted to the NIGC within 60 days after a key employee or primary management official commences work at a gaming operation or within 60 days of the approval of this chapter by the Chairman. Such report shall, at a minimum, include all of the following:

(1) Steps taken in conducting the background investigation;

(2) Results obtained;

(3) Conclusions reached by the Commission;

(4) The Commission's basis for those conclusions; and

(5) A copy of the eligibility determination made pursuant to section 16-5.08(a).

(d) Subject to the provisions of section 16-4.12, no gaming operation shall continue to employ as a key employee or primary management official any person who does not have a license within 90 days of commencing work at a gaming operation.

(e) If a license is not issued to an applicant, the Commission:

(1) Shall notify the NIGC; and

(2) May forward copies of its eligibility determination and any relevant report regarding a background investigation of the applicant to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(f) With respect to key employees and primary management officials, applications for employment and reports of background investigations shall be retained by the Commission for inspection by the Chairman or his designee for no less than three years from the date of termination of employment of each key employee or primary management official.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-5.09. Granting a gaming license.**

(a) If, within a 30-day period after the NIGC receives all required applications and reports, the NIGC notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official, the Commission may issue a license to such applicant.

(b) The Commission shall respond in a timely manner to requests for additional information

from the Chairman concerning key employees or primary management officials who are the subject of any report filed with the NIGC by the Commission. Any such request by the Chairman shall suspend the 30-day period referred to in this section until the Chairman receives the additional information requested.

(c) If, within a 30-day period after the NIGC receives all required applications and reports, the NIGC provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Commission has submitted an application and all required reports to the NIGC, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a license to such applicant.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.10. License revocation and suspension following receipt of information from NIGC.**

(a) If, after the issuance of a license, the Tribe receives information from the NIGC indicating that a management entity or controlling shareholder, key employee, or primary management official is not eligible for employment under section 16-4.02 of this chapter, the Commission shall suspend such license, shall notify the licensee in writing of such suspension and the potential revocation of the licensee's license, and shall conduct a hearing in accordance with the rules regarding the proposed license revocation.

(b) After a hearing, the Commission shall revoke or reinstate a license suspended pursuant to subsection (a) of this section. The Commission shall notify the NIGC of its decision. A decision of the Commission to revoke a license after the hearing called for by subsection (a) of this section shall be final and there shall be no appeal. A management entity whose license has been revoked or suspended pursuant to this section may not operate a gaming operation.

(Ord. No. 238, 7-24-1996)

**Sec. 16-5.11. Show cause hearing for manager and primary management officials.**

Excepting the provisions of section 16-5.10 and notwithstanding the foregoing, in the event that the Tribal Gaming Commission obtains reliable information that the duly licensed manager and/or a primary management official may have breached any provision of this chapter, the compact, IGRA, or its license, the Tribal Gaming Commission shall issue a notice for show cause to the licensee prior to any action of suspension or the giving of notice of a revocation hearing with respect to its/their licenses. The notice for show cause shall describe the alleged breach, shall describe the steps necessary to effect a cure and shall provide the licensee with an opportunity to meet with the Tribal Gaming Commission to discuss the matter. The discontinuance or correction of the alleged breach shall constitute a cure thereof, except where such alleged breach constitutes a criminal violation by the manager or the primary management official. If the alleged breach is not corrected or discontinued as required herein, then the Tribal Gaming Commission shall institute the notice and hearing procedure set forth above.

(Ord. No. 238, 7-24-1996)

**ARTICLE VI. RULES OF PROCEDURE FOR HEARINGS**



**Sec. 16-6.01. Scope.**

All license hearings, enforcement hearings and exclusion hearings conducted pursuant to this chapter shall be governed by this article.

(Ord. No. 238, 7-24-1996)

**Sec. 16-6.02. Hearings.**

(a) The Commission shall afford an applicant an opportunity for a hearing prior to any final action by the Commission on an application, other than an unconditional grant of a license.

(b) The Commission shall afford a licensee the opportunity for a hearing prior to taking final action resulting in the revocation of the license or the imposition of any penalties which the Commission is authorized to impose pursuant to these rules and the chapter.

(c) Nothing in this section shall limit the Commission's authority to summarily suspend or revoke a license without a hearing pursuant to section 16-5.07(b) of this chapter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-6.03. Notice of hearing.**

(a) The Commission shall provide written notice to the applicant or licensee of the hearing at least seven days prior to the date set for the hearing. The day the applicant or licensee receives the notice shall be considered a full day's notice under this section. The notice shall be sent by registered or certified mail, or may be personally served upon the applicant or licensee. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the actions being considered by the Commission including, but not limited to:

(1) Whether the Commission is holding the hearing for the purpose of obtaining further information from the applicant;

(2) Whether the Commission will be considering the grant or denial of the license application;

(3) Whether the Commission will be examining any alleged violations of the chapter, the compact, the IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements;  
or

(4) Whether any other sanctions or penalties will be considered.

The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

(Ord. No. 238, 7-24-1996)

**Sec. 16-6.04. Ex parte communications.**

(a) No ex parte communication relative to the actions being considered by the Commission, or a threat or offer of reward shall be made, before a decision is rendered, to any member of the Commission by or on behalf of the applicant or licensee, or any legal representative

or counsel of the applicant or licensee.

(b) Nothing in this section shall prohibit the applicant, licensee or its authorized agent from communicating with the Commission's legal counsel, its investigators or other authorized agents.

(c) Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission's legal counsel.

(d) For purposes of this section only, the actions being considered by the Commission shall be those matters identified in the written notice as provided in section 16-6.03(a) of this chapter, as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.

(e) The Commission shall have the power to impose any sanction pursuant to this article upon its determination that an applicant or licensee has made an ex parte communication in violation of this section.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-6.05. Appearance through counsel.**

(a) Parties to all hearings governed by this article may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.

(b) When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

(c) When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party, including a request for subpoenas.

(d) Upon the establishment of a Eastern Band of Cherokee Indians Bar, any attorney appearing before the Commission must be duly admitted and licensed by the Eastern Band of Cherokee Indians Bar to practice law on the Tribe's Reservation or before this Commission. Until such bar is established any attorney appearing before the Commission must be duly admitted and licensed by the State Bar of North Carolina to practice law.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-6.06. Discovery procedures for enforcement hearings.**

(a) The Commission's legal counsel and the licensee shall exchange a list of persons that each party intends to call as witnesses no later than five business days before a scheduled enforcement hearing. The day the list is received shall be considered a full day's notice under this section. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this section may be prohibited from testifying at a hearing in the Commission's discretion.

(b) The Commission's legal counsel and the licensee shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of the party's case in chief. This exchange shall be made to the opposing party no later than five business days before a scheduled enforcement hearing. The day the documents are received shall be considered a full day's notice under this section. Failure to make available any document or tangible thing in accordance with this section may, in the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing.

(Ord. No. 238, 7-24-1996)

**Sec. 16-6.07. Confidential materials.**

(a) Prior to making any documents available to the Commission's legal counsel or designated agent, the applicant or licensee may designate any document it believes to contain confidential information as subject to a confidentiality claim by so marking the document prior to providing a copy of the document to the Commission's legal counsel.

(b) Documents provided to the Commission's legal counsel or designated agent which have been marked in accordance with paragraph (a) above, and any nonpublic information contained within the document, shall not be made a part of the public record of the Commission proceedings otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the compact), without first providing the applicant or licensee with the opportunity to seek a ruling by the Commission that the document or nonpublic information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission in an executive session meeting. If the request for such a ruling is made during a public hearing session, the hearing session shall be adjourned and Commission shall conduct an executive session meeting in order to hear and rule upon the applicant's or respondent's request. The applicant or licensee may present to the Commission in executive session written and oral argument regarding the confidentiality claim, along with any facts the applicant or licensee believes to be relevant to such argument.

(c) In determining whether a document marked in accordance with subsection (a) above should be made part of the public record of the Commission proceedings on the application, the Commission will balance the applicant's claimed confidentiality concerns against the materiality of the information to the application, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the licensing decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.

(d) In the event that the Commission rules during executive session that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings on the application, the document and/or information contained therein will be made part of the public record unless the applicant withdraws the document from the Commission's possession. In the event the applicant chooses to withdraw the document from the Commission's possession, the Commission will then weigh the withdrawal along with the other evidence in making its determination on the application. Withdrawal of documents from the application process shall be looked upon by the Commission with disfavor, and, depending on the facts and circumstances, the Commission

may deem the withdrawal of any document to be sufficient cause in and of itself for denial of the license.

(e) In the event that the Commission rules during executive session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "Confidential" and will not be made part of the public record. The Commission may consider the document and information contained therein in camera in making its determination on the application.

(f) At the conclusion of the Commission proceedings on the license application, the Commission will return to the applicant all documents marked as "Subject to a Confidentiality Claim" pursuant to paragraph (c) above that were not (i) made part of the public record of the gaming license application or (ii) designated as "Confidential" and considered by the Commission in camera.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-6.08. Subpoenas.**

(a) The Commission has the power and discretion to issue subpoenas and to impose such reasonable penalties for noncompliance.

(b) Subpoenas may be issued to compel any person to appear at the hearing on the merits of the case, to give oral testimony, or to produce documents or other tangible things.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-6.09. Hearing procedures.**

(a) The Chair of the Commission shall preside over all hearings, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

(b) The Commission may require any person including, but not limited to, any applicant or licensee, or any agent, employee or representative of any applicant or licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. Testimony shall be recorded by a duly certified court reporter and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated shall result in sanctions. Failure to appear may constitute grounds for:

(1) The refusal to grant a license to the person summoned, and /or that person's principal, or employer;

(2) The revocation or suspension of a license held by the person summoned, and/or that person's principal, or employer; or

(3) The inference that the testimony of the person summoned would have been adverse to that person and/or that person's principal or employer.

(c) Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is

argumentative or repetitive.

(d) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.

(e) Persons shall be permitted to speak only when recognized by the Chair.

(f) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.

(g) Any party to the hearing may conduct cross examinations reasonably required for a full and true disclosure of the facts.

(h) All hearings held under this chapter shall be open to the public.

(i) The Commission, in its discretion, has the power to sequester witnesses.

(Ord. No. 238, 7-24-1996)

**Sec. 16-6.10. Evidence.**

(a) In hearings governed by this article, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(b) All evidence, including records and documents in the possession of the Commission or which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

(c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact, but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

(d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

(e) The record in a hearing governed by these rules shall include:

(1) All applications, intermediate rulings and exhibits and appendices thereto.

(2) Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence received pursuant to section 16-6.07 of this chapter.

(3) A statement of matters officially noticed.

(4) Questions and offers of proof, objections, and rulings thereon.

(5) Any decision, opinion, findings or report by the Commission.

(6) The transcript prepared by a duly certified court reporter.

(Ord. No. 238, 7-24-1996)

**Sec. 16-6.11. Determinations by the Commission.**

(a) The Commission shall make all determinations of issues before it by a majority vote of the Commission.

(b) All determinations made by the Commission involving the grant, denial, cancellation or revocation of a license, a finding of a violation of this chapter, the rules, the compact, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made by motion and on the record.

(c) A copy of any resolution reached pursuant to section 16-6.11(b) of this chapter shall be served upon the applicant or licensee by registered or certified mail, or may be served personally.

**Sec. 16-6.12. Sanctions.**

If any party or its attorney fails to comply with any provision of this chapter, the rules, the compact, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements including, but not limited to, any agreement regarding any matter including, but not limited to, discovery matters and the failure to appear at a hearing at the scheduled time, the Commission, upon motion or upon its own initiative, may in its discretion impose upon such party or attorney, or both, appropriate sanctions in regard to the failures as are just including, but not limited to, the following:

(a) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these rules or any order of the Commission;

(b) An order that designated facts shall be taken to be established;

(c) An order that the disobedient party may not support or oppose designated claims or defenses;

(d) An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party;

(e) A finding against the disobedient party; or

(f) Any sanction otherwise set forth in this chapter.

(Ord. No. 238, 7-24-1996)

**ARTICLE VII. APPEALS**

**Sec. 16-7.01. Right of appeal; appeals procedures.**

A person directly affected by any finding of the Commission pursuant to section 16-6.11 of this chapter, or any licensing decision of the Commission under this chapter, shall have the right to appeal such finding by filing for a rehearing before the Commission. Any such appeal must be filed with the Commission in writing on or before the tenth day following receipt by such affected person of the written finding of the Commission. The Commission shall certify the hearing record within 30 days of the date of the filing of the appeal. In any case which come before the Commission for final action, the Commission may determine to review all findings of fact and of law, or proceed pursuant to a de novo standard. The Commission's decision on rehearing shall be final, and no further appeal may be had.

(Ord. No. 238, 7-24-1996)

**Sec. 16-7.02. Sovereign immunity of the Commission.**

The Eastern Band of Cherokee Indians, acting through the Tribal Council, confers on the Commission all of the Tribe's rights, privileges, immunities and sovereign immunity from suit, to the same extent that the Tribe would have such rights, privileges, if it engaged in the activities undertaken by the Commission.

(Ord. No. 238, 7-24-1996)

**Sec. 16-7.03. Limited waiver of sovereign immunity of the Commission.**

The Commission hereby expressly waives its sovereign immunity from suit: in any suit against the Commission wherein relief is limited to injunctive or declaratory relief against the Commission. Jurisdiction for suit against the Commission for review of the Commission rulings or decisions by the Tribe's Class III Gaming Manager shall be as set forth in section 16.1 of the Class III Gaming Management Agreement with the Tribe as approved by the NIGC.

(Ord. No. 238, 7-24-1996)

**ARTICLE VIII. AUDITING AND INTERNAL CONTROL**

**Sec. 16-8.01. Minimum procedures for control of internal fiscal affairs.**

The Commission shall promulgate rules governing the control of internal fiscal affairs of all gaming operations. At a minimum, such rules shall require the consistent application of generally accepted accounting principles, and shall:

- (a) Prescribe minimum procedures for the safeguarding of a gaming operation's assets and revenues, including recording of cash and evidence of indebtedness, and mandatory count procedures. Such rules shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the gaming operation, ensure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
- (b) Prescribe minimum reporting requirements to the Commission;
- (c) Provide for the adoption and use of internal audits conducted in accordance with

generally accepted accounting principles by internal auditors licensed or certified to practice public accounting in the State of North Carolina;

(d) Formulate a uniform code of accounts and accounting classifications to ensure the consistency, comparability and effective disclosure of financial information. Such a code shall require that records be retained that reflect statistical drop (amount of cash wagered by patrons), statistical win (amount of cash won by the gaming operation), and the percentage of statistical win to statistical drop, or provide similar information for each type of game in each gaming operation;

(e) Prescribe the intervals at which such information shall be furnished;

(f) Provide for the maintenance of documentation, (i.e., checklists, programs, reports, etc.), to evidence all internal work performed as it relates to the requirements of this section; and

(g) Provide that all financial statements and documentation referred to in this section be maintained for a minimum of five years.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-8.02. Oversight of internal fiscal affairs.**

The Commission shall require independent audits of the financial statements of all gaming operations. Such independent audits must apply and require the consistent application of generally accepted accounting principles, and shall:

(a) Be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of North Carolina;

(b) Include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion on the financial statements taken as a whole in accordance with standards of the accounting profession established by rules and regulations of the North Carolina State Council of Accountancy and the American Institute of Certified Public Accountants;

(c) Disclose whether the accounts, records and control procedures maintained by the gaming operation conform with this chapter and the rules; and

(d) Provide a review of the internal financial controls of the audited gaming operation to disclose any deviation from the requirements of this chapter and the rules and report such findings to the Commission and the management of the audited gaming operations; and

(e) Provide such other information as the Commission deems necessary or appropriate.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-8.03. Conduct of audit.**

(a) The Commission shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the NIGC.



(b) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, and any other information the Commission deems necessary or appropriate shall be specifically included within the scope of the audit described in section 16-8.03(a).

(Ord. No. 238, 7-24-1996)

**Sec. 16-8.04. Prohibition against embezzlement.**

Any delay or action of any kind which, in the opinion of the Commission, is effectuated by any licensee to unlawfully or improperly divert gaming or other proceeds properly belonging to the Tribe, shall constitute grounds for taking disciplinary action against that licensee. If the Commission finds an unlawful diversion was attempted, it may sanction the licensee, report the matter to appropriate law enforcement and gaming regulatory agencies for further action and take such other action as it deems necessary or appropriate. Sanctions may include the imposition of fines, and/or the revocation, suspension, or limitation of, or refusal to renew, any license.

(Ord. No. 238, 7-24-1996)

**Sec. 16-8.05. Noncompliance.**

Failure to comply with any of the requirements of this article, or the rules promulgated hereunder may be found to constitute a violation of this chapter.

(Ord. No. 238, 7-24-1996)

**ARTICLE IX. EXCLUSION OR REJECTION OF INDIVIDUALS\***

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\*Cross references: Exclusion powers of Tribe, ch. 2.

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**Sec. 16-9.01. Prohibition against certain individuals.**

It shall be a violation of this chapter for any licensee to knowingly fail to exclude or eject from the gaming area of a gaming establishment any individual who:

- (a) Is visibly under the influence of liquor, a drug or other intoxicating substance;
- (b) Is under the age of 18 years;
- (c) Is displaying disorderly conduct;
- (d) Is a person known to have committed a gaming related felony;
- (e) Is known to have a reputation for cheating or manipulation of games; or
- (f) Has been personally excluded, or is a member of any group or type of persons which has been excluded, for cause from gaming establishments by a resolution of the Commission.

(Ord. No. 238, 7-24-1996)

**Sec. 16-9.02. Right to exclude or remove.**

If the Commission deems it in the best interest of the Tribe, the Commission may exclude or remove any persons from the premises of any gaming operation. Any person so excluded shall be entitled to a hearing as provided for by article VI and shall have the rights provided to an applicant therein. The manager of any gaming operation shall also have the authority to exclude or remove any person from the gaming establishment, and all such actions shall be reported to the Commission within 24 hours of the taking of such action.

(Ord. No. 238, 7-24-1996)

**ARTICLE X. PROHIBITED ACTS**

**Sec. 16-10.01. Enumeration.**

In addition to other civil and criminal acts that may be regulated or prohibited by this chapter, the compact, other Tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this chapter and shall subject any perpetrator to Commission action including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and license suspension or revocation:

- (a) Altering or misrepresenting the outcome of gaming or other event on which wagers have been made after the outcome of such gaming or event has been determined but before such outcome is revealed to the players;
- (b) Placing or increasing a bet or wager after acquiring knowledge of the outcome of the gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;
- (c) Aiding anyone in acquiring such knowledge referred to in subsection (b) of this section for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;
- (d) Claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud or claiming, collecting or taking an amount greater than the amount actually won in such game;
- (e) Knowingly to entice or induce another to go to any place where gaming is conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in such gaming;
- (f) Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- (g) Manipulating, with intent to cheat or defraud, any component or part of a game in a manner contrary to the designed and normal operational purpose for such component or part, with knowledge that such manipulation will affect the outcome of the game, or with knowledge of any event that affects the outcome of the game;

- (h) Defrauding the Tribe, any licensee or any participant in any gaming;
- (i) Participating in any gaming not authorized under this chapter and the compact;
- (j) Knowingly providing false information or making any false statement with respect to an application for employment or for any license, certification or determination provided for in this chapter;
- (k) Knowingly providing false or misleading information or making any false or misleading statement to the Tribe, the Commission or the Executive Director in connection with any contract for services or property related to gaming;
- (l) Knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;
- (m) Offering or attempting to offer any thing of value, to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee under this chapter, the rules, Tribal and Federal law or IGRA;
- (n) Acceptance by a licensee of any thing of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the licensee to act or refrain from acting, in a manner contrary to the official duties of the licensee under this chapter, the rules, Tribal and Federal law or IGRA;
- (o) Falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a gaming operation in ways other than is provided in approved internal control procedures;
- (p) Taking any action which interferes with or prevents the Commission or the Council from fulfilling its duties and responsibilities under this chapter, the rules, or IGRA; and
- (q) Entering into any contract, or making payment on any contract for the delivery of goods or services to a gaming operation, when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated.

(Ord. No. 238, 7-24-1996)

#### **Sec. 16-10.02. Prohibition against electronic aids.**

Except as specifically permitted by the Commission, no person shall possess, with the intent to use in connection with gaming, either individually, or in concert with others, any calculator, computer, or other electronic or mechanical device to assist in projecting the outcome or odds of such gaming, to keep track of or analyze cards, or to change probabilities of any game or the playing strategies regularly utilized in such gaming.

(Ord. No. 238, 7-24-1996)

### **ARTICLE XI. NATIONAL INDIAN GAMING COMMISSION AND COMPACT**

#### **Sec. 16-11.01. Regulation of the Commission.**

Notwithstanding any provision in this chapter or the rules, the Commission is hereby fully empowered to comply with all regulations promulgated by the NIGC including, but not limited to, reporting requirements relating to ordinances, contracts, license applications, background checks, and other information.

(Ord. No. 238, 7-24-1996)

**Sec. 16-11.02. Assessment.**

Notwithstanding any provision in this chapter or the rules, the Commission is hereby fully empowered to comply with all assessments authorized by the NIGC. Such assessments shall be payable solely from funds of gaming operation revenues as an operating expense.

(Ord. No. 238, 7-24-1996)

**Sec. 16-11.03. Compact with the State of North Carolina.**

Notwithstanding any provision in this chapter or the rules, the Commission is hereby fully empowered to comply with the provisions of the compact including, but not limited to, any licensing, approval, or monitoring requirements contained in the compact.

(Ord. No. 238, 7-24-1996)

**ARTICLE XII. GENERAL REQUIREMENTS**

**Sec. 16-12.01. Security and surveillance.**

Each gaming establishment must provide for full security and surveillance within the gaming establishment at all times. All security personnel in a gaming establishment must be licensed by the Commission. The security and surveillance departments shall interact when necessary to carry out their official duties and to coordinate their activities in order to effectuate the best protection for the gaming patrons and the Tribal and management interests and assets of the enterprise.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.02. Compliance with other laws.**

The construction, maintenance and operation of any gaming operation shall be in a manner which protects the environment, public health and safety, and shall comply with all applicable Tribal and federal laws relating to environmental protection and public health and safety including, but not limited to, 25 C.F.R. § 522.4(b)(7).

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.03. Amendments.**

All provisions of this chapter are subject to amendment by the Council. All rules promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission. All amendments to this chapter shall be effective upon the date of passage by the Council.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.04. Severability.**

If any provision of this chapter, or any portion of any provision to this chapter, is found to be invalid by any court of competent jurisdiction, the full remainder of such provisions shall not be affected.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.05. Words and terms.**

Tense, number and gender. In interpreting the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context:

- (a) Words in the present tense shall include the future tense;
- (b) Words in masculine, feminine and neuter genders shall include all genders; and
- (c) Words in the singular shall include the plural, and words in the plural shall include the singular.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.06. Repeal.**

To the extent that they are inconsistent with this chapter, all prior gaming laws, rules, ordinances or regulations of the Tribe are hereby repealed.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.07. Unclaimed winnings.**

(a) Any winnings, whether property or cash, which are due and payable to a participant in any gaming activity, and which remain unclaimed at the end of a gaming session, shall be held in safekeeping for the benefit of such participant if his or her identity is known. Such winnings shall be held for 12 months or such longer period as the Commission deems reasonable in consideration of all relevant facts and circumstances. The Commission shall make such efforts as are reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such winnings shall revert to the ownership of the Tribal Casino Gaming Enterprise and shall be transferred to the account or place designated by the enterprise.

(b) In the event the identity of a participant entitled to unclaimed winnings is unknown, the Commission shall use its best efforts to learn the identity of such individual and shall follow the procedure set forth in section 16-12.08 if the Commission is able to identify such individual with reasonable certainty; provided, however, if after six months from the time the winnings were payable, the Commission has been unable to identify the individual entitled thereto, such winnings shall revert to the ownership of the Tribal Casino Gaming Enterprise.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.08. Patron disputes.**

Any person who has any dispute, disagreement or other grievance with the gaming operation that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order:

- (a) A member of the staff relevant of the gaming operation;
- (b) The supervisor in the area of the relevant gaming operation in which the dispute arose;
- (c) The manager of the relevant gaming operation; and
- (d) The Commission.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.09. Patron rights regarding disputes.**

When a person brings a dispute for resolution pursuant to section 16-12.08, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level as set forth in section 16-12.08. Resolution of any dispute by the personnel of a gaming operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, or, in the case of the general manager of the gaming operation, to the Commission.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.10. Gaming Commission action on patron disputes.**

All disputes which are submitted to the gaming Commission shall be decided by the Commission based on information provided by the complainant, including any witnesses for, or documents provided by or for, the complainant. The decision of the Commission shall be in writing, shall be issued within 14 days of submission of the matter to the Commission, and shall be provided to the general manager of the gaming operation and to the complainant.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.11. Agent for service of process.**

The Commission Chairman shall be designated agent for service of process for the Tribal Gaming Commission of the Eastern Band of Cherokee Indians. The Chairman shall promptly report any such service to the Commission, and shall promptly provide the Commission with a copy of any complaints or other documents served.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.12. Consent to jurisdiction.**

Any person who applies for a license under this chapter, applies for employment in any

gaming establishment, enters into any contract or agreement related to gaming, or participates in any gaming on the Reservation, shall be deemed to consent to the civil jurisdiction of the Tribe, the Commission and the Tribal Court. Nothing in this section shall limit the jurisdiction of the Tribe, the Commission or the Tribal Court under any circumstances not explicitly contemplated in the section.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.13. Comity and concurrent jurisdiction.**

The Commission is empowered to seek comity and enforcement of the orders of the Commission by the courts of any other jurisdiction whose assistance may be required to give effect to the orders of the Commission. The Commission is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts of foreign jurisdictions.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.14. Other powers of the Commission.**

In addition to and in conjunction with the powers and responsibilities listed in this chapter, rules and other applicable laws and regulations the Commission shall have power to:

- (a) Issue orders of temporary closure of gaming activities for violations of this gaming ordinance or of contractual obligations to the Tribe, the IGRA or the approved Class III Compact or orders of permanent closure of gaming activities for violations of this chapter, Tribal gaming regulations or contractual obligations to the Tribe;
- (b) Initiate civil and criminal actions in court to enforce provisions of this chapter, Tribal gaming regulations or the IGRA;
- (c) Negotiate and approve management agreements for Class II Gaming to be submitted to the Tribal Council for approval by Tribal Council resolution;
- (d) Approve, deny or revoke gaming licenses for Class II or Class III Gaming;
- (e) Monitor all gaming activities conducted on Eastern Cherokee lands on a continuing basis;
- (f) Ensure that background investigations are conducted as required by this chapter and the IGRA as well as conduct such additional investigations as the Commission may deem necessary;
- (g) Demand access to and inspect, examine, copy and audit all papers, books and records concerning activities and revenues of any gaming activity conducted on Eastern Cherokee lands and any other matters necessary to carry out their duties under this chapter;
- (h) Conduct such hearings as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel witnesses to appear at such hearings;

(i) When information is received through audits or other investigations that indicates a violation of Tribal, federal or applicable state ordinances, laws or regulations, to treat as confidential and provide such information to the appropriate law enforcement officials;

(j) Adopt regulations deemed necessary to clarify or enforce provision of this chapter or Tribal rights and interests established in approved management agreements or an approved Class III Compact; and

(k) Adopt an Eastern Band of Cherokee Indians Class II and Class III Gaming license application.

(Ord. No. 238, 7-24-1996)

**Sec. 16-12.15. Enforcement provisions.**

(a) All matters and occurrences which indicate that a criminal act under the Tribal Code, federal law or state law may have occurred in or around any gaming establishment shall be immediately reported to the appropriate law enforcement agency and the Commission.

(b) All matters and occurrences contrary to this chapter, rules or regulations promulgated by the Commission which are not covered under a criminal code shall be deemed to be a civil violation. The Commission is hereby authorized to establish a civil violations list of penalties and fines which shall be imposed by the Commission for all such civil violations with the violator afforded the rights to a hearing as provided in article VI herein.

(Ord. No. 238, 7-24-1996)

**ARTICLE XIII. RESERVED\***

**Secs. 16-13.01--16-18. Reserved.**

**\*Editor's note:** Ord. No. 914, § 2, adopted September 13, 2001, amended the Code by repealing former Art. XIII, §§ 16-13.01--16-13.04, and adding a new Ch. 16D to the Code. Former Art. XIII pertained to the UCC ordinance for Tribal casino gaming enterprise, and derived from Ord. No. 387, adopted November 7, 1996; and Ord. No. 431, adopted October 25, 2000. Similar provisions can be found in Ch. 16D.

**ARTICLE XIV. RESERVED\***

**Secs. 16-19--16-40. Reserved.**

**\*Editor's note:** Ord. No. 914, § 1, adopted September 13, 2001, amended the Code by renumbering former Art. XIV, §§ 16-19--16-40, as a new Ch. 16C, §§ 16C-1--16C-22.

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**Chapter 16A: Tribal Casino Gaming Enterprise\***

**\*Cross references:** Tribal gaming, ch. 16; Tribal bingo enterprise, ch. 16B.

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**Sec. 16A-1. Authority.**

(a) Pursuant to the authority vested in the Eastern Band of Cherokee Indians by its governing document and particularly by section 23 thereof, and its inherent Tribal sovereign authority to oversee, protect and preserve the assets and benefits of the Tribe, together with its capacity and authority to conduct both governmental and business activities by and on behalf of the Tribe, especially when Tribal members derive direct benefit from such activities, the Tribal Council hereby creates this Tribal enterprise that shall be known as the Tribal Casino Gaming Enterprise, hereafter referred to as the TCGE.

(b) In any suit, action or proceeding involving the validity or enforcement of any of its contracts, the TCGE shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this chapter. A copy of the chapter duly certified by the Clerk of the Tribal Council, shall be admissible in evidence in any suit, action or proceeding.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-2. Declaration of need.**

It is hereby declared:

(a) The Eastern Band of Cherokee Indians is authorized by the Indian Gaming Regulatory Act ("IGRA") by virtue of section 5(D) of its Gaming Compact with the State of North Carolina to operate a Class III Tribal gaming enterprise (the "Permanent Casino"); that the Tribal Council of the Eastern Band of Cherokee Indians has revised its gaming ordinances to comply with the IGRA and regulations promulgated by the National Indian Gaming Commission ("NIGC"); that the Tribal Council has established a Gaming Commission ("TGC") which has regulatory oversight responsibilities over all gaming on the Cherokee Indian Reservation, to ensure that appropriate gaming laws and regulations are complied with.

(b) The Board of Advisors of the Tribal Casino Gaming Enterprise is authorized to undertake such actions as are necessary and appropriate for the execution of the duties and authorities enumerated herein.

(c) That the TCGE is hereby created and established in the public interest to provide an organizational plan which can most effectively and efficiently direct the Permanent Casino's gaming operations of the Tribe for business purposes.

(d) The Tribe has determined that it will be in the best interest of the Tribe to construct the permanent casino of approximately 175,000 square feet for the conduct of Class III Gaming, as that term is defined in the IGRA on land on the Cherokee Indian Reservation described in Exhibit A to Ordinance No. 389 (1996) (the Permanent Casino site).

(e) The Tribe has determined that it would be in the best interest of the Tribe to have authority for the administration and oversight of Class III Gaming at the Permanent Casino exercised for the Tribe by a separate, single purpose instrumentality of the Tribe having the authority, powers and duties set forth in this

chapter under the governance of a Board of Advisors, chosen and acting in the manner set forth in this chapter.

(f) The Tribe has selected Harrah's WC Casino Company, L.L.C., a North Carolina limited liability company (the "Manager"), which is owned by Harrah's Entertainment, Inc., to act as the Manager of the Casino, pursuant to a Management Agreement dated June 19, 1996, between the Tribe and the Manager (the "Management Agreement"), and to develop the Casino pursuant to a Development and Construction Agreement dated June 19, 1996, between the Tribe and the Manager (the "Development Agreement").

(g) The Tribe has determined that construction and startup of the permanent casino should be financed by a bank loan to be made by Bankers Trust Company as Agent and a bank group of lenders (the "Banks") pursuant to a credit agreement among Bankers Trust Company as Agent for the Banks as the lenders, the TCGE as the borrower and the Banks (the "Credit Agreement").

(h) The Credit Agreement requires, among other things, that the Manager, Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc. (the "Secured Parties") jointly and severally enter into a Guaranty and Loan Purchase Agreement (the "Guaranty") which includes a complete and unconditional guarantee of obligations under the Credit Agreement; and the secured parties require, as a condition to the issuance of the Guaranty among other things, that the TCGE agree to enter into a Security and Reimbursement Agreement with the secured parties (the "Security and Reimbursement Agreement") and a Pledge of Deposit Accounts Letter Agreement (the "Pledge Agreement") with the secured parties.

(Ord. No. 389, 11-7-1996)

### **Sec. 16A-3. Board of advisors; generally.**

(a) Composition of the Board: The Board of Advisors shall be composed of five enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes.

(b) Appointment of the Board: Members of the Board of Advisors shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Board of Advisors shall be selected on the basis of their business experience and ability to significantly contribute to the capabilities and functions of the gaming enterprise. At least one member of the Board of Advisors shall be an experienced auditor or certified public accountant.

(c) Members of the Board of Advisors may hold other positions of employment with the Tribe and may engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter or chapter 16 of this Code.

(d) Each member of the Board of Advisors shall serve a term of five years, subject to removal, with cause, at the pleasure of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Board of Advisors from serving successive terms, except a Board member shall not serve more than two successive terms. There shall be a six-month probationary period for each new appointee to be reviewed by the Tribal Council.

(d1) To ensure continuity in the Board and rotation of appointments, the initial Board

members' terms shall be adjusted so that they serve staggered terms. Upon the effective date of this amendment, the Principal Chief shall assign first term expiration dates for each current Board member, such that one member's term expires each year beginning September 30, 2000. The established rotation shall continue for each Board position for future new, renewal, or replacement appointments.

(e) No member of the Board of Advisors shall be finally selected until he or she has completed a background investigation conducted by the Gaming Commission with the same criteria applied to the Board member as is applied to key employees, as defined in chapter 16 of this Code, as same may be amended or replaced from time to time.

(f) Before assuming office, each member of the Board of Advisors shall take the oath of office administered to Tribal officers.

(g) Members of the Board of Advisors are prohibited from playing or participating in any gaming activity in any of the Tribal Gaming Enterprises.

(h) Resignation from the Board of Advisors: A member of the Board of Advisors may resign at any time by providing the Tribal Council with written notice of his or her intention to resign on a date certain. The resignation shall become effective on the date stated and need not be accepted by the Tribal Council to be effective.

(i) Filling of vacancies in the Board of Advisors: A nomination to fill a vacancy in the Board of Advisors shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.

(Ord. No. 389, 11-7-1996; Ord. No. 180, 4-17-2000)

#### **Sec. 16A-4. Eligibility criteria for TCGE Board of Advisors.**

No person shall be eligible or qualified to serve or continue to serve as a member of the Board of Advisors who:

(a) Owns or has an immediate family member, as defined in section 92-4(e)(1) who owns a financial interest in any gaming operation or financial interest in the management of any gaming operation;

(b) Provides professional services to a gaming enterprise;

(c) Is an elected official of the Tribe or has an immediate family member who is an elected official of the Tribe;

(d) Is a Gaming Commissioner or employee of the Gaming Commission or has an immediate family member who is a Gaming Commissioner or employee of the TCGE;

(e) Has any role whatever in the management of a gaming enterprise pursuant to a management contract between the Tribe and another party;

(f) Has been convicted of a felony or any other criminal offense involving moral turpitude; or

(g) Is younger than 25 years of age.

(Ord. No. 389, 11-7-1998)

**Sec. 16A-5. Powers and duties of Board of Advisors.**

(a) The TCGE Board of Advisors shall be charged with the following duties and is authorized to undertake any and all actions necessary and appropriate for the execution of such duties consistent with the purposes for which it is established. The TCGE shall be authorized to exist, operate and exercise the following enumerated powers for a perpetual period from the date of ratification of this chapter over all Class III Gaming activities owned by, or operated on behalf of, the Tribe in the Permanent Casino.

(1) *Limitations of authority.* The TCGE shall possess only those powers arising under this chapter, and the authority and power of the TCGE is constrained by the limitations contained in this chapter.

(2) *Duration of TCGE.* The TCGE shall come into existence as a separate, single purpose instrumentality of the Tribe on the date this chapter is adopted and continue in existence for the duration of the Management Agreement and until all obligations under the Credit Agreement have been repaid, and thereafter for a perpetual period until its existence is terminated by action of the Tribal Council. To enable the TCGE to carry out its duties pursuant to this chapter, it is hereby granted the exclusive rent-free right to use the Permanent Casino site subject to the provisions of the Management Agreement and the Development Agreement for the duration of the Compact. The TCGE shall not have any authority to conduct, administer or oversee any Class III Gaming at any facility other than the Permanent Casino on the Permanent Casino site.

(3) (A) *Power to waive sovereign immunity and Tribal waiver of sovereign immunity.* The TCGE has the power and authority to waive its right and the right of the Tribe to exercise Tribal sovereign immunity in any contracts, agreements or undertakings to which the TCGE is a party, including with respect to any such contracts, agreements or undertakings the power and authority:

(i) To agree on the law that will govern,

(ii) To agree to sue and be sued,

(iii) To agree on the forum or fora in which existing or future disputes may be resolved,

(iv) To agree to resolve and to resolve existing and future disputes by means of arbitration,

(v) To appoint arbitrators,

(vi) To consent to the jurisdiction of any court of competent jurisdiction to compel arbitration,

(vii) To agree that any award of the arbitrators may be enforced in any court of competent jurisdiction, and

(viii) To waive any requirement for the exhaustion of Tribal remedies, provided such suit or proceeding is brought against the TCGE or the Tribe in the Court of Indian Offenses of the Eastern Band of Cherokee Indians or any

successor Cherokee Tribal Court ("Cherokee Court") or in the United States District Court for the Western District of North Carolina, the United States Court of Appeals for the Fourth Circuit and the United States Supreme Court; or any other court of competent jurisdiction; and provided further that any such waiver is consistent with the limitations set forth in subparagraph 3(B) of this section. Without in any way limiting the generality of the foregoing, the TCGE, on its own behalf and on behalf of the Tribe, has the express power and authority to authorize any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any court described in this paragraph 3(A) including, without limitation, entering the Permanent Casino for the purpose of executing against any proper subject to a security interest or otherwise giving effect to any judgment or arbitration award entered, subject to the limitations set forth in subparagraph 3(B) of this section. The Tribe consents to the exercise of jurisdiction over such action and over the TCGE by said courts and to accept service of process upon the TCGE by delivery to any officer or managing agent of the Tribe doing business as the TCGE, and any judgment or arbitration award shall only be enforceable against those assets described in paragraph 3(B) below.

(B) *Assets against which enforcement can be sought.* The enforcement of any judgment, order or arbitration award against the TCGE or the Tribe in accordance with subparagraph 3(A) of this section is limited to enforcement of obligations of the TCGE, and can be made only against the following assets, including the following revenues:

- (i) The assets of the TCGE;
- (ii) The assets (other than real property and fixtures), including the revenues, related to or arising from the operation of the Permanent Casino, whether legal title to such assets or revenues is in the name of the TCGE or the Tribe;
- (iii) Any proceeds obtained by the TCGE through the use, ownership or other operation or disposition of such assets or of the business operated by the Tribe in the name of the TCGE; and
- (iv) Any other assets produced or acquired by the Tribe and operated as part of the business of TCGE; and
- (v) Provided, however, that assets, including revenues, transferred in accordance with article XIV of chapter 16 of this Code to other accounts or purposes of the Tribe shall be exempt from such enforcement.

(C) If in any case, the TCGE should exceed the foregoing limitations on its power and authority to waive sovereign immunity, it shall be deemed to have waived its sovereign immunity or that of the Tribe only to the extent permitted in subparagraphs 3(A) and 3(B) of this section.

(4) (A) The Board of Advisors shall be responsible for oversight of Management of the TCGE, provided that the Management or Management Contractors shall be responsible for day-to-day operation, development, management and maintenance of the gaming enterprise, the administration and enforcement of personnel policies, and hiring and termination of the employment of gaming enterprise employees.

(B) Management or Management Contractors shall report to the TCGE Board of Advisors at the frequency and in the format established by the Board of Advisors. Nothing herein contained shall be construed to create a conflict with any management or development agreements which the Tribe has entered into and if any such conflicts do arise then the Management or Development Agreements will be deemed to prevail.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-6. Order of business of Board.**

The Board of Advisors shall establish regular meetings, not less than monthly.

(a) Notice of meetings. Notice of each meeting of the Board shall be mailed to each member, addressed to each Board member's address or usual place of business, not less than five nor more than 20 days from the day on which the meeting is to be held, or notice may be delivered to such member personally not less than two days before the day on which the meeting is to be held. Notice of any meeting of the Board need not be given to any member who shall waive such notice.

(b) The Board of Advisors may call emergency meetings upon 24 hours' notice to Board members with the time and place of such meeting and the business to be transacted at such meeting. Any business conducted in an emergency session shall be approved by not less than a majority of the full Board of Advisors.

(c) The Board of Advisors shall endeavor to attend all meetings of the TCGE. The TCGE shall decide whether absences of a Board member are excused or unexcused. Three consecutive unexcused absences of a Board member shall be reported by the TCGE to the Tribal Council. Three consecutive unexcused absences may be considered cause for removal by the Tribal Council.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-7. Elections of Board officers.**

The Board of Advisors shall, at the first meeting of each fiscal year, elect from among themselves a Chairperson, a Vice-Chairperson and a Secretary. The Board member selected on the basis of his or her experience in auditing or accounting shall be designated Treasurer.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-8. Report by Board to the Tribal Council.**

The Board of Advisors shall be responsible for the preparation and presentation to the Tribal Council of the certified annual audit subject to the requirements of section 16A-20(e) below and shall thereafter submit such annual audit to the NIGC.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-9. Preservation of Board records.**

(a) The Secretary of the Board of Advisors shall prepare and maintain complete and

accurate records of all meetings and actions taken by the Board.

(b) The Treasurer shall keep complete and accurate financial records of the Board's expenses and receipts, report at least every fiscal quarter to the Board and shall submit a complete annual report to the Board.

(c) Reports. TCGE shall file quarterly reports with the Tribal Council and the Tribal Gaming Commission. The report shall include:

(1) Unaudited financial statements, prepared in accordance with generally accepted accounting principles, which reflect all business conducted at the Permanent Casino during the preceding fiscal quarter and year to date, as well as budgeted amount for the balance of the current fiscal year;

(2) Material changes and developments since the last report in the business conducted at the Permanent Casino, including a description of competitive conditions, research and development activities, new lines of business conducted by TCGE, the approximate amount of total sales and revenue, and income (or loss) attributable to each specific type of Class III Game and for each line of business which accounted for more than ten percent of total sales and revenues of Permanent Casino;

(3) Any material pending legal proceeding to which TCGE or a business venture of TCGE is or was a party;

(4) Total hirings, promotions and terminations by job classification during the preceding fiscal quarter of TCGE employees and work force forecast for each position classification for the current fiscal year; and

(5) Such other or different matters as the Tribal Council may request. The TCGE shall file with the Tribal Council such additional reports as required from time to time by the Tribal Council, as well as, meet all federal and state compliance.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-10. Additional duties of Board.**

The Board of Advisors shall by resolution approved by not less than a majority of the full Board membership:

(a) Annually prepare and submit for approval to the Tribal Council an annual operating budget to include short range and long range goals and objectives of TCGE and the strategies used by TCGE to accomplish these goals and objectives;

(b) Approve budgets for the Permanent Casino, including its annual operating budgets and annual business plans;

(c) Approve the establishment of accounts at specified banks as required;

(d) Authorize the expenditure of funds in the accounts of TCGE as necessary for the operation and maintenance of the business and properties of the Permanent Casino and the timely payment of financial liabilities and obligations of the Permanent Casino;

(e) Enter into agreements, contracts, understandings with any government agency,

person, partnership, corporation or Indian Tribe;

(f) Lease property from the Tribe and others for such periods as are lawfully authorized to hold and manage or sublease such properties;

(g) Borrow money and issue temporary or long term evidence of indebtedness and timely repay such debts, including without limitation the special authority to execute and deliver the Credit Agreement and related documents contemplated thereby;

(h) Pledge the assets and receipts of the TCGE as security for debts and acquire, sell, lease, exchange, transfer and/or assign the non-realty property or interest of the TCGE; including, without limitation, specific authority to enter into the Security and Reimbursement Agreement and the pledge of deposit accounts letter agreement with the Manager, Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc.;

(i) Undertake and carry out feasibility and other studies and analyses of gaming operations and markets, prepare gaming plans, and execute such plans to the extent permitted by the IGRA, Tribal-State Gaming Compact and this chapter, and amendments hereto;

(j) Prepare and adopt operation and management plans concerning gaming operations as required or otherwise necessary for the proper conduct of gaming as authorized by the Tribal Council pursuant to this chapter and amendments hereto;

(k) With respect to a gaming enterprise not operated by the Tribe pursuant to a Management Contract, employ a General Manager and delegate to the General Manager all duties and responsibilities as necessary for the lawful, efficient and profitable operation of the gaming enterprise;

(l) Cooperate with all other tribal gaming agencies and entities of the Tribe;

(m) The TCGE Board of Advisors shall exercise approval authority with respect to the following, and shall timely provide such approval (or notice of non-approval):

(1) Internal management policies including:

(a) A written manual sufficiently setting forth policy and procedures regarding:

(i) Hiring, disciplinary and discharge from employment of Permanent Casino employees including policy and rights of appeal governing the provision of the Indian Preference employment rights; and

(ii) Procurement policies.

(2) Vendor contracts, contracts consenting facility maintenance and repairs and contracts and sub-contracts regarding ancillary commercial activities of the gaming enterprise including retail shops and concessions;

(3) Advertisement and promotional sales and activities;

(4) Construction plans and specifications, interior and exterior design and furnishings;



(5) Annual operating, capital and working capital budgets.  
(Ord. No. 389, 11-7-1996)

**Sec. 16A-11. Quorum at Board meetings.**

Three members of the Board shall constitute a quorum.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-12. Decision making by Board.**

The Board shall meet and decide all matters by majority vote of the full Board. The Chairperson shall vote on all issues. A majority vote shall be binding on the Board. The Chairperson, or the Vice-Chairperson in the Chairperson's absence, shall preside at each meeting.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-13. Minutes of Board meetings.**

The Secretary shall cause to be kept a complete and accurate record of all Board meetings, copies of which shall be furnished to the Board and to the Tribal Council upon request.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-14. Compensation of Board members.**

Compensation, if any, of the Board members shall be determined by and approved by the Tribal Council and shall be paid from TCGE funds. Board Members shall be reimbursed from TCGE funds for all reasonable out-of-pocket expenses incurred while acting on behalf of the TCGE Board. Any such compensation and reimbursement shall be considered an operating expense of the TCGE.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-15. Signatory authority.**

All contracts and other documents executed in the name of the TCGE must be signed by two Officers, one of whom shall be the Chairperson or the Vice-Chairperson, provided that if both of them are absent or disabled, any other two officers expressly designated by the Board of Advisors to sign the specific contracts or documents may sign the contracts and documents for and on behalf of the TCGE. A certificate of any officer of the TCGE regarding the absence or disability of the Chairperson and the Vice-Chairperson shall be binding on the TCGE.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-16. Accountability of Board.**

The Board shall be responsible and accountable to the Tribal Council. Upon request of the

Tribal Council, the Board shall promptly and fully advise the Tribal Council with respect to the business and affairs of TCGE and shall provide the Tribal Council with copies of requested records, books or documents of TCGE. The Tribal Council may require such written reports regarding TCGE business and affairs as the council deems necessary.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-17. Sub-committees of Board.**

The Board may from time to time establish consultant groups and advisory Boards which shall have such duties and the members of which shall hold office for such periods as the Board may determine.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-18. Board Officers.**

(a) *Positions and selection.* From among the Board members, the Board shall appoint the following Officers of the TCGE Board ("Officers"): a Chairperson, a Vice-Chairperson, Secretary, and Treasurer.

(b) *Terms of office.* The Board shall appoint its Officers at each annual meeting of the Board in the first week of October.

(c) *Powers and duties.* Subject to the supervisory authority of the Board, Officers shall have the following powers and duties, in addition to such other powers and duties as may be set for the office in this article or applicable law, or as may be assigned by the Board:

(1) *Chairperson.* The Chairperson shall preside over all Board meetings; sign on behalf of TCGE all documents, contracts, or other instruments approved for such execution by the Board; and be responsible, jointly with the Treasurer, for the authorized and secure receipt, maintenance, execution, endorsement, disbursement, and other disposition of all funds, checks, drafts, other order or demands for money, notes other evidence of indebtedness, securities and other valuable instruments and shall have such other powers and duties as may from time to time be assigned to him by the Board.

(2) *Vice-Chairperson.* The Vice-Chairperson shall exercise the powers and perform the duties of Chairperson when the Chairperson is absent or disabled, sign on behalf of TCGE all documents, contracts, or other instruments approved for such execution by the Board, and shall have such other powers and duties may from time to time be assigned to him or her by the Board.

(3) *Secretary.* The Secretary shall issue notices for all Board meetings; keep minutes of all meetings; and serve as custodian of and maintain all minutes or meetings and associated records and correspondence of the TCGE Board. The Secretary shall make such reports and perform such other duties as are incident to the office, or are property required or assigned to him by the Board.

(4) *Treasurer.* The Treasurer shall be responsible, jointly with the Chairperson, for the authorized and secure receipt, maintenance, execution, endorsement, disbursement, and other disposition of all funds, check, drafts or other order or demands for money, notes, other evidence of indebtedness, securities and other

valuable instruments be responsible for the maintenance of comprehensive financial books and records of transactions, prepared in accordance with generally accepted accounting principles. The Treasurer shall have principal oversight responsibilities for all financial functions and affairs of TCGE and shall serve as the Board's principal financial liaison with the Tribal Council and other members of TCGE management having financial management responsibilities with the TCGE with any Contract Manager, accounting firm and financial advisors. The Treasurer shall perform such other duties incident to the office or that are properly required by the Board.

(5) The Board may temporarily delegate the Board's powers or duties as an officer to another Board member, until the Board member is available or no longer disabled or until the Tribal Council fills the vacancy.

(d) *Maintenance, inspection and return of books and records.* There shall be maintained at the principal office of TCGE all financial books and records, all minutes of Board meetings, and all other materials, books, records, documents, correspondence, and contracts. All such material shall be made available for inspection and copying at any reasonable time during the usual business hours:

(1) To the Tribal Council or duly authorized representatives thereof;

(2) To any Board member;

(3) To the Tribal Gaming Commission; and

(4) To agents of the State of North Carolina or of the NIGC conducting inspections pursuant to the approved Tribal-State Class III Gaming Compact or compliance with applicable federal law.

(e) *Duties upon termination of office.* Upon termination from office, each Board member, employee and agent of TCGE shall turn over to his or her successor or to the Chairperson, in a timely fashion and in good order, all monies, books, records, minutes, documents contracts or other property of TCGE in his or her custody. If such property is not turned over or is damaged or missing, the Board may charge each Board member and any employee or agent a reasonable replacement fee.

(Ord. No. 389, 11-7-1996)

### **Sec. 16A-19. Ownership and revenues.**

(a) *Ownership.* The Permanent Casino and all personal property assets used in the operation of the Permanent Casino and the revenues generated from the operation of the Permanent Casino shall be and continue to be owned by the Tribe but shall be administered for the Tribe by the TCGE for the benefit of the Tribe; it being expressly provided that title to the property which is to become a fixture or permanent improvement or part of the Permanent Casino site, shall continue to be held in the name of the Tribe with restrictions upon alienation imposed by the United States, or in the name of the United States in trust for the Tribe, and the title to such real property shall always remain in trust status.

(b) *General account.* The TCGE Board shall establish a general bank account and shall deposit within such account all receipts of the TCGE. The account shall be used to meet ongoing business needs, contingencies, maintenance of property of TCGE, capital for expansion of existing operations or additional operations under the terms of this chapter, and for such other purposes as deemed necessary and appropriate by the Board. The Board may direct the establishment of additional accounts as it may deem reasonable and

necessary for the conduct of TCGE business under this chapter.

(c) *Limitation on use of TCGE net earnings.* No part of the net earnings of TCGE shall inure to the benefit of or be distributed to any Board member or other private person, except that TCGE is authorized and empowered to pay reasonable compensation for services rendered to TCGE as provided in this chapter and to make payments and distribution in furtherance of the purposes set forth in this chapter.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-20. Disbursement of funds.**

(a) The TCGE shall make monthly disbursements to the Tribe of the profits realized by the TCGE from its operations. Profits must be distributed from the TCGE to the Tribe on not less than a monthly basis, with such funds to be used and distributed in accordance with the requirements of the IGRA, the Tribal Gaming Ordinance (chapter 16), and other applicable Tribal law.

(b) The profits of the TCGE required to be disbursed to the Tribe shall be defined as the total revenues received from all TCGE operations less the TCGE operating costs, expenses and funding of reserves as determined in accordance with generally accepted accounting principles.

(c) Upon actual transfer or disbursement of funds from the TCGE to the Tribe, the funds shall no longer be deemed the funds or property of TCGE, and shall no longer be subject to or liable for the obligations of the TCGE.

(d) All obligations incurred in connection with the operation of TCGE as authorized by said Board shall be special obligations of the Tribe payable solely from the assets, including the revenues, of the Permanent Casino and subject to the limits of powers set forth in section 16A-5.

(e) The TCGE shall provide an annual certified audit of its operations and other such audits as the Tribe deems necessary which shall be conducted by the Tribe's audit firm in connection with a "big six" accounting firm experienced in casino gaming audits. The certified public accountant shall report any instances of noncompliance with the IGRA, the North Carolina Cherokee Gaming Compact, the regulations of the NIGC, or the ordinances or regulations of the Tribe, which come to their attention during the performance of the audit. The auditors shall be paid from operational funds of the TCGE. The auditor shall have access to all books and records, all cash management procedure manuals, all internal control manuals, and all other records, documents, papers and persons employed by the TCGE, as they deem necessary. For each audit, the auditor shall provide the Board of Advisors with a draft management letter and shall permit the Board and the General Manager a reasonable time within which to respond to the letter with changes to the operations of the TCGE which address the concerns expressed in the draft management letter. The results of the certified audit shall be provided to the Board, the Tribe, the Tribal Gaming Commission, the NIGC and such other governmental agencies as may be required by law.

(f) The TCGE shall file promptly any reports of gaming winnings, and the names of the winners, as the same may be required by the Internal Revenue Service of the United States and shall comply with all other provisions of the Internal Revenue Code applicable to the operation of the TCGE as well as any state reports required by the Compact.

(g) The TCGE shall submit an annual report to the Tribal Council, signed by the Chairperson of the Board, showing:

- (1) A summary of the year's activities;
- (2) The financial condition of the TCGE;
- (3) The condition of the TCGE properties;
- (4) Any significant problems and accomplishments;
- (5) Plans for the future; and

(6) Such other information as the Board or the Tribal Council shall deem pertinent.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-21. Litigation.**

Obligation to notify Tribe and Tribal Gaming Commission. TCGE shall immediately notify the Chairman of the Tribal Council of the receipt of service of any summons or complaint upon TCGE, or any Board member, employee or agent of TCGE, or any management contractor, in which TCGE, or any Board member, employee or agent of TCGE is named in any suit, claim, action or other proceeding in any court, administrative or regulatory forum. A copy of the summons and complaint shall be provided to the Chairman of the Tribal Council and the Chairman of the Tribal Gaming Commission with the notice.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-22. Professional services.**

TCGE shall be authorized to retain the services of any business or professional consultants or any consultants or assistants; provided that TCGE may retain the services of only those attorneys and auditors approved by the Tribal Council.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-23. Severability of provisions.**

If any provision of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be violative of applicable law or otherwise invalid, then that provision shall be severable and considered null and void, but such judgment shall not affect, impair or invalidate the remainder of this chapter or its application to other persons and circumstances, but shall remain in full force and effect, and such judgment shall be confined in its operation to the provisions of the chapter or the application thereof to the person and circumstances directly involved in the controversy in which such judgment was rendered.

(Ord. No. 389, 11-7-1996)

#### **Sec. 16A-24. Adoption of By-laws.**

The TCGE Board may adopt By-laws for the TCGE Board of Advisors; provided that such By-laws shall not contain provisions inconsistent with or in violation of the provisions of this chapter or applicable law.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-25. Duration of TCGE and chapter.**

(a) By enacting this chapter, the Tribe, through its Tribal Council, agrees and affirmatively pledges that it shall not terminate the lawful existence of or the authority for the TCGE until or unless all obligations incurred by the TCGE for the financing of the Permanent Casino, have been satisfied, including without limitation, all obligations of the TCGE under the Credit Agreement and the Security and Reimbursement Agreement, and if for any reason the Tribe were to nevertheless terminate the existence or authority of the TCGE before all such obligations are satisfied then all obligations of the TCGE shall become the direct obligations of the Tribe; and the Tribe hereby irrevocably grants a waiver of the Tribe's sovereign immunity to permit the obliges of the TCGE to enforce such obligations against the Tribe in that circumstance, but with such waiver specifically limited to permit enforcement of such obligations as set forth in the Credit Agreement and the Security and Reimbursement Agreement.

(b) Notwithstanding anything contained in this chapter, in the event of any conflict or question of interpretation, the terms of the Management Agreement and/or the Construction and Development Agreement, the Credit Agreement, the Security and Reimbursement Agreement and any subsequent Management Agreement, between the Tribe and the Manager shall prevail over terms of this chapter.

(c) In addition to, and not in limitation of, the authority otherwise granted to the TCGE in this chapter, the TCGE is expressly authorized, acting as an instrumentality of the Tribe, to execute and deliver the Security and Reimbursement Agreement to create a security interest and first lien on the collateral described therein even although and in express recognition that such collateral constitutes assets of the Tribe.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-26. Rescission of inconsistent law.**

All prior ordinances and resolutions in conflict with this chapter including without limitation Ordinance No. 432 (1994) and Ordinance No. 232 (1996) are hereby rescinded in their entirety.

(Ord. No. 389, 11-7-1996)

**Sec. 16A-27. Definitions.**

As used in this Chapter and Ordinance No. 389 (1996):

*Credit agreement* shall mean the credit agreement with Bankers Trust Company, as agent and the banks that are parties to such credit agreement from time to time with the TCGE as such credit agreement may be amended, restated or extended from time to time with the approval of Tribal Council or as the credit facilities thereunder may be replaced from time to time pursuant to a new credit agreement(s) with such banks and on such terms as the

Tribal Council may approve from time to time.

*Development agreement* shall mean that certain restated development and construction agreement dated June 22, 2000 between the Tribe and Harrah's NC Casino Company, L.L.C., an affiliate of Harrah's Entertainment, Inc., as such agreement may be amended, restated or extended from time to time with the approval of Tribal Council and/or such other development agreement(s) which may be entered into with the approval of Tribal Council for the development of any portion of the permanent casino and permanent casino site.

*Gaming enterprise* shall have the same meaning as permanent casino.

*Guaranty and loan purchase agreement* shall mean any guaranty of obligations under the credit agreement as it exists from time to time by the manager or managers of the permanent casino (and/or one or more affiliates thereof) or any part thereof.

*Management agreement* shall mean the management agreement between the Tribe and Harrah's NC Casino Company, L.L.C. dated June 19, 1996 as amended by amendments dated January 29, 1998, November 22, 1999 and June 22, 2000 as the same may be further amended, restated or extended with respect to the management of the casino and the hotel and convention center which constitute a part of the permanent casino and such other management agreement(s) which may be entered into upon approval by the Tribal Council for the management and operation of all or any portion of the permanent casino as it exists from time to time.

*Permanent casino* shall mean the casino facility on the permanent casino site together with any expansions of such casino facility as are approved by Tribal Council together with any and all operations, activities or facilities which are authorized by Tribal Council to be developed and operated in conjunction and as a part of the TCGE's gaming activities, including without limitation the hotel and convention center.

*Permanent casino site* shall mean the land on the Cherokee Indian Reservation as described in Exhibit "A" to Ordinance No. 389 (1996) together with such other land as may be approved from time to time by Tribal Council where the permanent casino is located.

*Pledge agreement* shall mean a pledge of the deposit account of the TCGE required in connection with the credit agreement.

*Security and reimbursement agreement* shall mean that certain security and reimbursement agreement by the TCGE in favor of Harrah's NC Casino Company, L.L.C., Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc. given in connection with the credit agreement or the management agreement as each may be amended, restated or extended from time to time with the approval of Tribal Council or as the same may be replaced with the approval of Tribal Council in connection with the credit agreement(s) or the management agreement as each exist from time to time with such other security agreements in favor of the lenders or guarantors of the credit agreement(s).

(Ord. No. 656, 4-5-2001)

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## Chapter 16B: Tribal Bingo Enterprise\*

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**\*Cross references:** Tribal gaming, ch. 16; Tribal casino gaming enterprise, ch. 16A.

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**Sec. 16B-1. Tribal bingo enterprise created.**

(a) Pursuant to the authority vested in the Eastern Band of Cherokee Indians by its Governing document and particularly by section 23 thereof, and its inherent tribal sovereign authority to oversee, protect and preserve the assets and benefits of the Tribe, together with its capacity and authority to conduct both governmental and business activities by and on behalf of the Tribe, especially when Tribal members derive direct benefit from such activities, the Tribal Council hereby creates this Tribal enterprise that shall be known as the Tribal Bingo Enterprise, hereafter referred to as the TBE.

(b) In any suit, action or proceeding involving the validity or enforcement of any of its contracts, the TBE shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this chapter. A copy of the chapter, duly certified by the clerk of the Tribal Council, shall be admissible in evidence in any suit, action or proceeding.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-2. Declaration of need.**

It is hereby declared:

(a) That the Eastern Band of Cherokee Indians is authorized to conduct all forms of gaming as defined in 25 U.S.C. 2703(7) ("Class II Gaming"); that the Eastern Band of Cherokee Indians is authorized by the Indian Gaming Regulatory Act ("IGRA") by virtue of its Gaming Compact (the "Compact") with the State of North Carolina to operate its Class II Gaming facilities existing at the time the Compact became effective (the "Temporary Casino") without meeting the facility requirements of section 5(D) of the Compact until 30 days after the opening of the Class III Gaming Enterprise meeting the requirements of section 5(D) (the "Permanent Casino"); that the Tribal Council of the Eastern Band of Cherokee Indians has revised its gaming ordinances to comply with the IGRA and regulations promulgated by the National Indian Gaming Commission ("NIGC"); that the Tribal Council has established a Gaming Commission ("TGC") which has regulatory oversight responsibilities over all gaming on the Cherokee Indian Reservation, to ensure that appropriate gaming laws and regulations are complied with.

(b) The Board of Advisors of the Tribal Bingo Enterprise is authorized to undertake such actions as are necessary and appropriate for the execution of the duties and authorities enumerated herein.

(c) That the TBE is hereby created and established in the public interest to provide an organizational plan which can most effectively and efficiently direct all Class II Gaming and Class II Gaming owned by or operated on behalf of the Tribe other than the Class III Permanent Casino Project under the control of the Tribal Casino Gaming Enterprise. The Board of Advisors of the Tribal Bingo Enterprise is authorized to undertake such actions as are necessary and appropriate for the execution of the duties and authorities enumerated herein.

(Ord. No. 388, 11-7-1996)



**Sec. 16B-3. Board of Advisors; generally.**

(a) Composition of the Board. The Board of Advisors shall be composed of five enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes.

(b) Appointment of the Board. Members of the Board of Advisors shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Board of Advisors shall be selected on the basis of their business experience and ability to significantly contribute to the capabilities and functions of the Class II Gaming. At least one member of the Board of Advisors shall be an experienced auditor or certified public accountant.

(c) Members of the Board of Advisors may hold other positions of employment with the Tribe and engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter or chapter 16 of this Code.

(d) Each member of the Board of Advisors shall serve a term of five years, subject to removal, with cause, at the pleasure of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Board of Advisors from serving successive terms, except a Board member shall not serve more than two successive terms. There shall be a six-month probationary period for each new appointee to be reviewed by the Tribal Council.

(d1) To ensure continuity in the Board and rotation of appointments, the initial Board members' terms shall be adjusted so that they serve staggered terms. Upon the effective date of this amendment, the Principal Chief shall assign first term expiration dates for each current Board member, such that one member's term expires each year beginning September 30, 2000. The established rotation shall continue for each Board position for future new, renewal, or replacement appointments.

(e) No member of the Board of Advisors shall be finally selected until he or she has completed a background investigation conducted by the Gaming Commission with the same criteria applied to the Board member as is applied to "key" employees, as defined in chapter 16 of this Code.

(f) Before assuming office, each member of the Board of Advisors shall take the oath of office administered to Tribal Officers.

(g) Members of the Board of Advisors are prohibited from playing or participating in any gaming activity operated by the Tribe or any instrumentality of the Tribe.

(h) Resignation from the Board of Advisors. A member of the Board of Advisors may resign at any time by providing the Tribal Council with written notice of his or her intention to resign on a date certain. The resignation shall become effective on the date stated and need not be accepted by the Tribal Council to be effective.

(i) Filling of vacancies in the Board of Advisors. A nomination to fill a vacancy in the Board of Advisors shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.

(Ord. No. 388, 11-7-1996; Ord. No. 180, 4-17-2000)

**Sec. 16B-4. Eligibility criteria for Board members.**

No person shall be eligible or qualified to serve or continue to serve as a member of the Board of Advisors who:

- (a) Owns or has an immediate family member, as defined in section 92-4(c)(1), who owns a financial interest in any gaming operation or financial interest in the management of any gaming operation;
- (b) Provides professional services to a Class II and Temporary Casino Gaming Enterprises;
- (c) Is an elected official of the Tribe or has an immediate family member who is an elected official of the Tribe;
- (d) Is a Gaming Commissioner or employee of the Gaming Commission or has an immediate family member who is a Gaming Commissioner or employee of the Gaming Commission;
- (e) Has any role whatsoever in the management of a Class II and Temporary Casino Gaming Enterprise pursuant to a Management Contract between the Tribe and another party;
- (f) Has been convicted of a felony or any other criminal offense involving moral turpitude; or
- (g) Is younger than 25 years of age.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-5. Powers and duties of Board.**

(a) The TBE Board of Advisors shall be charged with the following duties and is authorized to undertake any and all actions necessary and appropriate for the execution of such duties consistent with the purposes for which it is established. The TBE shall be authorized to exist, operate and exercise the following enumerated powers for a perpetual period from the date of ratification of this chapter over all Class II and Class III Gaming activities owned by, or operated on behalf of, the Tribe other than the Class III Permanent Casino project under the control of the Tribal Casino Gaming Enterprise.

(1) Limitations of authority. The TBE shall possess only those powers arising under this chapter, and the authority and power of the TBE is constrained by the limitations contained in this chapter.

(2) Limited waiver of sovereign immunity. The Tribe hereby expressly waives any and all defenses based on its sovereign immunity from suit with respect to any action against the TBE in the Tribe's own court or the United States District Court of the Western District of North Carolina which seeks to enforce the obligations of the TBE. The Tribe consents to the exercise of jurisdiction over such action and over the TBE by said court and to accept service of process upon the TBE by delivery to any officer or managing agent of the Tribe doing business as the TBE, provided, however,

that such waiver and consent is limited to enforcement of such obligations of the Tribe doing business as the TBE, including:

- (i) Those assets acquired by the TBE through borrowed funds;
- (ii) Any proceeds obtained by the TBE through the use, ownership of other operation or disposition of such assets or of the business operated by the Tribe in the name of the TBE; and
- (iii) Any other assets produced or acquired by the Tribe and operated as part of the business of TBE; and

(3) Further provided, however, that such waiver and consent shall not extend to assets transferred in accordance with the ordinances of the Eastern Band of Cherokee Indians pertained to gaming and distribution of gaming proceeds from the accounts or business of the Tribe doing business as the TBE to other accounts or purposes of the Tribe.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-6. Order of business in Board meetings.**

(a) The Board of Advisors shall establish regular meetings, not less than monthly.

(b) Notice of meetings. Notice of each meeting of the Board shall be mailed to each member, addressed to each Board member's address or usual place of business, not less than five nor more than 20 days from the day on which the meeting is to be held, or notice may be delivered to such member personally not less than two days before the day on which the meeting is to be held. Notice of any meeting of the Board need not be given to any member who shall waive such notice.

(c) The Board of Advisors may call emergency meetings upon 24 hours notice to Board members with the time and place of such meeting and the business to be transacted at such meeting. Any business conducted in an emergency session shall be approved by not less than a majority of the full Board of Advisors.

(d) The Board of Advisors shall endeavor to attend all meetings of the TBE. The TBE shall decide whether absences of the Board member are excused or unexcused. Three consecutive unexcused absences of a Board member shall be reported by the TBE to Tribal Council. Three consecutive unexcused absences may be considered cause for removal by the Tribal Council.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-7. Elections of Board officers.**

The Board of Advisors shall, at the first meeting of each fiscal year, elect from among themselves a Chairperson, a Vice-Chairperson and a Secretary. The Board member selected on the basis of his or her experience in auditing or accounting shall be designated Treasurer.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-8. Annual report of Board to the Tribal Council.**

The Board of Advisors shall be responsible for the preparation and presentation to the Tribal Council of the certified annual audit subject to the requirements of section 16B-21(e), below and shall thereafter submit such annual audit to the NIGC.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-9. Preservation of records of the Board.**

(a) The Secretary of the Board of Advisors shall prepare and maintain complete and accurate records of all meetings and actions taken by the Board.

(b) The Treasurer shall keep complete and accurate financial records of the Board's expenses and receipts, report at least every fiscal quarter to the Board and shall submit a complete annual report to the Board.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-10. Report to the Tribal Council by Board.**

(a) The TBE Board of Advisors shall report at least annually to the Tribal Council. The Board may however be called to report to the Tribal Council as deemed desirable by the Tribal Council.

(b) Reports. TBE shall file quarterly reports with the Tribal Council and the Tribal Gaming Commission. The report shall include:

(1) Unaudited financial statements, prepared in accordance with generally accepted accounting principles, which reflect all business conducted during the preceding fiscal quarter and year to date, as well as budgeted amount for the balance of the current fiscal year;

(2) Material changes and developments since the last report in the business described, including a description of competitive conditions, research and development activities, new lines of business conducted by TBE, the approximate amount of total sales and revenue, and income (or loss) attributable to each specific type of Class II and III Game and for each line of business which accounted for more than ten percent of total sales and revenues of TBE;

(3) Any material pending legal proceeding to which TBE or a business venture of TBE is or was a party;

(4) Total hiring, promotions and terminations by job classification during the preceding fiscal quarter of TBE employees and work force forecast for each position classification for the current fiscal year; and

(5) Such other or different matters as the Tribal Council may request. TBE shall file with the Tribal Council such additional reports as required from time to time by the Tribal Council as well as meet all federal and state compliance.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-11. Additional duties of Board.**

The Board of Advisors shall by resolution approved by not less than a majority of full Board membership:

- (a) Annually prepare and submit for approval to the Tribal Council an annual operating budget to include short-range and long-range goals and objectives of TBE and the strategies used by TBE to accomplish these goals and objectives;
- (b) Approve activities budgets of all Class II and Temporary Casino Gaming Enterprise, other than that under the authority of the TBE, including their annual operating budgets and annual business plans;
- (c) Approve the establishment of accounts at specified banks as required;
- (d) Authorize the expenditure of funds in the accounts of TBE as necessary for the operation and maintenance of the business and properties of the Class II and Temporary Casino Gaming Enterprise and the timely payment of financial liabilities and obligations of the Class II and Temporary Casino Gaming Enterprise;
- (e) Enter into agreements, contracts, understandings with any government agency, person, partnership, corporation or Indian tribe with respect to the Class II and Temporary Casino Gaming Enterprise;
- (f) Lease property from the Tribe and others for such periods as are lawfully authorized to hold and manage or sublease such properties;
- (g) Borrow money and issue temporary or long term evidence of indebtedness and timely repay such debts;
- (h) Pledge the assets and receipts of the TBE as security for debts and acquire, sell, lease, exchange, transfer and/or assign the nonrealty property or interest of the TBE;
- (i) Prepare and adopt operation and management plans concerning gaming operations as required or otherwise necessary for the proper conduct with respect to the Class II and Temporary Casino Gaming Enterprise as authorized by the Tribal Council pursuant to this chapter and amendments hereto;
- (j) Employ a General Manager and delegate to the General Manager all duties and responsibilities as necessary for the lawful, efficient and profitable operation of the Class II and Temporary Casino Gaming Enterprise;
- (k) Cooperate with all other Tribal gaming agencies and entities of the Tribe;
- (l) The TBE Board of Advisors shall exercise approval authority with respect to the following, and shall timely provide such approval (or notice of nonapproval);
  - (1) The TBE Board of Advisors shall do all hiring for the temporary casino and the Tribal Bingo.
  - (2) The TBE Board of Advisors must follow Indian Preference and Tribal laws when hiring for the temporary casino and the Tribal bingo.

(3) Internal management policies, including a written manual sufficiently setting forth policy and procedures regarding:

(i) Hiring, disciplinary and discharge from employment of Class II and Temporary Casino Gaming Enterprise employees, including policy and rights of appeal governing the provision of the Indian Preference employment rights; and

(ii) Procurement policies.

(4) Vendor contracts, contracts concerning facility maintenance and repairs and contracts and subcontracts regarding ancillary commercial activities of the Class II and Temporary Casino Gaming Enterprise, including retail shops and concessions;

(5) Advertisement and promotional sales and activities;

(6) Construction plans and specifications, interior and exterior design and furnishings;

(7) Annual operating, capital and working capital budgets.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-12. Quorum of Board meetings.**

Three members of the Board shall constitute a quorum.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-13. Decision making by Board.**

The Board shall meet and decide all matters by the majority vote of the full Board. The Chairperson shall vote on all issues. A majority vote shall be binding on the Board. The Chairperson, or the Vice-Chairperson in the Chairperson's absence, shall preside at each meeting.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-14. Minutes of Board meetings.**

The Secretary shall cause to be kept a complete and accurate record of all Board meetings, copies of which shall be furnished to the Board and to the Tribal Council upon request.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-15. Compensation of Board members.**

Compensation, if any, of the Board members shall be determined by and approved by the Tribal Council and shall be paid from TBE funds. Board members shall be reimbursed from TBE funds for all reasonable out-of-pocket expenses incurred while acting on behalf of the TBE Board. Any such compensation and reimbursement shall be considered an operating expense of the TBE.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-16. Signatory authority of Board officers.**

The Chairperson and Vice-Chairperson or in either of their absences any other officer must sign papers for and on behalf of the TBE Board before any papers signed are deemed official.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-17. Accountability of Board members.**

The Board shall be responsible and accountable to the Tribal Council. Upon request of the Tribal Council, the Board shall promptly and fully advise the Tribal Council with respect to the business and affairs of the TBE and shall provide the Tribal Council with copies of the requested records, books or documents of TBE. The Tribal Council may require such written reports regarding TBE business and affairs as the Council deems necessary.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-18. Sub-committees of Board.**

The Board may from time to time establish consultant groups and advisory Boards which shall have such duties and the members of which shall hold office for such periods as the Board may determine.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-19. Board Officers.**

(a) *Positions and selections.* From among the Board members, the Board shall appoint the following Officers of the TBE Board ("Officers") a Chairperson, a Vice-Chairperson, Secretary and Treasurer.

(b) *Terms of office.* The Board shall appoint its Officers at each annual meeting of the Board in the first week of October.

(c) *Powers and duties.* Subject to the supervisory authority of the Board, an Officer shall have the following powers and duties, in addition to such other powers and duties as may be set for the office in this chapter or applicable law, or as may be assigned by the Board.

(1) *Chairperson.* The Chairperson shall preside over all Board meetings; sign on behalf of TBE all documents, contracts, or other instruments approved for such execution by the Board; and be responsible, jointly with the Treasurer, for the authorized and secure receipt, maintenance execution, endorsement, disbursement, and other disposition of all funds, checks, drafts, other order or demand for money, notes, other evidence of indebtedness, securities and other valuable instrument's and shall have such other powers and duties as may from time to time be assigned to him by the Board.

(2) *Vice-Chairperson.* The Vice-Chairperson shall exercise the powers and perform

the duties of Chairperson when the Chairperson is absent or disabled; sign on behalf of the TBE all documents, contracts or other instruments approved for such execution by the Board and shall have such other powers and duties as may from time to time be assigned to him or her by the Board.

(3) *Secretary*. The Secretary shall issue notices for all Board meetings; keep minutes of all meetings; and serve as custodian of and maintain all minutes of meetings and associated records and correspondence of the TBE Board. The Secretary shall make such reports and perform such other duties as are incident to the office, or are properly required or assigned to him by the Board.

(4) *Treasurer*. The Treasurer shall be responsible, jointly with the Chairperson, for the authorized and secure receipt, maintenance, execution, endorsement, disbursement, and other disposition of all funds, checks, drafts or other order or demand for money, notes, other evidence of indebtedness, securities and other valuable instruments be responsible for the maintenance of comprehensive financial books and records of transactions, prepared in accordance with generally accepted accounting principles. The Treasurer shall have principal oversight responsibilities for all financial functions and affairs of TBE and shall serve as the Board's principal financial liaison with the Tribal Council and other members of TBE management having financial management responsibilities with the TBE with any Contract Manager, accounting firm and financial advisors. The Treasurer shall perform such other duties incident to the office or that are properly required by the Board.

(5) *Delegation*. In case of unavailability or disability of any Board member, the Board may temporarily delegate the Board's powers or duties as an officer to another Board member, until the Board member is available or no longer disabled or until the Tribal Council fills the vacancy.

(d) *Maintenance, inspection and return of books and records*. There shall be maintained at the principal office of TBE all financial books and records, all minutes of Board meetings, and all other materials, books, records, documents, correspondence, and contracts. All such material shall be made available for inspection and copying at any reasonable time during the usual business hours:

(1) To the Tribal Council or duly authorized representatives thereof;

(2) To any Board member;

(3) To the Tribal Gaming Commission; and

(4) The agents of the State of North Carolina or of the NIGC conducting inspections pursuant to the approved Tribal-State Class III Gaming Compact or compliance with applicable federal law.

(e) *Duties upon leaving office*. Upon termination from office, each Board member, employee and agent of TBE shall turn over to his or her successor or to the Chairperson, in a timely fashion and in good order, all monies, books, records, minutes, documents, contracts or other property of TBE in his or her custody. If such property is not turned over or is damaged or missing, the Board may charge each Board member and any employee or agent a reasonable replacement fee.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-20. Ownership and revenues.**



(a) *Ownership.* All assets acquired by TBE and any of its business ventures shall be deemed to be owned by the Tribe and held by TBE as a Tribal enterprise operated by and for the benefit of the Tribe; provided, that title to real property and property which is to become a fixture or permanent improvement or part of the real property shall be held or taken in the name of the Tribe with restrictions upon alienation imposed by the United States, or in the name of the United States in trust for the Tribe if such property is located within the Qualla Boundary, and the title to such real property shall remain in trust status.

(b) *General account.* The TBE Board shall establish a general bank account with respect to each of the Class II and Temporary Casino Gaming Enterprise and shall deposit within such account all receipts with respect to each of the Class II and Temporary Casino Gaming Enterprise of the TBE. The account shall be used to meet ongoing business needs, contingencies, maintenance of property of TBE, capital for expansion of existing operations or additional operations under the terms of this chapter, and for such other purposes as deemed necessary and appropriate by the Board. The Board may direct the establishment of additional accounts as it may deem reasonable and necessary for the conduct of TBE business under this chapter.

(c) *Limitation on use of TBE net earnings.* No part of the net earnings of TBE shall inure to the benefit of or be distributed to any Board member or other private person, except that TBE is authorized and empowered to pay reasonable compensation for services rendered to TBE as provided in this chapter and to make payments and distribution in furtherance of the purposes set forth in this chapter.

(Ord. No. 388, 11-7-1996)

#### **Sec. 16B-21. Disbursement of funds.**

(a) The TBE shall make monthly disbursements to the Tribe of the profits realized by the TBE from its operations. Profits must be distributed from the TBE to the Tribe on not less than a monthly basis, with the requirements of the IGRA, chapter 16 of this Code, and other applicable Tribal law.

(b) The profits of the TBE required to be disbursed to the Tribe shall be defined as the total revenues received from all TBE operations less the TBE's operating costs, expenses and funding of reserves as determined in accordance with generally accepted accounting principles.

(c) Upon actual transfer or disbursement of funds from the TBE to the Tribe, the funds shall no longer be deemed the funds or property of TBE, and shall no longer be subject to or liable for the obligations of the TBE.

(d) All obligations incurred in connection with the operation of TBE as authorized by said Board shall be special obligations of the Tribe, payable solely from the assets of the TBE and subject to the limits of powers set forth in section 16B-5.

(e) The TBE shall provide an annual certified audit of its operations and other such audits as the Tribe deems necessary which shall be conducted by the Tribe's audit firm. The certified public accountants shall report any instances of noncompliance with the IGRA, the North Carolina - Cherokee Gaming Compact, the regulations of the NIGA, or the ordinances or regulations of the Tribe, which come to their attention during the performances of the audit.

The auditors shall be paid from operational funds of the TBE. The auditors shall have access to all books and records, all cash management procedure manuals, all internal control manuals, and all other records, documents, papers and persons employed by the TBE, as they deem necessary. For each audit, the auditor shall provide the Board of Advisors with a draft management letter and shall permit the Board and the General Manager a reasonable time within which to respond to the letter with changes to the operations of the TBE which address the concerns expressed in the draft management letter. The results of the certified audit shall be provided to the Board, the Tribe, the Tribal Gaming Commission, the NIGC and such other governmental agencies as may be required by law.

(f) The TBE shall file promptly any reports of gaming winnings, and the names of the winners, as the same may be required by the Internal Revenue Service of the United States and shall comply with all other provisions of the Internal Revenue Code applicable to the operation of the TBE, as well as, any state reports required by the Compact.

(g) The TBE shall submit an annual report to the Tribal Council, signed by the Chairperson of the Board, showing:

- (1) A summary of the year's activities,
- (2) The financial condition of TBE,
- (3) The condition of the TBE properties,
- (4) Any significant problems and accomplishments,
- (5) Plans for the future, and
- (6) Such other information as the Board or the Tribal Council shall deem pertinent.

(Ord. No. 388, 11-7-1996)

#### **Sec. 16B-22. Litigation.**

(a) Obligation to notify Tribe and Tribal Gaming Commission. TBE shall immediately notify the Chairman of the Tribal Council of the receipt of service of any summons or complaint upon TBE, or any Board member, employee or agent of TBE, or any management contractor, in which TBE, or any Board member, employee or agent of TBE is named in any suit, claim, action or other proceeding in any court, administrative or regulatory forum. A copy of the summons and complaint shall be provided to the Chairman of the Tribal Council and the Chairman of the Tribal Gaming Commission with the notice.

(Ord. No. 388, 11-7-1996)

#### **Sec. 16B-23. Professional services.**

TBE shall be entitled to retain the services of any business or professional consultants or any consultants or assistants; provided the TBE may retain the services of only those attorneys and auditors approved by the Tribal Council.

(Ord. No. 388, 11-7-1996)

#### **Sec. 16B-24. Severability of provisions.**

If any provision of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be violative of applicable law or otherwise invalid, then that provision shall be severable and considered null and void, but such judgment shall not affect, impair or invalidate the remainder of this chapter or its application to other persons and circumstances, but shall remain in full force and effect, and such judgment shall be confined in its operation to the provisions circumstances directly involved in the controversy in which such judgment was rendered.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-25. Adoptions of By-laws.**

The TBE Board may adopt By-laws for the TBE Board of Advisors, provided that such By-laws shall not contain provisions inconsistent with or in violation of the provisions of this chapter or applicable law.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-26. Amendment, rescission of previous legislation.**

This chapter is an amendment and restatement of Ordinance No. 232 for and on behalf of the Eastern Band of Cherokee Indians, and all prior ordinances and resolutions in conflict with this chapter are hereby rescinded, except that this section shall have no effect on chapters 16 and 16A of this Code.

(Ord. No. 388, 11-7-1996)

**Sec. 16B-27. Duration of TBE.**

The lawful existence of the TBE shall remain until or unless all obligations incurred by the TBE for the financing of the Class III Enterprise facilities have been satisfied including, without limitation, all obligations of the TBE under applicable credit documents.

(Ord. No. 388, 11-7-1996)

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## Chapter 16C: Allocation and Per Capita Distribution of Gaming Net Revenue\*

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**\*Editor's note:** Ord. No. 914, § 1, adopted September 13, 2001, amended the Code by renumbering former Art. XIV, §§ 16-19--16-40, as a new Ch. 16C, §§ 16C-1--16C-22.

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**Sec. 16C-1. Statement of policy.**

(a) This article is enacted in order to promote the general welfare of the Eastern Band of Cherokee Indians and its members, to provide for fair and equitable per capita distribution to eligible enrolled members from revenues allocated by the Tribal Council from gaming activities conducted by and on behalf of the Eastern Band of Cherokee Indians; and

(b) In order to provide for long term investment of profits derived from tribal gaming activities, to be invested in a manner which will provide for the general welfare of the Tribe over a period of time longer than is presently provided in the Tribe's Gaming Compact with the State of North Carolina; and

(c) In order to provide for an allocation of specified amounts to the Tribe's general fund, to be used in the current operating budget of the Tribe in each fiscal year; and

(d) To provide funding for retirement of debt associated with gaming activities and the development of housing and infrastructure needs of the Tribe.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

### **Sec. 16C-2. Definitions.**

For purposes of this article:

*Act* shall mean the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. 2701 et seq.

*BIA* shall mean the Bureau of Indian Affairs, or the official of such agency with the duty or assigned authority to act in behalf of the agency.

*Capital improvement program (CIP)* shall mean the program established to provide funding for ongoing capital improvements of Tribal operations and programs.

*Cherokee Central Schools Assistance Fund* shall mean that fund established to provide funding to implement the Cherokee Central Schools Strategic Plan and the Facility Master Plan.

*Cherokee Central School Board* shall mean those officials elected to carry out the policies and procedures for the Cherokee Central School System.

*Debt service sinking fund* shall mean the fund established to retire the long term debt of the TCGE which was assumed for purposes of constructing the casino facility on Highway 19.

*Eligibility for disbursement* shall apply to any person who is enrolled as of September 30, 1997, March 31, 1998, and each subsequent disbursement date thereafter with the Tribe, provided that person is enrolled no less than 60 days preceding a scheduled disbursement and meets all requirements of this article.

*Endowment and Investment Fund* shall mean a trust fund established pursuant to this article to administer funds allocated for investment and appreciation for the long term benefit of the Tribe and its members.

*External investments* shall mean investments that may be made by the Reserve Fund and the Endowment and Investment Fund which must be made under the Prudent Investor Rule, in accordance with the investments permitted to be made by such funds in this article, as amended or supplemented from time to time.

*Equivalent degree* shall mean a high school diploma, GED, degree from a vocational or technical college, or other appropriate educational institution.

*Higher education* shall mean college, graduate, or professional school. Higher education shall not mean "secondary school" as defined in section 16C-6(2)a.

*Higher education funding program* shall mean those funds established to provide funds to benefit enrolled members who attend institutions of higher education.

*Infrastructure Housing Fund* shall mean the fund created for the purpose of providing funds to assist in housing development as permitted to be made by this article, as amended or supplemented from time to time.

*Interim Distribution Fund* shall mean a fund into which 50 percent of Tribal net gaming proceeds are deposited monthly by Tribal Management and from which funds are distributed as per capita payments to competent adult members on an annual basis and into the Reserve Fund annually for minor and other legally incompetent members. This Fund shall be invested only in U.S. Treasury bills and other U.S. Government obligations having a maturity no later than December 15 of the current Tribal fiscal year.

*Internal investments* shall mean investments that are made by allocation or distribution of funds through the Tribal budget process, with such investments limited to on-reservation assets.

*Manager* shall mean that person or institution retained by the Tribe to manage and oversee the investments of the Reserve Fund.

*Members* shall mean those persons who are duly recognized as enrolled members of the Eastern Band of Cherokee Indians by the Tribe.

*Minor* shall mean a member who has not yet reached the age of 18 years.

*Net revenues* shall mean gross revenues of gaming activities less amounts paid out as prizes, less total operating expenses (including debt service and fees paid to a management contractor within the meaning of 25 U.S.C. § 2711), as audited and certified by an independent certified audit firm retained by the Tribe in accordance with generally accepted accounting principles.

*Ordinance* shall mean this allocation and per capita distribution chapter.

*Reserve Fund or Reserve Fund for Enrolled Minors and Incompetents* shall mean a fund created by the Tribe whose sole purpose is to receive a portion of the net gaming revenues for and on behalf of enrolled minor and incompetent members of the Tribe as the manager of such fund may determine.

*Revenue allocation plan* shall mean that plan providing for the use of funds derived from Tribal gaming operations by the Tribal General Fund and the Endowment and Investment Fund.

*State* shall mean the State of North Carolina.

*Tribal Council* shall mean the legislative body of the Eastern Band of Cherokee Indians.

*Tribal Court* shall mean the Cherokee Court of Indian Offenses or any successor Tribal Court established by the Eastern Band of Cherokee Indians.

*Tribal Entity* shall mean only Qualla Housing Authority, Cherokee Boys Club, the Tribal Casino Gaming Enterprise, the Tribal Bingo Enterprise, the Tribal Health Enterprise, and the Eastern Band of Cherokee Indians Community Development Corporation.

*Tribal management* shall mean the Executive Committee and the Tribal Finance Officer, who shall be jointly responsible for calculating net revenues on a monthly basis for purposes of this article and for making monthly deposits of such revenues into the appropriate accounts or funds under this article.

*Tribal shares* is defined as: Total Shares = 12 months/12 shares of the competent adult + 12 months/12 shares minors + x months per deceased members (as defined in section 16C-5(f))/12 shares).

*Tribe* shall mean the Eastern Band of Cherokee Indians. It does not mean individual members of the Tribe.

(Ord. No. 349-A, 11-16-1998; Ord. No. 528, 4-8-1999; Ord. No. 430, 10-25-2000; Ord. No. 914, § 1, 9-13-2001)

### **Sec. 16C-3. Allocations and applications of net revenues.**

In order to provide for the general welfare of the Tribe and its members, the Tribal Council shall review the income and expenses of Tribal gaming operations each year and after due consideration of the need to fund Tribal government operations and programs, shall determine the overall needs of the Tribe and its members as well as the need to promote Tribal economic development and shall then adopt a budget which will include the amount provided for allocation of available gaming funds. This budget shall include a determination of what amount shall be provided for Tribal purposes pursuant to the Indian Gaming Regulatory Act (Act). The budget shall first provide for distribution of 50 percent of net gaming revenues to Tribal members under this Chapter. The remaining 50 percent of net gaming revenues shall be allocated for distribution to support Tribal government operations, enterprises or programs; provide for general welfare of the Tribe and its members; promote Tribal economic development; donate to charitable organizations; or fund operations of local government agencies; all as the Tribal Council may deem necessary or appropriate, subject to the provisions of the revenue allocation plan for the funding of the Endowment and Investment Fund and the General Fund in this article.

(Ord. No. 349, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

### **Sec. 16C-4. Membership and eligibility.**

(a) *Membership requirements.* Those members, including minors and other legal incompetents, who are recognized by the Tribe as duly enrolled, and who do not fall within the specific exemptions listed in paragraph (b) below, shall be eligible for biannual allocations in the Reserve Fund and/or per capita payments.

(b) *Ineligible members.* The following are not eligible to receive per capita distributions:

- (1) A former member of the Eastern Band of Cherokee Indians who has been formally and officially disenrolled by the Eastern Band of Cherokee Indians. Any person who has been disenrolled by the Eastern Band of Cherokee Indians based on

false or misleading representations in the enrollment application process, or on the knowing acceptance of financial benefits of membership in any other Indian Tribe, shall be liable in Tribal Court for repayment of all funds received from the Eastern Band of Cherokee Indians.

(2) A member of the Eastern Band of Cherokee Indians who has been convicted of theft, embezzlement, or any other crime involving unlawful taking of money or property from any gaming operation of the Eastern Band of Cherokee Indians shall be subject to a civil penalty to be established by the Cherokee Gaming Commission under its hearing procedures set forth in Article VI of the Tribal Gaming Ordinance. That civil penalty shall not be less than 100 percent, nor more than 200 percent, of the amount determined by the Gaming Commission to have been taken by the member. The amount of the civil penalty shall be collected from each per capita check as a debt to the Tribe until the amount is paid in full. The member shall not receive any per capita payment until the full amount of the penalty has been collected.

(3) Three strikes rule.

a. Any member of the Eastern Band who has been convicted on three separate occasions of any drug offense, or any offense for which exclusion is allowed whether or not that punishment has been imposed, shall forfeit his or her right to receive per capita distributions of net gaming proceeds. This section shall apply only to offenses that occur after the effective date of this section. The Cherokee Court shall notify the Tribal Finance Office of any person to whom this section applies.

b. Such per capita distributions shall be paid to a responsible person for support of the convicted person's minor children, if any, to the Tribe to cover any debt owed by the defendant to the Tribe, or to the convicted person's victim(s) for restitution, until such amounts are paid in full.

c. If no amounts are payable under subsection (b)(3)b. of this section, then a convicted person to whom this section applies shall not be used in calculating the shares for per capita distribution.

(c) *Applications, written determination of eligibility.* Applications for a finding of eligibility may be made at any time and shall be submitted in such form and manner as the Enrollment Office may reasonably require. In order to provide for the orderly review and consideration, applications submitted within less than 60 days of a scheduled distribution date shall not be eligible for distribution until the next scheduled distribution. At least 45 days, but no longer than 50 days before the date of a scheduled distribution to the Reserve Fund or per capita payments as provided in section 16C-6 of this Chapter, the Enrollment Office shall publish a list of those persons found eligible for such payments. Any applicant found not to be eligible shall be provided with a written determination of the basis for the denial by the Enrollment Office.

(d) *Appeal of findings.* Any person who believes that the Enrollment Office has made an erroneous determination regarding their own membership may appeal that finding in accordance with the Tribal Enrollment Ordinance, chapter 49 of this Code. The Enrollment Officer shall offer such evidence and testimony as may be appropriate to justify the finding of ineligibility.

(e) *Time limit for claiming distribution.* Tribal members are responsible for keeping the Tribal Enrollment Office informed of their addresses.

(1) A member who is eligible for, but did not receive, any distribution made before December 31, 1998, shall file a written request with the Finance Office on or before December 31, 1999.

(2) A member who is eligible for, but does not receive, a per capita distribution made after the effective date of this amendment must make a written request to the Finance Office within 60 days of the distribution.

Upon failure to make such a request in writing, the member's entitlement shall expire. Any unclaimed funds held in reserve for such claims shall be distributed to all eligible members at the next per capita distribution.

(Ord. No. 349-A, 11-16-1998; Ord. No. 528, 4-8-1999; Ord. No. 430, 10-25-2000; Ord. No. 914, § 1, 9-13-2001)

### **Sec. 16C-5. Distribution to members.**

(a) *Biannual distribution.* Per capita payments shall be made two times each year to all competent adult members eligible for the distribution as set forth in section 16C-4. Likewise, an appropriate share shall be set aside twice each year in the Reserve Fund on behalf of minor and incompetent members.

(b) *Distribution for deceased members.* Eligible members as defined under section 16C-4 who have passed away prior to the date of any scheduled disbursement shall be eligible to receive a pro rata share of the proposed disbursement for each and every month during the calculation period that they were alive. The Tribal Finance Office shall disburse any and all funds of the deceased Tribal member to the authorized, or court appointed, administrator for the deceased's estate.

(c) *Distribution to handicapped members.* Eligible minors who have a severe handicap or terminal illness may request early distribution of per capita payments through their parent or guardian in accordance with section 16C-6(3).

(d) *Garnishment.* Except as specifically set forth in this section, the per capita disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity, including the Tribal Court. Per capita payments may be garnished only as follows:

(1) *Garnishment for child support.* A parent, guardian, court-appointed trustee, or other individual or entity, who has provided for the support of any minor Tribal member, may request the court-ordered garnishment of any responsible enrolled member's per capita distribution for the support of the minor child. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.

(2) *Garnishment for debts owed to the Eastern Band of Cherokee Indians.* The Tribe, or a Tribal entity as defined in this article, may administratively garnish a member's per capita payment to reimburse the Tribe or the Tribal entity for any outstanding fees, costs, rent, judgments, user fees, or other charges owed to the Tribe or the Tribal entity. This subsection shall not apply to fees, costs, rent, judgments, user fees, or other charges owed to individual Tribal members. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.



(3) *Procedure*. Garnishment orders may only be entered if the following minimum due process requirements have been met:

- a. Garnishment of per capita is only permitted to enforce a valid, final, and enforceable court order or judgment entered after the defendant was personally served with a summons and complaint, and given an opportunity to be heard in compliance with the law of the jurisdiction granting the judgment.
- b. The defendant must be given notice of the request for garnishment, either in the complaint originally served on the defendant or by a motion served on the defendant by first class mail at least ten days prior to hearing on the garnishment motion.
- c. A list of garnishments must be received by the Tribal finance office no less than 30 days before a scheduled disbursement.
- d. The garnished funds shall be deposited with the Tribal Court for disbursement in accordance with the court order after the time for legal review under subparagraph (d)(4) has passed.
- e. After these procedures have been followed once, the garnishment order shall remain in effect for subsequent distributions until the debt is paid in full.

(4) *Legal review*. Funds garnished pursuant to Tribal court order shall be held by the Tribal finance office for a period of ten working days after the per capita disbursement. Upon a request within those ten days by a member whose per capita has been garnished, the office of the attorney general will review the court records to ensure there was compliance with the procedures set forth in this section. Upon discovery of a failure to comply with these procedures, the office of the attorney general will notify the court and the funds shall be held by the court in escrow until the tribal member can be given notice and an opportunity to be heard.

(e) *Voluntary assignment*. This subsection shall apply only to debts owed to the Tribe or to a Tribal entity listed in section 16C-2. A member who owes an obligation to the Tribe or a Tribal entity may enter into a voluntary assignment agreement for all or part of the amount of the scheduled disbursement, subject to the following limitations:

(1) The Office of the Attorney General shall develop a voluntary assignment agreement form. Voluntary assignments shall not be enforced unless they are completed on the proper form, notarized, and filed with the Tribal Finance Office at least 30 days prior to a scheduled per capita disbursement.

(2) A Tribal entity requesting a voluntary assignment shall first pay a fee of \$35.00 to the Tribal Finance Office to defer the costs of administering the voluntary assignment, which fee will be charged to the member.

(3) A voluntary assignment may cover past and/or future obligations owed by the member to the Tribe or Tribal Entity.

(4) Valid garnishment orders entered under subsection (d) of this section shall have priority over voluntary assignments filed under this subsection. When there is more

than one voluntary assignment, priority shall be given by date of filing. Voluntary assignments shall remain in effect until the amount assigned is paid in full.

(f) *Priorities.* In the event there are multiple garnishments against a member, priority for disbursement of garnished funds shall first be in the order set forth in this section, namely:

(1) Child support; and

(2) Debts to the Tribe or a Tribal Entity.

Within each category above, priority shall be determined by the date of the garnishment order.

(g) *Limitation on garnishment.* Except as specifically set forth in subsections (d) and (e) of this section, the per capita disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity, including the Tribal Court. Any resolution, ordinance, or code provision which states or implies otherwise is hereby rescinded and shall have no further force or effect.

(h) *Timing for distribution.* Distribution to members shall be made within 75 days of the following:

March 31st of any disbursement year following 1998; and, September 30th of each disbursement year.

For purposes of the first disbursement scheduled for 1998, distribution shall be made no later than July 31, 1998. Any scheduled disbursements made in accordance with this article after July 31, 1998 shall be made within 75 days of the above referenced dates. The Finance Office shall calculate and disburse per capita to eligible members no later than 75 days following the first disbursement closure date and again at the close of the fiscal year. In calculating disbursement, the Finance Office shall use financial data provided by the TBE and TCGE operations management for the first biannual disbursement and shall calculate disbursements for the second biannual disbursement through a certified audit. Tribal Management shall make appropriate allocations and transfers and insure that per capita distributions are made no later than 75 days after the end of the first disbursement closure date and again at the end of the fiscal year.

(i) *Certified roll of eligible members.* The Tribal Enrollment Office shall deliver to Tribal Management a current certified roll of all members eligible under this article, and in accordance with the Tribal Enrollment Ordinance, as of March 31 and a second certified roll as of September 30 of each disbursement year. Said certification shall be submitted to the Finance Office no later than 15 days following the aforementioned dates. This roll shall also be published in the Cherokee One Feather no later than 15 days following the above dates, together with notice to promptly notify the Enrollment Office of any objections to persons listed on the roll, identification of any persons deemed to be ineligible for distribution or of the death of any person listed on the roll.

(j) *Percentage of net revenue.* The percentage of the net gaming revenue available for distribution to each competent adult member under this article shall be determined by applying the following formula: An amount shall be added which is the sum of Total Shares. Total Shares is defined as: Total Shares = 12 months/12 shares of the competent adult + 12 months/12 shares minors + x months per deceased members (as defined in section 16C-5(b))/12 shares. Total shares shall then be divided into 50 percent of Net Revenues to equal the distribution per share. The distribution per share shall be multiplied by the total shares distributable to competent adult members, minors, and deceased members which shall

equal no more than the Reserve Fund and/or per capita distribution which is required pursuant to the terms and conditions of this article. Anyone not on the certified roll for the biannual distribution shall have no right to any past Reserve Fund and/or per capita distributions. This requirement shall become effective on the date of ratification of the ordinance from which this article derives.

(k) *Balance of funds.* The balance of the funds after calculation of the amount to be distributed to competent adult members as set forth in section 16C-5 shall be transferred to the Reserve Fund for the benefit of enrolled minor and incompetent adult members, to be allocated as set forth in section 16C-6.

(l) *Improper assignments and garnishments.* No per capita assignment or garnishment, except for child support or debts to the Tribe, should have been accepted by the Cherokee Court of Indian Offenses after the ratification of Ordinance No. 528 (1999) on April 14, 1999. The court improperly accepted assignments and garnishments after that date, and those assignments and garnishments are void and unenforceable by operation of law. Because members of the Tribe and the public have relied in good faith on the court's improper action, however, the Tribal Council has determined that those improper assignments and garnishments will be partially honored on a one-time basis using the following procedure:

(1) The remedy provided in this subsection shall apply only to garnishments ordered by the court after April 14, 1999, and filed with the court on or before November 29, 1999. Valid garnishments or assignments of per capita ordered by the court before April 14, 1999 shall remain enforceable until paid in full. No garnishment or assignment of per capita filed after November 29, 1999 shall be valid or enforceable in any way, unless it is for child support or a debt to the Tribal government or a Tribal Entity.

(2) Garnishments for child support or tribal debts, and other garnishments ordered prior to April 14, 1999, shall be released to the court after the ten-day legal review period provided in subsection (d)(4) of this section. The Tribal finance office shall freeze all other funds subject to court garnishments or assignments pending hearing.

(3) The garnishments or assignments subject to a hearing under this subsection shall be paid only in the amount of the principal loan or debt, plus interest at a rate of 24 percent per annum (two percent per month) from the date of the loan through November 30, 1999.

(4) The Tribal Court shall conduct a hearing on each garnishment or assignment. The clerk of court shall give the debtor and creditor notice by personal service or mail at least 30 days prior to the hearing. The hearing shall be held before a judge or magistrate whose name does not appear on the original garnishment order.

(5) At the hearing, the creditor shall have the burden of proving, by clear and convincing evidence, the principal amount of the loan or debt on which the garnishment or assignment was based. The debtor shall have the right to raise defenses at the hearing. If the creditor fails to meet that burden of proof, then the judge or magistrate shall enter an order that the creditor receive nothing.

(6) At the conclusion of each hearing, the judge or magistrate shall enter an order, signed in person by that judge or magistrate, stating:

a. The principal amount of the loan or debt, if proven; and

b. The amount of interest accrued at two percent per month from the date of the loan through November 30, 1999.

In no event shall the amount ordered by the court exceed the amount of the original assignment or garnishment order.

(7) Upon receipt of the order described in subparagraph (l)(6) from the court, the finance office shall release the funds so ordered to the clerk of court for distribution to the creditor. Any balance remaining, after hearings and orders on all garnishments allegedly executed by a tribal member, shall be released to the tribal member.

(8) Orders entered pursuant to this section shall remain in effect until the allowed amount is paid in full.

(9) This subsection shall not affect the validity of garnishments for child support or Tribal debts, the validity of garnishments ordered by the court before April 14, 1999, or the validity of voluntary assignments properly filed with the finance office under former subsection (e). All such garnishments and assignments have priority over the orders entered under this subsection.

(10) This subsection is not intended to affect the contractual rights of any creditor. It is intended to provide a partial remedy for creditors whose garnishments or assignments are otherwise void and unenforceable by operation of law. For any alleged claim that remains unsatisfied after the hearing, the creditor may file a separate civil action against the debtor in the Tribal Court and pursue the judgment collection procedures provided by Chapter 25, which do not include garnishment or assignment of per capita.

(11) The clerk of court shall prepare a budget amendment providing for the return of all filing fees charged to creditors for garnishments or assignments ordered after April 14, 1999 and covered by the hearing procedures of this subsection. Upon approval of that budget, the clerk shall return all such filing fees to the respective creditors. Debtors shall not be required to pay those filing fees.

(12) The Tribal Court is directed to post the following notice in a prominent location easily visible to the public in the clerk's office at all times:

NO VOLUNTARY ASSIGNMENTS OR GARNISHMENTS OF PER CAPITA PAYMENTS WILL BE ACCEPTED BY THIS COURT. PER CAPITA PAYMENTS CAN ONLY BE GARNISHED AFTER A JUDGMENT IS ENTERED BY THIS COURT FOR CHILD SUPPORT OR DEBTS OWED TO THE EASTERN BAND OF CHEROKEE INDIANS OR ITS ENTERPRISES.

(13) Nothing in this Chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians, or its officers, agents, or employees acting in their official capacities. To the extent that any other tribal law may be interpreted as such a waiver of sovereign immunity for any claim or action related to distribution of per capita payments, it is hereby rescinded.

(Ord. No. 349-A, 11-16-1998; Ord. No. 528, 4-8-1999; Ord. No. 21, 11-24-1999; Ord. No. 69, 12-2-1999; Ord. No. 223, 5-16-2000; Ord. No. 430, 10-25-2000; Ord. No. 914, § 1, 9-13-2001)

**Sec. 16C-6. Minors and other legal incompetents.**

The interest of minor and other legally incompetent members otherwise entitled to receive per capita payments shall be disbursed as follows:

(a) *Reserve Fund for enrolled minors and incompetents.*

(1) Within 60 days of passage and approval of this article by the Secretary of Interior, a Reserve Fund shall be established for all minor members and legally incompetent members who shall be eligible for per capita payments. The Tribe shall select an institutional Manager with suitable expertise and discretion to administer the Reserve Fund, as well as an individual Manager who shall ensure the investments for the Reserve Fund are appropriate. The eligibility and actual receipt by a member of a per capita distribution upon reaching the age of 18 years shall not compel or otherwise change the conditions and provisions of the Reserve Fund as set forth in the following subsections.

(2) The Reserve Fund shall be a Fund created by the Tribe whose sole purpose is to receive a portion of funds allocated for per capita distribution pursuant to the Act. The Reserve Fund shall be invested in external investments for the long term benefit of the minors and incompetent adult members as the Managers of such Fund may determine. Reserve Fund assets shall be invested in a reasonable and prudent manner so as to protect the principle and seek a reasonable return.

(3) Funds from the Reserve Fund not used for education or health purposes will be paid directly to the minor member in accordance with procedures established by the Reserve Fund Managers. Nothing in these procedures shall prohibit the minor member, upon reaching majority, from electing to defer payment of some or all of the payment of their portion of the Reserve Fund indefinitely. This provision shall not operate to compel disbursement of funds to members legally determined to be incompetent.

(4) Beginning with the first disbursement in 1999, and continuing with every disbursement thereafter, any minor member who reaches the age of 18 years must submit a high school diploma, or an equivalent degree, to the finance office prior to receiving any funds from the reserve fund. Any minor member who fails to submit a high school diploma or documentation of an equivalent degree, shall not be entitled to any monies held in their name in the reserve fund until the earlier occurrence of the following:

- a. The minor member has met the requirements of this section; or
- b. The minor member reaches the age of 21 years, which waives the requirement of an educational degree and immediately entitles the member to all monies held under their name in the Reserve Fund. Students with learning disabilities or other disabilities may present a certificate of attendance showing that the student has attended a full 12 years of school and that certificate shall be deemed to be an equivalent degree for purposes of this section.

(b) *Early distribution to minors and incompetents for education.*

(1) Distribution to such members from the Reserve Fund prior to when they reach the age of 18 years shall be made only for attendance at a secondary school, college, graduate or professional school. For purposes of this article, "secondary school" shall mean a private school or boarding school that is a member of the National Association of Independent Schools. Incompetent members shall be eligible to receive a distribution for special training or education in programs or schools for disabled or handicapped students.

(2) Application for distribution from the Reserve Fund for educational purposes may be made by the member, their parent or legal guardian and must be approved by the Managers. The funds disbursed may not exceed the cost of tuition, miscellaneous fees, room, board, books and equipment. Funds may be disbursed, upon a showing of special need, but only in an amount up to the proportional share allocated to that person at the time of the disbursement, to the parents or the guardians of the trust beneficiaries in such amounts as may be necessary to provide for the education of the member.

(3) If the member is still a minor, in order to request such funds, a written request must be submitted to the Managers of the Reserve Fund by a parent or legal guardian. The parent or legal guardian shall maintain records sufficient to demonstrate that the funds disbursed are expended for the child's education needs as required by this article and any other applicable law.

*(c) Early distribution to minors and incompetents for health care.*

(1) Funds in the Reserve Fund allocated a minor or legally incompetent member shall be available for the benefit of such member's unmet health care needs when the needs of such person are not being met from other available personal, Tribal or other public sources and upon a finding of special need by the Cherokee Court. In order to request such funds, a written request must be submitted to the Manager of the Reserve Fund by a parent or legal guardian. The parent or legal guardian shall maintain records sufficient to demonstrate that the funds disbursed are expended for the child's special health care needs as required by this article and any other applicable law.

(2) Application for funds for unmet serious health care needs may be made by the member, their parent or legal guardian and must be approved by the Reserve Fund Managers.

(3) In addition to the above provisions, any severely handicapped or terminally ill minor may receive early disbursement of any funds held in their name through a request submitted by their parent or legal guardian. Said request shall be submitted with specific documentation by both educational and medical personnel to support the representation of either the severity of the handicap or the terminal illness.

Requests submitted under this paragraph shall be reviewed by a team of educational and health professionals appointed by the Principal Chief who shall evaluate each request and shall make a recommendation to the Principal Chief. After reviewing the recommendations, the Principal Chief shall authorize the Finance Office to release appropriate funds to the minor child.

(d) *Distributions to deceased minors.* Any minor who passes away prior to a biannual disbursement or prior to reaching the age of majority, shall have any funds held in their name disbursed to their estate in accordance with section 16C-5(c).

(e) *Disbursements prior to obtaining 18 years of age.* No disbursements from the Reserve Fund shall occur until the minor has at least obtained the age of 18 years. No court order evidencing emancipation prior to attaining majority shall be accepted or acted upon to authorize a disbursement from the Reserve Fund.

(f) *Voluntary disenrollment.* No distributions whatsoever from the Reserve Fund shall be made to any minor or, in the alternative to any guardian or parent of a minor, when that minor, or that minor's guardian or parent voluntarily chooses to renounce and abandon their enrollment with the Tribe. Any monies held for the minor prior to disenrollment shall be distributed equally among those other minors which remain in the Reserve Fund.

(g) *Disbursements.* For purposes of this article disbursements made from the Reserve Fund shall only occur at the next regularly scheduled quarterly disbursement date.

(Ord. No. 349-A, 11-16-1998; Ord. No. 392, 9-18-2000; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-7. Taxation.**

All payments made to individual members are subject to federal taxation, and members receiving per capita payments shall be subject to the withholding of appropriate amounts for such tax payment in the manner and to the extent provided by applicable law.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-8. Technical amendments.**

Technical amendments to this article are herewith authorized whenever and wherever necessary in order to comply with language and terms established or required by the U.S. Tax Code that would affect the intent and purpose of this article in order to preserve and limit taxation of per capita distributions until such distributions are received by the individual members or by their parent or legal guardian. The Tribal Council herewith approves and confirms technical language amendments proposed by tax counsel in connection with the establishment of the various funds set forth in this article, together with subsequent proposed technical amendments from tax counsel for the Tribe or the funds resulting from changes to the U.S. Tax Code, federal tax regulations, court decisions or interpretations thereof.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-9. Revenue allocation plan.**

The 50 percent of net gaming revenues not distributed to individual members or to the reserve fund shall be allocated for Tribal purposes under section 16C-3 in the following manner:

(a) Commencing October 1, 2000 and each year thereafter, Tribal operations shall be funded by payment to the general fund either in the amount representing 20.25 percent of net gaming revenues, or the balance of net gaming revenues not allocated

to the other funds set forth in this section, whichever is less.

(b) At the end of each fiscal year, all revenues allocated to the general fund which have not been obligated or expended shall be distributed to the endowment and investment fund.

(c) The general fund allocation for fiscal year 2002 shall be \$29,970,000.00. For fiscal year 2003 and each year thereafter, Tribal operations through the general fund shall be permitted to receive an increase in its allocation from net gaming revenues by a maximum of 10 percent over the prior year's allocation while remaining subject to the limitation of 20.25 percent of the net gaming revenues for each such year.

(d) Commencing October 1, 2000, and each year thereafter, ten percent of net gaming revenues, and not less than \$12,000,000.00 per year, shall be allocated to a debt service sinking fund for the purposes described in section 16C-14.

(e) Commencing on October 1, 2000, and each year thereafter, the housing infrastructure fund shall be funded in the amount of one percent of net gaming revenues. At the end of each fiscal year, all funds in excess of \$1,000,000.00 remaining in the housing infrastructure fund shall be distributed to the endowment and investment fund.

(f) Commencing October 1, 2001, and each year thereafter, 1.0 percent of net gaming revenues shall be allocated to a higher education funding program for the purposes described in Section 16C-16. At the end of each fiscal year, all funds in excess of \$500,000.00 remaining in the higher education fund shall be distributed to the endowment and investment fund.

(g) Commencing October 1, 2000, and each year thereafter, 3.5 percent of net gaming revenues shall be allocated to a capital improvement program (CIP) for the purposes described in section 16C-17.

(h) Commencing October 1, 2000, and each year thereafter, two percent of the net gaming revenues shall be allocated to a Cherokee Central School Assistance Fund for purposes described in section 16C-18.

(i) Commencing October 1, 2000, and each year thereafter, three percent of the net gaming revenues shall be allocated to a health program supplement fund for the purposes described in section 16C-19. At the end of each fiscal year, all funds in excess of \$2,000,000.00 remaining in the health program supplement fund shall be distributed to the endowment and investment fund.

(j) Commencing October 1, 2001, and each year thereafter, 0.50% of the net gaming revenues shall be allocated to a Tribal home improvement program fund for the purposes described in section 16C-20. Commencing October 1, 2002, this allocation shall be reduced to 0.25 percent of net gaming revenues. At the end of each fiscal year, all funds in excess of \$1,000,000.00 remaining in the Tribal home improvement program fund shall be distributed to the endowment and investment fund.

(k) Commencing on October 1, 2000, and each year thereafter, eight percent of net gaming revenues, and not less than \$9,500,000.00 per year, shall be allocated to the endowment and investment fund for the purposes set forth in section 16C-10.



Commencing October 1, 2002, this allocation shall be increased to 8.75 percent of net gaming revenues.

(l) Commencing October 1, 2001, and each year thereafter, 0.75% of net gaming revenues shall be allocated to the mutual help program fund for the purposes described in section 16-40. At the end of each fiscal year, all funds in excess of \$500,000.00 remaining in the mutual help program fund shall be distributed to the endowment and investment fund.

(Ord. No. 989, 9-7-1999; Ord. No. 349-A, 11-16-1998; Ord. No. 686, 9-7-1999; Ord. No. 70, 12-2-1999; Ord. No. 430, 10-25-2000; Ord. No. 914, § 1, 9-13-2001; Ord. No. 891, 9-28-2001)

#### **Sec. 16C-10. Cherokee Endowment and Investment Fund.**

The Tribal Council shall create and fund a separate Endowment and Investment Fund with net gaming revenues as directed in section 16C-9(k). The purpose of this Fund shall be to provide a long term investment and capital appreciation vehicle for the Tribe. The goal for the fund shall be to accumulate and grow capital for the long term economic growth and security of the Tribe and its members. Tribal management shall make monthly deposits from net gaming revenues into this Fund.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-11. Investment of Endowment and Investment Funds.**

Money deposited in this Fund shall be invested in a balanced investment portfolio seeking long term gain and capital appreciation, with investments not subject to investment limitations of GASB. Such funds may also be used to purchase additional lands for the Tribe, to acquire or make loans or investments in new or ongoing business enterprises for the Tribe, to acquire or make loans or investments in additional business enterprises and/or to supplement or loan funds to existing Tribal business enterprises and to pay off existing indebtedness of the Tribe or Tribal enterprises, but such funds shall be limited to External Investments as defined in this article. Any additional land purchases or any loans made to ongoing business enterprises, or loans made to additional business enterprises shall be approved by Tribal Council.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-12. Limitations on investment of Endowment and Investment Fund.**

No more than ten percent of the Fund may be invested in any single stock, bond, instrument, entity, company, Fund or project or cumulatively.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-13. Trustee of Endowment and Investment Fund.**

The Tribe shall appoint a Trustee for the Fund, who shall be selected by the Tribal Business Committee and approved by the Tribal Council. The Trustee shall be an individual qualified and experienced in managing and investing funds but such Trustee shall consult and work with not less than three institutional Trustees to establish a balanced portfolio for the Fund. After appointment by Tribal Council, the Trustee and Tribe shall enter into a Trust

Agreement setting forth the terms and conditions of the Trust and the duties of the Trustee and provisions for removal and appointment of a substitute Trustee by the Tribe.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-14. Debt Service Sinking Fund.**

The Tribal Council shall create and fund a separate Debt Service Sinking Fund with net gaming revenues as directed in section 16C-9(d). The purpose of this Fund shall be to provide a long term investment vehicle for the Tribe to retire the long term debt incurred through the Tribal Casino Gaming Enterprise (TCGE) which was assumed for purposes of constructing the casino facility on Highway 19. The goal for the Fund shall be to accumulate and grow capital for the retirement of long term debt of the TCGE.

(1) *Investment of Debt Service Sinking Fund.* Money deposited in this Fund shall be invested in a balanced investment portfolio seeking long term gain and capital appreciation, with investments not subject to investment limitations of GASB.

(2) *Limitations on investment of Debt Service Sinking Fund.* No more than ten percent of the Fund may be invested in any single stock, bond, instrument, entity, company, fund or project. Additionally, no more than ten percent of the Fund shall be cumulatively invested in any single stock, bond, company or project.

(3) *Trustee of Debt Service Sinking Fund.* The Tribe shall appoint a trustee for the Fund, who shall be selected by the Tribal Business Committee and approved by the Tribal Council. The Trustee shall be an individual qualified and experienced in managing and investing funds, but such Trustee shall consult and work with the necessary institutional Trustees to establish a balanced portfolio for the Fund. After appointment by the Tribal Council, the Trustee, or Trustees, and Tribe shall enter into a Trust Agreement setting forth the terms and conditions of the Trust and the duties of the Trustee and provisions for removal and appointment of a substitute Trustee or Trustees by the Tribe.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-15. Housing Infrastructure Fund.**

The Tribal Council shall create and fund a separate Housing Infrastructure Fund with net gaming revenues as set forth in section 16C-9(e). The purpose of this Fund shall be to provide funding to assist Tribal members in obtaining adequate housing.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-16. Higher Education Funding Program.**

The Tribal Council shall create and fund a separate Higher Education Funding Program with net gaming revenues as set forth in section 16C-9(f). The purpose of this Program shall be to provide funding to assist enrolled members with their higher education needs.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

#### **Sec. 16C-17. Capital Improvement Program (CIP).**

The Tribal Council shall create and fund a separate Capital Improvement Program with net

gaming revenues as set forth in section 16C-9(g). The purpose of this Fund shall be to provide for ongoing capital improvement of Tribal operations and programs.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

**Sec. 16C-18. Cherokee Central School Assistance Fund.**

The Tribal Council shall create and fund a Cherokee Central School Assistance Fund with net gaming revenues as set forth in section 16C-9(h). The purpose of this Fund shall be to implement the Cherokee Central Schools Strategic Plan and Facility Master Plan. At least 50 percent of this Fund shall be allocated toward implementing the Facility Master Plan. This Fund shall be administered by the Cherokee Central School Board.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

**Sec. 16C-19. Health Program Supplemental Fund.**

The Tribal Council shall create and fund a health program supplemental fund with net gaming revenues as set forth in section 16C-9(i). The purposes of this fund shall be:

- (1) To purchase Medicare Part B insurance for eligible enrolled members;
- (2) To assist enrolled members needing Priority 1 medical procedures not otherwise covered by the contract health services program at Cherokee Indian Hospital;
- (3) To supplement funding for a wound care center to serve enrolled members;
- (4) To supplement necessary dental services for enrolled members who are children;
- (5) To purchase pharmaceuticals for enrolled members pursuant to guidelines to be established by the Health Board and Tribal Council as described below;
- (6) To supplement funding shortfalls at the Cherokee Indian Hospital;
- (7) To pay administrative expenses; and
- (8) For such other health-related purposes as the Tribal Council may determine by resolution.

The health and medical division, in consultation with the Tribal health board, shall conduct a needs assessment and develop a plan for eligibility and other requirements for such programs, subject to final approval by the Tribal Council. Based on that plan, funds will be allocated to the various programs through the annual budget approval process. The Eastern Band shall be payor of last resort for all programs established to purchase medical services, and shall not be responsible for coverage except to the extent that funds are specifically appropriated by the Tribal Council.

(Ord. No. 686, 9-7-1999; Ord. No. 430, 10-25-2000; Ord. No. 914, § 1, 9-13-2001)

**Sec. 16C-20. Tribal Housing Improvement Program.**

The Tribal Council shall create and fund a Tribal Housing Improvement Program with net gaming revenues as set forth in section 16C-9(j). The purpose of this Fund is to provide funding to alleviate the backlog of participants in the Housing Improvement Program (HIP) currently in place. This Fund shall be used in conjunction with existing HIP funding. This

Fund shall be administered by the Tribal HIP Committee. Once the backlog of housing is eliminated, this program will be downgraded to an appropriate level of funding. After two years, this program shall cease.

(Ord. No. 686, 9-7-1999; Ord. No. 914, § 1, 9-13-2001)

**Sec. 16C-21. Amendments.**

Except for technical amendments provided in section 16C-8, this article may be amended by action of the Tribal Council in a meeting at which a quorum is present by a majority vote of the Council membership.

(Ord. No. 349-A, 11-16-1998; Ord. No. 914, § 1, 9-13-2001)

**Sec. 16C-22. Mutual Help Program Fund**

The Tribal Council shall create and fund a mutual help program fund with net gaming revenues as set forth in section 16C-9(l). This fund shall be administered by the Qualla Housing Authority and shall be used to supplement the housing authority's mutual help housing program.

(Ord. No. 430, 10-25-2000; Ord. No. 914, § 1, 9-13-2001)

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## Chapter 16D: UCC Ordinance for Tribal Casino Gaming Enterprise\*

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**\*Editor's note:** See editor's note, Ch. 16, Art. XIII.

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**Sec. 16D-1. Adoption of Articles 1 and 9.**

(a) Except as otherwise provided or modified by this ordinance, all provisions of Article I and Article 9 of the Uniform Commercial Code, as set forth in the 1972 Official Text of the Uniform Commercial Code drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws (the "UCC"), are adopted as the law of this Tribe applicable to the TCGE Refinancing Transaction (but the provisions of this Ordinance shall not be applicable to any other transactions of the Tribe or TCGE).

(b) To the extent that Article 1 and Article 9 incorporate definitional provisions from Articles 2, 2A, 3, 4, 5, 6, 7 or 8 of the UCC, such definitions as set forth in Articles 2, 2A, 3, 4, 5, 6, 7 or 8 of the UCC are adopted.

(c) To the extent that Article 1 and Article 9 refer to nondefinitional provisions of Articles 2, 2A, 3, 4, 5, 6, 7 or 8 of the UCC, any court interpreting this Ordinance shall be guided by such provisions of Articles 2, 2A, 3, 4, 5, 6, 7 or 8 to the extent necessary to give the intended effect to Article 1 and Article 9, but such provisions of Articles 2, 2A, 3, 4, 5, 6, 7 or 8 are not specifically adopted as the law of this Tribe.

(d) As adopted by this Chapter, all references to Article 1 and Article 9 to "this state" are modified to refer to the Tribe or TCGE, or to lands under the jurisdiction of the TCGE or the Tribe, as the context requires.

(e) As used in this Chapter, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico, including lands under the jurisdiction of this Tribe.

(Ord. No. 914, § 2, 9-13-2001)

**Sec. 16D-2. Amendments to Article 1 of the Uniform Commercial Code.**

Article 1 of the UCC, as adopted by this chapter, is amended as follows:

(1) Section 1-101 is deleted and all references in Article 1 to this Act shall be deemed to refer to this Ordinance.

(2) Section 1-102(2) is deleted.

(3) Section 1-103 is modified to provide as follows: "Unless displaced by the particular provisions of this Ordinance, the principles of law and equity as developed in this Tribe and, where required to supplement Tribal law, the individual, the individual states of the United States, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

(4) Section 1-105 is modified to provide as follows:

a. Except as provided hereafter in this section, when a transaction bears a reasonable relation to the TCGE, as an instrumentality of the Tribe, and also to another nation or state within such other nation, including but not limited to an individual state of the United States, the parties may agree that the law either of this Tribe or such other nation or state within such nation shall govern their rights and duties.

b. Where the perfection provisions of Article 9 specify the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified.

(Ord. No. 914, § 2, 9-13-2001)

**Sec. 16D-3. Amendments to Article 9 of the Uniform Commercial Code.**

Article 9 of the UCC, as adopted by this Chapter, is amended as follows:

(1) Section 9-103(2)(a) is modified by changing the phrase "a statute of this state" to read "a law of this Tribe."

(2) Section 9-104(e) is deleted.

(3) Section 9-203(4) is deleted.

(4) Section 9-302(3)(b) is deleted.

(5) Except as specifically provided in subsection (6) below, Part 4 of Article 9 of the UCC is deleted, and Part 4 of Article 9, in the form now enacted in the State of North Carolina (the "State") is adopted as the law of this Tribe with respect to the TCGE

Refinancing Transaction.

(6) As adopted by subsection (5) above, Part 4 of Article 9 is modified as follows:

a. The date appearing in the first clause of Section 9-404(1), as enacted by the State, is replaced with the effective date of this Chapter.

b. As adopted by this Chapter, all references in Part 4 to the offices of the Secretary of State, the county recorder or other offices shall be interpreted to refer to such offices as established from time to time by the State or its political subdivisions.

(Ord. No. 914, § 2, 9-13-2001)

**Sec. 16D-4. Miscellaneous.**

(a) All tribal laws and parts of tribal laws inconsistent with this Chapter are hereby repealed as they apply to the TCGE Refinancing Transaction.

(b) Nothing contained in this Ordinance shall be construed as a waiver of the sovereign immunity of the Tribe or the TCGE, as an instrumentality of the Tribe, or any of their officers, agents or instrumentalities.

(c) This Chapter shall apply only to the TCGE Refinancing Transaction.

(d) This Chapter shall remain in force and shall not be amended or repealed so long as the security and reimbursement agreement is in force.

(Ord. No. 914, § 2, 9-13-2001)

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## Chapter 16E: Comprehensive Ordinance Approving Tribal Casino Gaming Enterprise Financing

**Sec. 16E-1. Authority of principal chief.**

(a) The Principal Chief is hereby authorized and directed to execute and deliver those of the agreements to which the Tribe is a party, on behalf of the Tribe, and to take such other steps and to execute and deliver such other documents that may be appropriate or required to implement said Agreements, and/or to accomplish, complete and provide for the continued development, construction, financing, refinancing and operation of the casino/hotel project.

(b) The Principal Chief is hereby further authorized and directed to take such additional steps on behalf of the Tribe as may be required to perform, implement, give effect to and administer the agreements to which the Tribe is a party and to complete the construction and equipping of the casino/hotel project and open and commence operation of the casino/hotel project, including without limitation, the forwarding of such of the agreements (as legal counsel for the Tribe or other parties to the agreements may request) to the Bureau of Indian Affairs or to other regulatory authorities for regulatory review or approval and/or for confirmation that any regulatory approval is not required.

(Ord. No. 655, 4-5-2001; Ord. No. 914, § 3, 9-13-2001)

**Sec. 16E-2. Authority of TCGE Board.**

(a) The TCGE Board is hereby authorized and directed to execute and deliver those of the agreements to which the TCGE is a party, on behalf of the TCGE, and to take such other steps and to execute and deliver such other documents that may be appropriate or required to implement said agreements, and/or to accomplish, complete and provide for the financing, refinancing, development, construction and operation of the casino/hotel project. Without limiting the foregoing, the Board of Advisors of the TCGE is hereby authorized and directed in connection with the execution and delivery of the credit agreement to the banks to make, on behalf of the TCGE and on behalf of the Tribe as if they were made directly by the Tribe, the representations, warranties and agreements set forth in the credit agreement.

(b) The TCGE Board is hereby further authorized and directed to take such additional steps on behalf of the Tribe as may be required to perform, implement, give effect to and administer the agreements to which the TCGE is a party and to complete the construction and equipping of the casino/hotel project and open and commence operation of the casino/hotel project, including, without limitation, the forwarding of such of the Agreements (as legal counsel for the TCGE or other parties to the agreements may request) to the Bureau of Indian Affairs or to other regulatory authorities for regulatory review or approval and/or for confirmation that any regulatory approval is not required.

(c) Without limiting the foregoing, the TCGE Board is hereby authorized and directed to execute and deliver, as the Tribe's agent, the security and reimbursement agreement and the pledge of deposit accounts letter agreement granting a perfected first security interest and first lien on the collateral described in such agreements; it being acknowledged that the ownership of that collateral is retained by the Tribe and the TCGE is expressly acting on behalf of the Tribe for purposes of executing and delivering and performing the security and reimbursement agreement and the pledge of deposit accounts letter agreement.

(Ord. No. 655, 4-5-2001; Ord. No. 914, § 3, 9-13-2001)

**Sec. 16E-3. Agreements are obligations of tribal signatories.**

(a) Upon the execution and delivery of the agreements as authorized by this comprehensive ordinance, the agreements are, under the laws of the Tribe, legal, valid and binding obligations of the Tribal Signatories, enforceable against the Tribal Signatories or the Tribe in accordance with their terms including the waiver of sovereign immunity and recourse as set forth in Sections 12.08 and 12.17 of the Credit Agreement, notwithstanding any contrary provision of Tribal law, except as otherwise provided in paragraph (g) below.

(b) Upon the execution and delivery of the agreements as authorized by this Comprehensive Ordinance, the secured parties described in the security and reimbursement agreement shall have under the laws of the Tribe a valid and perfected security interest in and lien on all collateral described in the security and reimbursement agreement superior to the claim of any other creditor of the TCGE, or of the Tribe, whether such creditor is the Tribe, itself, the TCGE, any other instrumentality or agency of the Tribe, or anyone else.

(c) The Tribe having granted and/or delegated to the TCGE the right to grant the security interest in the collateral pursuant to the security and reimbursement agreement and the

pledge of deposit accounts letter agreement, regardless of whether such collateral is owned by the TCGE or the Tribe, if it becomes necessary for the secured parties or any of them to enforce the security and reimbursement agreement and the pledge of deposit accounts letter agreement against the Tribe because the TCGE ceases to exist or for any other reason, the security and reimbursement agreement and the pledge of deposit accounts letter agreement, expressly including the limited waiver of sovereign immunity set forth in Section 35 thereof, shall be applicable to, binding on and enforceable against the Tribe as if the word "Tribe" were substituted for the word "Grantor" and the Tribe were a party throughout the security and reimbursement agreement and the pledge of deposit accounts letter.

(d) No permits, licenses or other governmental approvals, or renewals thereof, are required to be issued by the Tribe or any agency of the Tribe for or in connection with development, construction, financing, refinancing, and operation of the Casino/Hotel Project, except for permits, licenses and governmental approvals, and renewals thereof, which have already been issued.

(e) No Indian Traders License is required to be issued under Tribal law or under the Indian Trader's Licensing Act, 25 U.S.C. 261-254 and accompanying regulations, for any party in connection with the closing and performance of the transactions contemplated by the agreements.

(f) The provisions of this chapter shall control and take precedence over any contrary provisions of any ordinance, resolution or other law of the Tribe or adopted on behalf of the Tribe, or by any agent, corporation or instrumentality of the Tribe.

(g) Nothing contained herein shall have the effect of making any term contained in the agreements enforceable if such term is otherwise unenforceable under the laws of the state whose laws are designated as governing pursuant to the terms of such agreements. Further, this chapter shall not have the effect of waiving nor shall it be construed as waiving any defense to the enforceability of any term of the agreements which would otherwise be available to the parties to the agreements under the laws of the state whose laws are designated as governing pursuant to the terms of such agreement. Any such defense is hereby specifically retained.

(Ord. No. 655, 4-5-2001; Ord. No. 914, § 3, 9-13-2001)

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## Chapter 18: Alcohol\*

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**\*Cross references:** Criminal law, ch. 14; crimes involving alcoholic beverages, § 14-15 et seq.

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### **Sec. 18-1. Possession of intoxicating beverages.**

The introduction or possession of intoxicating beverages shall be lawful within the Indian Country of the Eastern Band of Cherokee Indians, provided that such introduction or possession is in conformity with the laws of the State of North Carolina. Any Tribal laws, resolutions or ordinances heretofore enacted which prohibit the introduction or possession of intoxicating beverages are hereby repealed.



(Res. No. 46-S, 7-31-1968; Ord. No. 94, 3-11-2000)

**Sec. 18-2. Individuals under the age of 21 years.**

The NCGS Chapter 18B, Section 302 is hereby adopted for use by the Cherokee Court of Indian Offenses. This section makes it illegal to provide alcoholic beverages to individuals under the age of 21 years. The penalties for these offenses set forth in NCGS 18B-302 are hereby amended as follows:

(1) *First offense.* \$25.00 fine and costs, 24 hours of community service work, and the defendant to obtain a substance abuse assessment and follow all recommendations.

(2) *Second offense.* \$50.00 fine and costs, 48 hours of community service work, and if the defendant has not had a substance abuse assessment, to obtain this assessment and follow all recommendations.

(3) *Third offense.* \$100.00 fine and costs, 72 hours of community service work, and one weekend in Swain County Jail.

(4) *Subsequent offenses.* Imprisonment not to exceed six months and/or a \$500.00 fine.

(Ord. No. 434, 3-9-1989; Ord. No. 432, 6-3-1993; Ord. No. 94, 3-11-2000)

**Sec. 18-3. Reserved.**

**Editor's note:** Ord. No. 94, adopted March 11, 2000, completely repealed § 18-2 which pertained to serving alcoholic beverages and derived from Ord. No. 434, adopted March 9, 1989 and Ord. No. 432, adopted June 3, 1993. Former § 18-3 has been renumbered as § 18-2 as currently set out herein.

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## Chapter 19: Animals\*

**\*Editor's note:** Ord. No. 917, adopted September 13, 2001, amended the Code by repealing former Ch. 19, §§ 19-1--19-22 and 19-25--19-42, and adding a new Ch. 19, §§ 19-1--19-38. Former Ch. 19 pertained to similar subject matter, and derived from Resolution 7, of November 6, 1912; Resolutions of November 8, 1922 and October 10, 1935; Ord. No. 169 of June 15, 1972; Res. 293 of October 27, 1976; Res. 368 of April 2, 1981; Ord. No. 32, adopted October 15, 1991; and Ord. No. 157, adopted April 16, 1992.

**Cross references:** Hunting and fishing, ch. 113; health and sanitation, ch. 130.

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### ARTICLE I. ANIMAL CONTROL

**Sec. 19-1. Animal Control Department.**

The Tribal Animal Control Department shall regulate the ownership, possession, treatment and disposal of animals within the territorial jurisdiction of the Eastern Band of Cherokee Indians, which shall include all lands held in trust for the Eastern Band of Cherokee Indians

or its members and all other lands owned by the Eastern Band of Cherokee Indians. These regulations are intended to protect the public from unvaccinated, diseased, stray, roaming, or dangerous animals; to enforce the provisions of this Chapter which make unlawful those acts of animals that interfere with the enjoyment of property or the peace and safety of the community; to protect animals from abuse or conditions harmful to their well-being; and to perform any other duties authorized by applicable law.

(Ord. No. 917, 9-13-2001)

### **Sec. 19-2. Duties.**

The Tribal Animal Control Department shall be charged with enforcing all applicable laws relating to the control of animals within the territorial jurisdiction of the Eastern Band of Cherokee Indians, and shall have the following responsibilities:

- (1) Issue appropriate permits, civil penalties and notices required for the enforcement of this Chapter;
- (2) Operate an animal shelter;
- (3) Investigate complaints regarding the possession, care, custody, and control of animals and issue written orders and/or seize the animal;
- (4) Investigate all reported animal bites or other human physical contact with suspected rabid animals;
- (5) Engage in appropriate emergency response activities, including seizing and impounding animals, enforcing animal quarantine directives, ordering owners to take certain preventive measures, and any other activities related to the enforcement of animal care and control regulations;
- (6) Maintain all records as required by this chapter.

(Ord. No. 917, 9-13-2001)

### **Sec. 19-3. Definitions.**

*Acts deemed public nuisance.* The keeping of any animal in such manner or in such numbers as to constitute a public nuisance. A public nuisance shall include, but is not limited to: maintaining an animal that is diseased and dangerous to the public; allowing or permitting an animal to damage the property of anyone other than the owner; allowing or permitting an animal to interfere with the enjoyment of another's property, such as by creating offensive odors, defecating on another's property, allowing an animal to enter another's property (enclosed or otherwise) and creating a disturbance; maintaining an animal that habitually or repeatedly chases or snaps at pedestrians, other animals, or vehicles; or failing to securely confine a female dog in heat.

*Animal control officer.* Any person designated by the Tribe to enforce these regulations.

*Animal shelter.* Any premises designated by the Tribe or Department for impounding and caring for animals found running at large or otherwise subject to seizure and/or impoundment in accordance with the provisions of this chapter.

*At large.* Any animal shall be deemed to be at large when it is off the property of his owner

and is not under the control of a competent person.

*Boarding kennel.* Any place other than a veterinary hospital where the owner, tenant, or occupant keeps or allows others to keep or board any dogs, cats, or other animals for longer than 12 hours for a fee or donation.

*Department.* The Tribal Animal Control Department.

*Domesticated animal.* Any animal kept, cared for, sheltered, fed or harbored for use as a pet, labor or as a source of food or income.

*Exposed to rabies.* An animal has been exposed to rabies within the meaning of this chapter if it has been bitten by or has been exposed to any animal known or suspected by an animal control officer to have been infected with rabies.

*Neutered male.* Any male domestic animal which has been operated on to prevent reproduction.

*Owner.* Any person, group of persons, firm, partnership or corporation owning, keeping, having charge of, sheltering, feeding, harboring or taking care of any animal. The owner is responsible for the care, action, and behavior of his animal.

*Pet shop.* A business establishment where animals, including but not limited to, dogs, cats, fish, birds, reptiles or rodents are kept for sale or commercial barter.

*Restrain.* An animal is under restraint within the meaning of this chapter if it is controlled by means of a chain, leash, fence, or other like device, is sufficiently near the owner or handler to be under his direct control and is obedient to that person's commands; is on or within a vehicle being driven or parked; or is within a secure enclosure.

*Spayed female.* Any female domestic animal which has been operated on to prevent conception.

*Stray.* Any dog, cat or domestic animal wandering at large or lost within the territorial jurisdiction of the Eastern Band of Cherokee Indians.

*Vicious and/or dangerous animal.* Certain breeds of animals, as well as any animal determined by the Animal Control Officer to be vicious or dangerous to the safety of the public. A vicious animal is one that bites or attempts to bite any person; bites another animal; or in a vicious or terrorizing manner is allowed to approach any person in an apparent attitude of attack, whether or not the attack is consummated. The following breeds or species are considered dangerous: Pit bulls (including bull terriers and American pit bull terriers) and Rottweillers.

*Wild animal.* Any animal which can normally be found in the wild state, particularly those feral, exotic, dangerous or nondomestic animals which generally do not live in or about the habitation of humans, including, but not limited to deer, bear, fox, wolves, lions, monkeys, raccoons, skunks, squirrels, rabbits, tigers, and snakes.

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-4. Rabies vaccination and control.**

(a) Every person who owns, keeps, or controls a dog, cat, kitten or puppy that is kept any time during the year within the territorial jurisdiction of the Eastern Band of Cherokee Indians, or permits a dog, cat, kitten or puppy to remain in or about his home, place of business or other premises within the territorial jurisdiction of the Eastern Band of Cherokee Indians, shall have such dog, cat, kitten or puppy regularly vaccinated against rabies. Such regular vaccinations shall begin on or before the animal reaches four months of age, but not earlier than three months of age, by a licensed veterinarian with an approved anti-rabies vaccine and shall be kept up to date as directed by the veterinarian. The veterinarian shall issue a rabies tag which shall be stamped with the number and year issued. The owner of the animal shall take such steps as necessary to ensure that the current, unexpired rabies tag is worn by the vaccinated animal by providing a collar or harness to which the tags may be securely attached. The collar or harness with attached tags must be worn at all times except when the animal is confined to an enclosure on the owner's premises or in an animal control facility.

(b) If the animal has received the proper vaccinations but the owner has not obtained a tag issued by the veterinarian, the owner of the animal shall be in violation of this section.

(c) Should it be deemed necessary by the Director of Fish and Game or his designee that a person's other pet(s) (i.e., pets other than dog, cat, kitten or puppy) should be vaccinated in order to prevent a threatened epidemic or to control an existing epidemic, then such person shall provide for a current inoculation against rabies for that animal as well. Failure to comply with this paragraph shall subject the animal to impoundment by the animal control department. The owner will be allowed to redeem the animal only upon payment of all applicable fines and fees and agreement that the vaccination will be obtained immediately. (See Section 19-12, Cherokee Code, describing "Impoundment and redemption.")

(d) It shall be unlawful to transfer a rabies tag from one animal to another and no person shall affix a rabies tag to any animal other than the animal for which the tag was issued at the time of its rabies vaccination. Nor shall any person affix a registration tag to an animal that has not been vaccinated against rabies, nor shall any person counterfeit, alter, obliterate or attempt to counterfeit, alter or obliterate any rabies tag.

(e) Any wild animal which has bitten anyone or which shows symptoms of rabies shall be destroyed. Any domestic animal which has bitten anyone or which shows symptoms of rabies shall be confined immediately and promptly reported to the Tribal Animal Control Department by the owner of the animal or any person having charge of the animal. Such animal shall be securely quarantined, unless exception is granted by written permission from the Director of Fish and Game or his designee. The animal, along with its records of vaccination and registration shall be inspected by the Animal Control Officer, who will then observe the following policy:

(1) A dog, cat or other domestic animal, with adequate proof of vaccination, belonging to an owner, shall immediately be confined for ten days in a veterinary hospital or the Tribal Animal Shelter, and such expense of confinement shall be borne by the owner.

(2) All biting animals without adequate proof of vaccination shall be picked up by the Animal Control Officer and delivered to the Animal Shelter for testing and euthanasia.

(3) The attending medical provider shall determine the definition of "animal bite." Exceptions to the aforementioned procedures may be granted in cases involving animals biting their owners.

(f) Except as provided in subsection (e) of this section, it shall be unlawful for the owner of an animal which has bitten a human to refuse to surrender said animal to the department for the purposes outlined above upon demand. Refusal to surrender such an animal shall result in immediate seizure of the animal. The expense of any supervised quarantine shall be borne by the owner of the animal. If rabies does not develop within ten days, the animal may be reclaimed upon payment of the confinement fee, payment of any assessed fines, and compliance with other provisions of this chapter.

(g) When reports indicate a positive diagnosis of rabies, the Director of Fish and Game or his designee may order an area-wide quarantine for such period as is deemed necessary. Upon invoking such emergency quarantine by the Director or his designee, no animal shall be taken onto the street or permitted to be in the street, nor taken or shipped from the territorial jurisdiction of the Eastern Band of Cherokee Indians, without the written permission of the Director of Fish and Game or his designee.

Members of the Animal Control Department and the Cherokee Police Department are authorized during such emergency to impound any animal found running at large on the territorial jurisdiction of the Eastern Band of Cherokee Indians. During the quarantine the Department shall be empowered to provide for further mass immunization by the establishment of temporary emergency rabies vaccination clinics strategically located throughout the territorial jurisdiction of the Eastern Band of Cherokee Indians. No animal which has been impounded by reason of being a stray or unclaimed by its owner shall be allowed to be adopted from the Animal Shelter during the period of emergency rabies quarantine.

(h) An animal without current rabies inoculation bitten by a known rabid animal shall be immediately destroyed by the Animal Control Officer. If the animal has a current rabies inoculation, the owner may agree to a re-vaccination and confinement for a period of two weeks at the Animal Shelter or at a veterinarian hospital, at the owner's expense.

(i) In the event additional positive cases of rabies occur during the period of quarantine, such quarantine period may be extended at the discretion of the Director of Fish and Game, or his designee. During the quarantine period, the Director of Fish and Game may require additional vaccinations of dogs against rabies.

(j) It shall be unlawful for any person to remove from the territorial jurisdiction of the Eastern Band of Cherokee Indian, to kill, or to release, any animal under observation for rabies, any animal suspected of having been exposed to rabies, or any animal which has bitten a human, without permission of the Director of Fish and Game or his designee.

(k) The carcass of any dead animal exposed to rabies or any animal which dies while under observation for rabies shall be surrendered to the Animal Control Department. The head of such animal shall be submitted to the North Carolina Laboratory of Hygiene for diagnosis.

(l) It shall be unlawful for any person to fail or refuse to surrender any animal or the carcass of any dead animal exposed to rabies or which dies while under observation for rabies for disposition as required herein when demand is made by the Animal Control Department.

(m) Violation of any of the provisions of this section will result in a fine ranging from \$25.00 to \$100.00.

(Ord. No. 917, 9-13-2001)

**Sec. 19-5. Restrictions on the possession, sale, release, etc. of certain animals.**

(a) No person shall possess, sell, offer for sale, trade, give away, acquire, import, export, release, or cause to be released a wolf, coyote, fox, or hybrid (i.e., any dog crossed with any of the above animals), a poisonous reptile, a crocodile, or a related species within the territorial jurisdiction of the Eastern Band of Cherokee Indians. Any such animal illegally possessed may be ordered seized and may be disposed of by the Department, provided there is no pending court action, as specified in Section 19-37, Cherokee Code.

(b) Nonpoisonous snakes. Any owner, caretaker, or other person who keeps any non-poisonous snake over three feet and/or 15 pounds, must keep the snake at all times in an enclosure which will prevent the possibility of escape; maintain the enclosure in a clean and sanitary condition; keep the snake in a manner so as not to threaten or annoy any person of normal sensitivity; prevent unauthorized access to the snake; and use only escape proof enclosures when transporting the snake.

(c) No person shall keep any vicious or dangerous animal within the territorial jurisdiction of the Eastern Band of Cherokee Indians unless it is securely confined within a building or enclosure, or unless it is securely muzzled and under restraint by a competent person over 18 years old who is physically able to restrain the animal and, by means of a leash, chain, rope, etc., has such animal firmly under absolute control at all times.

(d) Upon receiving a report that an animal is being kept in violation of this section, the Animal Control Officer may seize the animal. Upon seizing the animal, the Animal Control Officer shall provide the owner/caretaker with a written order of seizure (provided the identity of such person can be determined) and shall assess a fine.

(e) Obligation to comply with written seizure order. When the Animal Control Officer serves the owner/caretaker with a written order of seizure, it shall be unlawful for the owner/caretaker to fail to comply with the order or interfere with the Animal Control Officer. A game warden shall accompany the Animal Control Officer to seize the animal. Failure to cooperate and comply with the seizure order shall result in an additional fine of five hundred dollars (\$500.00).

(f) Owner/caretaker's redemption of animal. The owner or caretaker is entitled to redeem the animal, unless the department retains the animal upon some basis of legal authority (such as a determination that the possession of the animal is prohibited by tribal or federal law or should be destroyed for public safety purposes), by paying all applicable fines, costs and boarding fees and complying with any outstanding corrective orders of the Animal Control Officer. These orders shall be in writing and shall clearly identify specific preventive measures. Implementation of these preventive measures must be completed by the owner prior to redemption.

(g) Termination of owner/caretaker's rights. If possession of the animal is prohibited by federal or tribal law or if the owner or caretaker fails to comply with any outstanding corrective order issued by the department or fails to reclaim the animal within ten days, then the Animal Control Shelter shall have the authority to humanely destroy the animal or,

in certain circumstances, place the animal for sale, as long as a small claims action, filed pursuant to Section 19-37, Cherokee Code, is not pending. If, after the animal is redeemed, the owner/caretaker fails to comply with the corrective order issued in the earlier seizure, then the animal control officer may issue a second seizure order, seize the animal, and humanely destroy the animal, provided a challenge to the seizure order filed pursuant to the provisions of Section 19-37, Cherokee Code, is not pending.

(h) Violations of the provisions of this section shall result in a fine of not more than one hundred dollars (\$100.00). (Exception: the provision regarding failure to cooperate and/or comply with a seizure order shall result in a \$500.00 fine.)

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-6. Keeping stray dogs; requirements; failure to surrender.**

It shall be unlawful for any person within the territorial jurisdiction of the Eastern Band of Cherokee Indians to knowingly and intentionally:

(1) Harbor, feed, keep in possession by confinement, any animal which does not belong to him or her if the person has reasonable grounds to believe that the animal belongs to some other person who can be located;

(2) Remove an identifying collar or electronic device from such animal unless he or she has, within 24 hours from the time such animal(s) came into his/her possession, notified the Animal Control Department. Upon receiving such notice, an Animal Control Officer shall take the animal(s) and place it in the animal shelter, and shall deal with it as provided in Section 19-12, Cherokee Code. It shall be unlawful for any person to refuse to surrender any such animal(s) to an authorized representative of the Animal Control Department upon demand.

(3) Violation of paragraphs 19-5(a) or 19-5(b), Cherokee Code, shall result in a fine ranging from fifty dollars (\$50.00) to five hundred (\$500.00).

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-7. Public nuisance prohibited.**

(a) It shall be unlawful for any owner to permit his animal to create a public nuisance.

(b) Written order. Upon receiving a report that an animal has created a public nuisance, and after investigating the report and determining that the report is supported by the evidence, the Animal Control Officer shall make reasonable efforts to notify the owner or caretaker to take special preventive measures. The written order should identify the specific preventive measures that must be taken and should designate the time period for carrying out compliance with this order. Any extension of time granted for carrying out this order shall be in writing. In the event the owner or caretaker cannot be immediately located, the Animal Control Officer shall impound the animal.

(c) Failure to comply with written order. It shall be unlawful for an owner or caretaker to fail to comply with a written order or any extension thereof. Violation of this paragraph will subject the animal to impoundment. In addition, the owner will be assessed the following penalties:

First offense: \$50.00 fine.

Second and all subsequent offenses within a one-year period shall be at least \$100.00 and not more than \$500.00.

(Ord. No. 917, 9-13-2001)

**Sec. 19-8. Improper care or treatment of animals prohibited.**

(a) It shall be unlawful for any person who has control over or custody of any animal to molest, torture, seriously overwork, torment such animal, or cause one animal to fight with another; to deprive the animal of necessary sustenance, exercise, shelter, or care; to cruelly beat, needlessly mutilate or kill, wound, injure, or poison the animal without legal privilege to do so; to abandon; transport or confine an animal in a cruel manner; or subject the animal to conditions detrimental to its health or general welfare. It is further unlawful for any person to cause in any way or to procure any of the above actions. The words "torture," "torment," or "cruelty" shall be held to include every act or omission whereby unjustifiable pain, suffering, or death is caused or permitted.

(b) Upon receiving a report that an animal has been improperly cared for or treated, the Animal Control Officer may seize the animal from the premises when the Animal Control Officer determines that the animal's safety or health is being jeopardized. Upon seizing the animal, the Animal Control Officer shall provide the owner or caretaker with a written order of seizure. In addition, the Animal Control Officer may assess a fine up to the amount of five hundred dollars (\$500.00).

(c) Obligation to comply with written order of seizure. When the Animal Control Officer serves the owner or caretaker with a written order of seizure, it shall be unlawful for the owner or caretaker to fail to comply with the order or interfere with the Animal Control Officer. A game warden shall accompany the Animal Control Officer to seize the animal. The Animal Control Officer may assess a fine of five hundred dollars (\$500.00) for violation of this paragraph.

(d) Termination of owner's rights. If there is not a pending challenge filed in Tribal Court pursuant to the provisions outlined in Section 19-37, Cherokee Code, by the owner or caretaker, then the department shall have the authority to humanely destroy the animal or place the animal for sale to the public.  
(Ord. No. 917, 9-13-2001)

**Sec. 19-9. Disposal of dead animals.**

(a) No person shall bury a dead animal within the territorial jurisdiction of the Eastern Band of Cherokee Indians unless it is buried at a depth of at least three feet beneath the surface of the ground within 24 hours after knowledge of the death of said animal, or to otherwise dispose of the same in a manner approved by the Animal Control Officer. It shall be unlawful to dispose of any animal in a body of water or to dispose of any animal within 300 feet of any flowing stream or public body of water.

(b) It shall be unlawful for any person to move the carcass of a dead animal from his/her premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcass as above provided.

(c) The Director of Fish and Game shall provide for the removal and disposal of any dead animals within the territorial jurisdiction of the Eastern Band of Cherokee Indians when the



owner of the animal refuses to comply with the provisions of this section or when the owner of the animal cannot be located after reasonable efforts have been made to locate the owner. If the identity of the owner can be determined, all costs incurred in the removal of such animal shall be recoverable from the owner of such animal.

(d) The term "animal" as used in this section, shall include, but is not limited to dogs, cats, poultry, swine, horses, goats, sheep, and cattle.

(e) The animal control officer may assess a fine in the amount of \$100.00 for violation of this section.

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-10. Disposal of diseased animals.**

(a) The Animal Control Officer, with the approval of the Director of Fish and Game, is authorized to kill diseased, sick, old, or crippled animals on the premises of the owner upon the owner's request, and to dispose of such animals. The owner shall be responsible for the cost of this and this amount shall be paid in advance.

(b) No animal known to have tuberculosis, Bang's disease, mad cow, foot-and-mouth, anthrax, rabies, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without the permission of the Director of Fish and Game or his designee. Violation of this subsection shall result in a fine of \$50.00.

(c) The Director of Fish and Game shall maintain records regarding the collection and disposal of dead animals.

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-11. Transportation, sale, etc. Of diseased livestock.**

(a) It shall be unlawful for any person to transport (unless for the purpose of obtaining treatment) or sell within the territorial jurisdiction of the Eastern Band of Cherokee Indians any animal with visible symptoms of a contagious or infectious disease unless written permission is first obtained from the Director of Fish and Game or his designee. The animal control officer will assess a fine in the amount of \$100.00 for violation of this paragraph.

(b) The burden of proof to establish the health of any animal transported on a public highway or sold, traded, or otherwise disposed of shall be upon the owner of the animal.

(c) Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to a contagious or infectious disease, shall be liable for all damages resulting from such sale or trade, provided that nothing in this section shall prevent an individual who owns or who has custody of a sick animal from transporting such animal to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture and Consumer Services if reasonable and proper precautions to prevent the exposure of other animals or humans is taken by the owner or transporter thereof.

(d) It shall be unlawful for any person to remove before slaughter any ear tag, back tag, or other mark of identification for identifying animals for disease control purposes unless prior written authorization has been obtained from the Director of Fish and Game or his

authorized representative. The animal control officer will assess a fine in the amount of \$100.00 for violation of this paragraph.

(Ord. No. 917, 9-13-2001)

**Sec. 19-12. Impoundment and redemption.**

(a) *Authorization for capture and impoundment.* Animal Control Officers are hereby authorized to take or capture animals deemed by them to be included in the categories listed below, and to impound them at an Animal shelter or other appropriate location where the animal will be confined in a humane manner. Such officers may utilize a tranquilizer dart if necessary in order to capture an animal which appears to be dangerous or vicious or is not able to be captured in any other humane manner. The officer may destroy such animal if necessary to avoid a physical threat to human beings.

- (1) Any animal, the possession of which is prohibited by tribal or federal law;
- (2) Any animal which appears to be lost, astray or unwanted or which is found not wearing a valid tag;
- (3) Animals which have been determined to have violated a public nuisance order issued by the animal control department;
- (4) Vicious or dangerous animals or any other animals which have not been properly restrained in accordance with the provisions of this Chapter;
- (5) Animals which constitute a safety or health hazard;
- (6) Animals which were being transported by a person involved in a vehicular accident when such person becomes unable to care for or maintain control over the animal as a result of the accident and there is no responsible person present to take possession of the animal;
- (7) Animals which will apparently be and have been left uncared for under various circumstances, including but not limited to the death, injury, arrest, detention or other incapacitation of the owner or keeper.

(b) *Notice of impoundment.* If, by tags or other identification attached to the animal or any other information given to the Animal Control Officer, the owner of an impounded animal can be identified, an Animal Control Officer or other Animal Control Facility representative shall immediately upon impoundment, notify the owner of such impoundment, either verbally or in writing.

(c) *Minimum time for impoundment of animals.*

- (1) Unclaimed animals shall be kept at the Animal Control Facility or other appropriate location for not less than ten days after impoundment unless euthanasia prior to that time is deemed necessary or appropriate by the veterinarian advising the Animal Control Facility. (Immediate euthanasia may be deemed necessary when, for instance, an impounded animal is badly wounded or diseased and the Department has no way of identifying and/ or reaching the owner of such animal) Animals not redeemed by their owners within ten days after being taken into custody may be sold or destroyed in a humane manner by the Department, so long as there is not a pending claim filed in Tribal Court pursuant to the provisions outlined in Section 19-37, Cherokee Code.

(2) Animals which have been surrendered by the owner to the Animal Control Department to be placed in a home or destroyed in a humane manner may be disposed of without waiting ten days at the discretion of the Department.

(3) Animals which have been surrendered to the Animal Control Department by a victim of domestic violence (as defined in Section 14-40.1, Cherokee Code) or by a law enforcement officer who has responded to a domestic violence call, will be held by the Department for a maximum period of 90 days, with no charge. (At the time the animal is placed with the Department, the Department must have a signed affidavit from either the owner/keeper of the animal or a law enforcement officer stating the circumstances surrounding the placement of the animal. Such affidavit must clearly describe why placement of the animal should be covered by this paragraph.) If at the conclusion of this 90 day period the owner has not retrieved the animal, the Department may dispose of the animal.

(4) Except for situations described in Paragraph (3) above, any animal not reclaimed by its owner or keeper within ten days after impoundment shall become the property of the EBCI or its designated Animal Control Facility and shall be placed for adoption in a suitable home or humanely euthanized, as long as there is no pending claim filed in accordance with the provisions of Section 19-37, Cherokee Code. No unclaimed animal shall be released for adoption without payment of a fee which shall include the cost of a rabies vaccination as well as the cost of spaying or neutering the animal. Upon payment of this fee, the animal may be released to the adopter, provided the adopter signs a written statement guaranteeing that such animal will be taken to the designated veterinarian for such vaccination, spaying or neutering (as appropriate) within one week after the date of adoption. It shall be unlawful for the adopter to violate the terms of such agreement. Proof that the appropriate procedures have been conducted shall be submitted to the Animal Control Facility on or before the expiration of the one week period. If no such proof is received, an Animal Control Officer will be dispatched to seize the animal.

(d) *Redemption of certain animals restricted or prohibited.* Any animal which is prohibited pursuant to tribal or federal law, which constitutes a known safety or health hazard, which poses a known physical threat to human beings or other animals, or which, should it be released to the owner, would be kept in violation of this Chapter, shall not be released to the owner or other person and may be humanely euthanized, as long as there is not a pending claim in Tribal Court, filed pursuant to the provisions outlined in Section 19-37, Cherokee Code.

(e) *Redemption procedure for impounded animals.*

(1) When any animal (other than one which has been voluntarily given to the department by an owner who is no longer able to take care of it) has been impounded at the Animal Shelter, notice shall be given to the owner, if known. If the owner is not known, notice shall be posted for ten days or until the animal is disposed of (whichever is longer), on a bulletin board at the Animal Shelter, with a description of the animal and the time and place of taking said animal, together with the time and date of posting of the notice. The time for redemption of the animal shall not begin until such notice has been given or posted. The owner shall be entitled to regain possession of his animal, (unless such redemption is prohibited in other sections of this Chapter), upon compliance with the provisions of this chapter

and the payment of any applicable fines or fees.  
The shelter fees shall be as follows:

*Adoption fee.* No fee, but adopting individual must pay for cost of spaying or neutering, as well as rabies vaccination.

*Boarding fee.* In addition to the redemption fees listed below and any applicable fines, a boarding fee at the rate of \$7.00 per day must be paid before an animal may be redeemed.

*Redemption fees:*

Ordinary redemption by owner

First impoundment . . .	\$25.00
Second impoundment of any animal owned by same owner within a one-year period . . .	50.00
Third and subsequent impoundment of any animal owned by same owner within a one-year period . . .	75.00

Redemption by owner for animal impounded for violation of Section 19-6 or 19-7, Cherokee Code (if not prohibited by Section 12-12(d), Cherokee Code)

First impoundment . . .	\$50.00
Second impoundment of any animal owned by same owner within a one-year period . . .	75.00
Third and subsequent impoundment of any animal owned by same owner within a one-year period . . .	150.00

(2) If the redeemed animal has not been vaccinated against rabies, the owner will be given a "proof of rabies vaccination card" at the time of redemption. This card will be stamped with a date stating the maximum time limit allowed to take the animal to the veterinarian of his choice for a rabies vaccination. The time limit for animals four months or older will be one week. For animals under four months, the time limit will vary according to their age. The card must be completed and returned to the Animal Shelter by the veterinarian within the stated time limit. If the card is not returned within the time limit, an Animal Control Officer will be dispatched to retrieve the animal.

(Ord. No. 917, 9-13-2001)

**Sec. 19-13. Operation of pet shops, businesses for the public display of animals, boarding kennels, public auction of animals.**

(a) It shall be unlawful for any person to operate a pet shop, a business for the public display of animals, a boarding kennel or to publicly auction animals without first obtaining approval from the Tribal Business Committee and a license to operate such an establishment or enterprise from the Director of Fish and Game, signed by the Executive Director of Community Services. (Persons operating existing businesses as those described above shall be granted 60 days within passage of this ordinance to obtain this license. Persons who breed animals and sell fewer than ten animals a year and operate out of their home are exempted from the requirements of this subsection.) The license, once issued, shall be valid for a period of one year and must be renewed for additional one-year periods. The Director of Fish and Game may assess a fine in the amount of \$250.00 for violation of this paragraph.

(1) Licenses issued under this section are not transferable. When there has been a transfer of ownership, management, or operation of a business, the new owner, manager, or operator, whether it be an individual, firm, partnership, corporation, or other entity, shall have ten days from such sale or transfer to secure a new license to operate such business. A licensee shall notify the Director of Fish and Game within ten days of any change in the name, address, management, or substantial control of the business operation. The Director of Fish and Game may assess a penalty in the amount of \$250.00 for violation of this paragraph.

(2) The Director of Fish and Game may refuse to issue or renew or may suspend or revoke such a license, if after an impartial investigation, it is revealed that:

- a. The applicant has made a material misstatement in the application for the license or in the application for renewal; or
- b. The applicant has willfully disregarded or violated any provisions of this chapter; or
- c. The applicant has failed to provide adequate housing facilities, medical attention, exercise, or enclosures for the animal(s) or has failed to properly feed, water, or keep the animal(s) in a sanitary condition; or
- d. The applicant has allowed his/her license to be used by someone other than the applicant.

(3) Prior to refusing to issue or renew a license or suspending or revoking a license, the Director of Fish and Game shall provide the applicant or license holder with written notice containing a statement which indicates why the applicant has failed to satisfy the requirements for holding a license and any corrective action that would need to be taken in order to satisfy these requirements.

*(b) Restriction on display, sale, or gift.*

(1) No licensee shall display, offer for sale, sell or give away any animal with obvious signs of any of the following conditions:

- a. Infectious diseases such as distemper, hepatitis, leptospirosis, rabies, or other similar infectious diseases;
- b. Nutritional diseases including but not limited to, rickets, emaciation, and hypo-vitaminosis;
- c. Obvious signs of severe parasitism which is impacting the general health of the animal;
- d. Fractures, lameness or congenital abnormalities affecting the general health of the animal;
- e. Metabolic disease including, but not limited to kidney disease and diabetes.

(2) No licensee shall display any reptile, amphibian or invertebrate for sale without posting its taxonomic derivation, or display any dog under six months of age for sale without posting, in a place readily visible to the consumer where dogs are available for sale, a sign which states the following in black lettering not less than 38 point size upon a white background: "THE FOLLOWING INFORMATION IS ALWAYS

AVAILABLE ON ALL OF OUR PUPPIES: THE PUPPY'S DATE OF BIRTH, CITY/TOWN AND STATE OR TRIBE OF BIRTH, THE DATE THIS PET SHOP RECEIVED THE PUPPY, THE PUPPY'S COMPLETE VACCINATION, WORMING, MEDICATION, AND TREATMENT RECORDS, AND THE PUPPY'S 14-DAY WARRANTY"

(3) No licensee shall offer for sale any animal which has not been weaned and is fully self sufficient. Unweaned animals must not be on the shop premises. The minimum age of animals for sale must be:

- a. Eight weeks for dogs and cats;
- b. Five weeks for rabbits;
- c. Four weeks for guinea pigs; and
- d. Three weeks for mice.
- e. Juvenile birds must be self-sufficient and should be fully feathered (molt permitted).

(4) No licensee shall offer a dog or cat for sale unless the animal has been vaccinated at least fourteen days prior to sale to cover the following: rabies, canine distemper, infectious canine hepatitis, canine parvovirus for dogs, and infectious feline enteritis and feline respiratory disease for cats.

(5) All dogs and cats sold must have a vaccination certificate signed by a veterinarian stating that the animal has been vaccinated in accordance with the instructions of the manufacturer of the vaccine. The certificate must indicate the next date for further vaccination.

(6) A copy of an animal's complete vaccination, prophylactic and treatment records shall be given to the purchaser or adopter at the time of sale or give away, along with a notice of the 14-day warranty, and the purchaser or adopter shall sign a statement acknowledging receipt of these materials, to be kept as part of the licensee's record of sale or give away.

(c) *Pet information.* Purchasers of pet animals must be given literature about feeding, desexing, parasite control, health, including procedures for emergency treatment during the guarantee period, housing, and responsible pet ownership.

(d) *Fourteen-day warranty.* All licensees shall provide a substitution or a full refund of the purchase price of any dog or cat to any purchaser who:

(1) Within 14 calendar days of sale has the dog or cat examined by a licensed veterinarian of his or her choice, and the examination indicates the dog or cat is diseased or has a congenital disorder; and

(2) Presents the dog or cat, a veterinarian's written statement that the dog or cat is diseased or has a congenital disorder, and proof of sale within five business days of the date of the examination.

(e) Licensees who sell or give animals away shall display the warranty outlined above in a prominent position on a wall of the shop.

(f) Licensees shall maintain records on all animals (for a period of one calendar year following the sale or disposal of such animal) showing the following:

- (1) Origin of animals (including names and addresses of consignors) and date animals were received;
- (2) Description of animals, including species, age, sex, breed and color markings;
- (3) Disposition of animals including name and address of person to whom animal is sold, traded, or adopted; if euthanized, record will show date and type of euthanasia;
- (4) Record of veterinary care including treatments and immunizations;

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-14. Records.**

It shall be the duty of the Department to maintain accurate and detailed records of:

- (1) Impounded animal;
- (2) Animals redeemed by owners or disposed of by the Animal Shelter by euthanasia or adoption;
- (3) Bite cases, violations and complaint investigations;
- (4) Reports of positive diagnosis of rabies;
- (5) Records of quarantine measures taken;
- (6) Records of all violations committed under this chapter, including date of violation, name and address of owner or keeper of animal, written orders issued, and actions taken;
- (7) Records of all licenses issued to persons operating pet shops, businesses for the public display of animals, boarding kennel, or auction business, as specified in Section 19-13, as well as all records of complaints, investigations, or administrative action taken to deny, revoke, or suspend such licenses;
- (8) All other records deemed necessary by the Executive Director of Community Services or by the Community Services Committee.

(Ord. No. 917, 9-13-2001)

#### **Sec. 19-15. Caging of animals.**

(a) It shall be unlawful for any person or business enterprise to cage wild animals within the territorial jurisdiction of the Eastern Band of Cherokee Indians except in compliance with this Chapter as well as with the Animal Welfare Act, Pub. L. 91-579, 7 U.S.C. 2131-2156, and all federal regulations promulgated thereunder.

(b) Violation of this section shall result in a fine not to exceed \$5,000.00.

(Ord. No. 917, 9-13-2001)

**Sec. 19-16. Black bears.**

The minimum standards for facilities used for captivity of legally acquired bears shall include the following:

(1) *Enclosure.* The bear must be maintained in a stationary, permanent metal cage constructed of iron or steel bars at least one-fourth inch in diameter, or of heavy gauge chainlink steel fencing, of dimensions not less than eight feet by 12 feet by six feet. The gate of such cage shall be equipped with a lock or with a safety catch. The cage shall have a concrete floor in which there shall be a drainable pool at least 11/2 feet deep containing not less than 18 square feet. There shall be running water provided immediately adjacent to the cage to provide for flushing the floor and for changing the pool during hot weather. The cage shall be located within a shaded area during the mid-day and afternoon hours of the summer months. The cage shall also include a den not smaller than five feet by five feet by four feet, which shall be constructed in such a manner that it may be cleaned regularly.

(2) *Sanitation.* The floor of the cage shall be flushed daily with clean water. The enclosed den shall be flushed weekly. Disinfectant shall be used to flush the entire cage and den every 60 days. The cage shall have a removable food trough which shall be cleaned daily. Adequate food shall be available to the bear at all times.

(3) *Prohibited acts.* It shall be unlawful to use collars, chains or stakes to confine a bear except as a temporary safety device. The use of lumber or timber in the outer cage shall be strictly prohibited.

(4) *Recommendations.* It is recommended, but not required, that the cage be constructed with two compartments, being separated by a sliding door. There should be guardrails constructed outside the cage, a minimum of three feet from the cage. There should be a "scratch log" of sizable limb with branched stubs contained inside the cage.

(5) *Enforcement.* These minimum standards shall be enforced by the Cherokee Police Department, the Cherokee Fish and Game Management Program or the Department of Agriculture.

(6) Violation of this section shall result in a fine not to exceed \$5,000.00.

(Ord. No. 917, 9-13-2001)

**Sec. 19-17. Fencing cattle.**

(a) Individuals who have cattle shall erect and maintain fences on their holdings to enclose the cattle.

(b) Violation of this section shall result in a fine of \$50.00.

(Ord. No. 917, 9-13-2001)

**ARTICLE II. ANIMAL DRAWN VEHICLES**

**Sec. 19-18. Permit to operate.**



No person shall operate an animal-drawn vehicle for tours by the general public without a permit from the Business Committee. Such permits shall be limited to enrolled members of the Eastern Band of Cherokee Indians. Any violation of the standards set forth in this article shall be grounds for suspension or termination of the permit. In addition, the animal control officer may assess a fine for violation of any of the provisions of this article.

(Ord. No. 917, 9-13-2001)

**Sec. 19-19. Operating specifications.**

Animal-drawn vehicles shall adhere to the following operating specifications during the hours of operation:

- (1) Vehicles shall travel in the curb lane except when passing parked vehicles or other obstructions which prevent use of the curb lane.
- (2) Vehicles shall not travel on streets or roads with grades equal to or greater than ten percent.
- (3) Vehicles shall not stop within the roadway other than at designated loading and unloading areas except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.
- (4) Vehicles shall observe all applicable rules of the road as required for motor vehicles.

(Ord. No. 917, 9-13-2001)

**Sec. 19-20. Route system.**

A proposed detailed route system of an animal-drawn vehicle for hire shall be submitted to the Tribal Police Department for review, recommendation and approval. The Police Department shall designate streets and hours of the day that animal-drawn vehicles will be prohibited. A route system shall be submitted for each vehicle to be placed into operation. This detailed route system shall include the following information:

- (1) The hours of operation for the vehicle.
- (2) The days of the week the vehicle will be in operation.
- (3) The duration of the operation, i.e., summer only or year-round
- (4) All locations for loading and unloading passengers.

(Ord. No. 917, 9-13-2001)

**Sec. 19-21. Health of the animal.**

No animal shall be permitted to pull any vehicle for hire unless the animal is in good health and meets at least the following requirements:

- (1) The animal must be at least 30 months old.
- (2) The animal must weigh no less than 900 pounds.

(3) The animal shall have no open sores or wounds, shall not be lame or have any other ailment. Any animal found to have an ailment shall not be used without the approval of an approved veterinarian.

(4) The animal must be groomed daily and not have fungus, a dirty coat or show symptoms of illness or irritation.

(5) The animal must have adequate flesh and muscle tone. The ribs showing on the animal must be no deeper than one-fourth inch.

(6) The animal must be no more than six months pregnant.

(Ord. No. 917, 9-13-2001)

**Sec. 19-22. Animal working conditions.**

(a) No animal used as provided in this article shall be worked under any of the following conditions, and any owner allowed to let the conditions exist will be found in violation of this article if any of the following occur:

(1) The animal or combination of animals shall not pull any combined weight, including passengers and driver, in excess of two times the animal's body weight. No animal or combination of animals shall pull any vehicle which is occupied by a number of persons which exceed such vehicle's normal safe seating capacity;

(2) The animal works more than ten hours in any 24-hour period without at least one 20-minute rest break or two ten-minute rest breaks per hour;

(3) The animal pulling a vehicle for hire is moving at a speed faster than a slow trot. A slow trot means a speed of five to 15 miles per hour.

(4) The animal works more than 50 hours in any seven-day period or the animal works more than five consecutive days;

(5) The animal is worked with equipment, other than normal blinders, which causes an impairment of vision; or

(6) The animal is subjected to any condition or treatment which will impair the good health and physical condition of the animal.

(b) For purposes of this section, working hours of animals shall include time spent on rest breaks and all the time animals are available for hire.

(Ord. No. 917, 9-13-2001)

**Sec. 19-23. Use of harness.**

(a) Under this article, no animal will be worked without a padded saddle or bit.

(b) The harness must be oiled and cleaned so as to be soft at all times.

(c) The harness will be properly fitted and maintained and kept free of makeshift material such as wire, sisal rope and hazardous rusty chain.

(Ord. No. 917, 9-13-2001)

**Sec. 19-24. Use of whips.**

No driver of an animal-drawn vehicle for hire may whip an animal with more than a light touch by a light whip.

(Ord. No. 917, 9-13-2001)

**Sec. 19-25. Apron bags.**

No animal shall pull a vehicle for hire unless such animal is wearing an apron bag (manure catcher). Apron bags must be properly fitted and constructed of a sturdy material to ensure comfort to the animal and complete waste disposal.

(Ord. No. 917, 9-13-2001)

**Sec. 19-26. Shoes.**

No animal shall be used to pull a vehicle for hire without properly fitting shoes on each properly trimmed hoof. Should an animal throw a shoe during its shift, the hoof must be examined by the driver and any nails removed. If the animal's hoof is grown more than one-fourth inch from the quick, the horse may complete the shift, but must be shod prior to the next day's shift.

(Ord. No. 917, 9-13-2001)

**Sec. 19-27. Water.**

Adequate water for animals pulling vehicles for hire will be provided in the stables at all times and in working areas as often as needed and as climate and working conditions require.

(Ord. No. 917, 9-13-2001)

**Sec. 19-28. Stalls and stables.**

(a) Ventilation and fresh air shall be provided in stalls housing animals used to pull vehicles for hire so as to minimize drafts, odors, and moisture condensation.

(b) Ceilings in stalls and stables must be at least ten feet high from bedding flooring.

(c) Bedding stalls and stables shall be highly absorbent and comfortable, if in direct contact with the animal and shall be provided as follows:

(1) Bedding shall be deep enough so as not to show wetness under the pressure of the animal.

(2) Bedding so used shall not be a type that will harm or in any way be a discomfort to the animal.

(3) Bedding shall be deep enough to provide warmth to the animal.

(4) Surfaces, including floors, with bedding shall be free of odor and waste and shall be cleaned and disinfected regularly.

(d) Stalls and stables shall be structurally sound and maintained in good repair to protect the animals from injury, and to contain them.

(e) Stalls and stable floors or surfaces shall be constructed and maintained to protect the animal's feet and legs from injury.

(f) Stalls and stable floors or surfaces shall be constructed and maintained so as to enable the animals to remain dry and clean.

(g) Stalls shall be constructed and maintained to provide sufficient space to allow each animal to turn about freely and to easily stand, sit or lie in a comfortable, normal position.

(h) Stalls and stables shall be constructed and maintained so that the animals contained therein have easy access to food and water, and such food and water shall be kept free of contamination.

(i) Stalls and stables shall be kept sanitary and receive periodic cleaning to remove feces and other waste materials, including trash and dirt, so as to minimize disease hazards and reduce odors.

(Ord. No. 917, 9-13-2001)

**Sec. 19-29. Additional powers of animal control department.**

(a) Whenever any animal-drawn vehicle is operated for commercial purposes to provide rides to the general public, the fitness of the animal for the work and its humane treatment shall be subject to the supervision of the Animal Control Department, who shall have the power to determine:

(1) Physical fitness of the animal and limitation on work and conditions of work;

(2) Condition and fitness of the harness;

(3) Care and treatment of such animals, and

(4) Emergency conditions of animals, if unfit to pull vehicles for hire.

(b) The Animal Control Department shall direct the inspection of such animals at least once every three months.

(Ord. No. 917, 9-13-2001)

**Sec. 19-30. Removal of an animal from service for violation.**

(a) Upon discovery of a violation of any section in this article relating to animal-drawn vehicles for hire, the Animal Control Department may issue an order to the person responsible for the violation requiring the removal of the subject animal from service.

(b) No animal which has been removed from service for violation of this section shall be returned to service until the animal has been inspected by the Animal Control Department and approved for return to service in writing.

(c) Any person who refuses to comply with the order of the Animal Control Department, or who complies with the order and returns the animal to service before being inspected and approved by the Animal Control Department, shall be subject to a fine, as well as revocation of its authority to operate a commercial animal-drawn vehicle.

(Ord. No. 917, 9-13-2001)

**Sec. 19-31. Condition of vehicles.**

(a) Vehicles for hire pulled by animals must be properly lubricated and wheels must spin freely. Such vehicles for hire must be inspected and approved in writing for service by the Cherokee Police Department every 12 months, and are subject to removal of service pending repair and reinspection.

(b) Animal-drawn vehicles operated commercially for hire by the general public shall conform to the following vehicle specifications:

(1) The wheel base shall be equal to or less than 14 feet.

(2) The total overall length of the vehicle shall be equal to or less than 28 feet.

(3) The maximum overall width of the vehicle shall be equal to or less than 78 inches.

(4) The tires shall be rubber or other resilient material. Metal tires shall be prohibited.

(5) Vehicles shall be equipped with hydraulic brakes.

(6) The vehicle shall be drawn by no more than two animals.

(7) Vehicles shall be equipped with one red light on each outer extremity of the rear of the vehicle body and mounted between two and five feet above the road surface. Similarly mounted yellow lights shall be mounted on the front of the vehicle body. Each light shall be no less than four inches in diameter. Vehicles shall also be equipped with a slow-moving vehicle emblem.

(8) Vehicles shall have canopy protection from sun and rain.

(9) Vehicles shall be reasonably accessible to disabled passengers.

(Ord. No. 917, 9-13-2001)

**Sec. 19-32. Trailers.**

Any trailer or vehicle involved in transporting animals governed in this article must be in good working order and must be near the working location to provide speedy removal of any animal in an emergency situation.

(Ord. No. 917, 9-13-2001)

**Sec. 19-33. Drivers.**

Drivers of animal-drawn vehicles shall comply with the following:

(1) Drivers must have a working knowledge and general experience involving livestock and driving carriages or animal-drawn vehicles.

(2) Drivers must be 18 years old or older.

(Ord. No. 917, 9-13-2001)

**Sec. 19-34. Alcohol or controlled substances.**

(a) No driver shall operate an animal-drawn vehicle while under the influence of alcohol, controlled substances, or prescription drugs that may impair the driver.

(b) Passengers who are visibly under the influence of alcohol or controlled substances shall not be permitted to ride.

(c) No person shall consume alcohol or controlled substances while operating or riding in an animal-drawn vehicle.

(Ord. No. 917, 9-13-2001)

**Sec. 19-35. Insurance.**

Businesses operating animal-drawn vehicles shall maintain insurance coverage for the protection of drivers, passengers and other users of the public roadways in an amount not less than \$1,000,000.00. Proof of insurance shall be provided to the Business Committee annually.

(Ord. No. 917, 9-13-2001)

**Sec. 19-36. Fines.**

The Department may assess a fine for any violation or violations of this Article, i.e. animal drawn vehicles, and such fine will be a minimum of \$50.00 and will not exceed \$5,000.00.

(Ord. No. 917, 9-13-2001)

**Sec. 19-37. Appeals.**

(a) No animal held by the Department shall be placed for adoption, euthanized, or otherwise disposed of until a minimum of ten days has elapsed from the time the Department gained possession of the animal (unless immediate euthanasia has been deemed necessary or appropriate by the veterinarian advising the Department). During this ten-day period, the owner or caretaker will have an opportunity to file a small claims action in Tribal Court for recovery of the animal only. In no case will the Court be authorized to award monetary damages to the owner. The person filing the small claims action will be responsible for immediately notifying the Department in writing that such action has been filed. Such notification must be received by the Director of Fish and Game (or his designee) on or before the expiration of the ten-day period. If such an action is filed in tribal court within the ten-day period and the Department has been properly notified by the party filing the action, the Department will take no further action regarding the animal until the Court proceeding

is concluded. Any action taken by the Department will be in compliance with the Court's Order.

(b) The party filing the small claims action will be responsible for payment of any costs associated with the impoundment of the animal for all time spent in impoundment, both before and after the action is filed, if he/she does not prevail in his/her appeal to the court.

(c) If the filing Party prevails in his/her appeal to the Court, he or she will not be responsible for the cost of any applicable impoundment.

(d) Nothing in this law shall be construed as a waiver of the Tribe's sovereign immunity.

(Ord. No. 917, 9-13-2001)

### **Sec. 19-38. Criminal penalties.**

In addition to any administrative fines assessed by the Animal Control Department pursuant to this chapter, violation of any provisions in this Chapter may, depending upon the circumstances and the severity of the violation, also result in criminal penalties, including a fine of up to \$5,000.00, a term of imprisonment not to exceed one year, or both. In addition, the court may order a defendant who is found guilty to pay restitution to the victim(s) of the crime. An order of restitution shall be subject to enforcement as a debt to the Tribe, along with any fine imposed by the court, and the restitution shall be distributed by the court to the victim(s) of the crime.

(Ord. No. 917, 9-13-2001)

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## Chapter 20: Motor Vehicles\*

**\*Cross references:** Transportation of alcoholic beverages, § 14-15.3; gasoline tax, § 105-20 et seq.; roads and highways, ch. 136A.

### **Sec. 20-1. Motor vehicle/traffic laws.**

(a) In order to ensure consistency in the application and enforcement of all civil and criminal traffic and motor vehicle laws on the Cherokee Indian Reservation and in surrounding areas, the Tribe adopts Chapter 20 of the North Carolina General Statutes and any amendments to that chapter which may be made in the future. In so doing, all persons operating motor vehicles on the Cherokee Indian Reservation must abide by these provisions, including the North Carolina licensing and registration requirements. Any references in Chapter 20 of the N.C.G.S. to violations occurring within the State of North Carolina shall also include violations occurring within the Cherokee Indian Reservation. Speed limits on all state highways shall be established pursuant to NCGS 20-141. The speed limit for the approximately one-half mile section of US 19 running from the east intersection of US 19 with US 441, eastward to SR 1391 shall be 20 miles per hour. Speed limits on all reservation roads (other than state highways) shall be established and posted by the Cherokee DOT in consultation with the Cherokee Police Department.

(b) All civil traffic infractions contained therein shall be enforced by the North Carolina Highway Patrol, Federal Law Enforcement Officers, and the Cherokee Police Department

who shall cite all violators into the Cherokee court.

(c) Persons subject to the Cherokee court's civil jurisdiction may have civil penalties imposed as set forth in Chapter 20 of the North Carolina Statutes.

(d) Criminal penalties may only be imposed against persons who are subject to the Cherokee court's criminal jurisdiction and such penalties shall not exceed one year imprisonment, a \$5,000.00 fine or both.

(e) All traffic and motor vehicle violations shall be enforced in accordance with existing compacts in an effort to ensure cooperation between all law enforcement agencies.

(Res. No. 200, 10-6-1980; Ord. No. 471, 9-25-1981; Ord. No. 17, 10-19-1983; Res. No. 101, 2-4-1986; Ord. No. 10, 1-8-1998; Ord. No. 287, 7-17-2000)

**Sec. 20-2. Reserved.**

**Editor's note:** Ord. No. 287, adopted July 17, 2000 completely repealed the provisions of § 20-2 which pertained to civil traffic infractions and derived from Ord. No. 551, adopted Sept. 9, 1993 and Ord. No. 10, adopted Jan 8, 1998.

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## Chapter 22: Statutes of Limitations\*

**\*Editor's note:** Ord. No. 790, adopted June 14, 2001, amended the Code by repealing former Ch. 22, § 22-1, and added a new Ch. 22, §§ 22-1--22-15, to read as set out herein. Former Ch. 22 pertained to limitations, and derived from Ord. No. 24, adopted October 27, 1981.

**Cross references:** Civil procedure, ch. 1; criminal procedure, ch. 15.

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### ARTICLE I. APPLICATION

**Sec. 22-1. Chapter applicable to actions by private parties and the Tribe.**

This chapter applies to actions brought in the Cherokee Court by or for the benefit of private parties and to actions brought by or for the benefit of the Tribe. As used in this chapter, "Tribe" means the government of the Eastern Band of Cherokee Indians and all of its agencies, enterprises, entities, instrumentalities, organizations, commissions and all other bodies owned or operated by the government of the Eastern Band of Cherokee Indians.

(Ord. No. 790, 6-14-2001)

**Sec. 22-2. Period of limitation runs from accrual of action.**

Actions in the Cherokee Court may only be commenced within the time periods prescribed in this chapter, after the cause of action has accrued, unless a different time period is expressly provided by law.

(Ord. No. 790, 6-14-2001)



**Sec. 22-3. Sovereign immunity not waived.**

Nothing in this chapter constitutes a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

(Ord. No. 790, 6-14-2001)

**ARTICLE II. TIME PERIODS DESCRIBED**

**Sec. 22-4. One year.**

The following actions must be brought within one year after the cause of action accrues:

- (1) All actions against the Tribe or its officers acting in their official capacity, regardless of the form or grounds for the action.
- (2) Actions for libel, slander, assault, battery or false imprisonment.
- (3) For the year's allowance of a surviving spouse or children.
- (4) For a deficiency judgment on any debt, promissory note, bond or other evidence of indebtedness.

(Ord. No. 790, 6-14-2001)

**Sec. 22-5. Three years.**

The following actions must be brought within three years after the cause of action accrues:

- (1) Actions on an express or implied contract, except as provided in Section 22-6, Cherokee Code.
- (2) Actions in tort, except for torts enumerated in Section 22-4, Cherokee Code, and except as provided in Section 22-6, Cherokee Code. Provided, that a cause of action for personal injury does not accrue until the bodily harm to the claimant becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. However, no cause of action may accrue more than seven years from the last act or omission of the defendant giving rise to the cause of action.
- (3) For trespass upon real property.
- (4) For taking, detaining, converting or injuring personal property. The cause of action does not accrue until the taking, detaining, converting or injury to personal property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. However, no cause of action may accrue more than seven years from the last act or omission of the defendant giving rise to the cause of action.
- (5) For relief on the ground of fraud or mistake. The cause of action does not accrue until the aggrieved party discovers the facts constituting the fraud or mistake.

(Ord. No. 790, 6-14-2001)

**Sec. 22-6. Six years.**

The following actions must be brought within six years after the cause of action accrues:

- (1) Any action brought by the Tribe, notwithstanding any other provision of this chapter.
- (2) Actions for the prosecution of all crimes prohibited by the Tribe.
- (3) For injury to any intangible right in land, such as an easement.
- (4) Actions on an express or implied contract or in tort for damages based upon or arising out of the defective or unsafe condition of an improvement to real property.

a. The actions must be brought within six years from the last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement, whichever is later. For purposes of this subdivision, "substantial completion" means that degree of completion of a project or improvement upon which the owner can use the project or improvement for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

b. For actions for personal injury based on or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the plaintiff. However, no action may be brought more than seven years from the later of the specific last act or omission or substantial completion.

- (5) Actions based on or arising out of any alleged defect or any failure in relation to a product. The action must be brought within six years after the date of initial purchase of the product for use or consumption.

(Ord. No. 790, 6-14-2001)

**Sec. 22-7. Seven years for all actions not expressly articulated.**

All actions not expressly articulated in this chapter or other chapter of the Cherokee Code must be commenced within seven years after the cause of action accrues.

(Ord. No. 790, 6-14-2001)

**Sec. 22-8. Conflicts with federal law--Federal law prevails.**

If federal law provides a different limitation for an action than is provided in this chapter or other chapter of the Cherokee Code, the limitation in the federal law shall prevail.

(Ord. No. 790, 6-14-2001)

**ARTICLE III. GENERAL PROVISIONS**

**Sec. 22-9. Disabilities.**

A person who is entitled to commence an action and who, at the time the cause of action

accrued, is under a disability such as minority, insanity, incompetency or other disability recognized by the Cherokee Court, may bring an action within the periods provided in this chapter, after the disability is removed. For those persons under a disability on July 1, 2001, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from July 1, 2001.

(Ord. No. 790, 6-14-2001)

**Sec. 22-10. Cumulative disabilities; disability must exist when right of action accrues.**

(a) If two or more disabilities coexist at the time the right of action accrues, or if one disability supervenes an existing one, the limitation does not attach until both disabilities are removed.

(b) A person may not avail himself of a disability unless the disability existed when the right of action accrued, except as authorized in this section for cumulative disabilities.

(Ord. No. 790, 6-14-2001)

**Sec. 22-11. Death before limitation expires; action by or against personal representative or collector.**

(a) If a person entitled to bring an action dies before the expiration of the period of limitation for bringing the action, and the cause of action survives, an action may be commenced by his personal representative or collector after the expiration of that time, and within one year from the person's death.

(b) If a person against whom an action may be brought dies before the expiration of the time for bringing the action, and the cause of action survives, an action may be begun against his personal representative or collector after the expiration of that time. Provided, the action must be brought or notice of the claim upon which the action is based must be presented to the personal representative or collector within two years of the date of death.

(c) The time that elapses during a controversy on the probate of a will or granting of letters of administration is not counted when calculating time under this section, until an administrator is duly appointed, with authority to sue or be sued.

(Ord. No. 790, 6-14-2001)

**Sec. 22-12. Transition provision.**

The limitation periods established herein apply to all actions filed on or after the effective date of this chapter. Actions that accrued before the effective date of this chapter and are not already barred by a pre-existing statute of limitations must be filed within: (a) The limitation period established by this chapter; or (b) one year after the effective date of this chapter, whichever is later.

(Ord. No. 790, 6-14-2001)

**Sec. 22-13. New promise must be in writing.**

No acknowledgment or promise is evidence of a new or continuing contract, from which the period of limitations runs, unless it is contained in a writing signed by the party to be charged thereby. However, this section does not alter the effect of any payment of principal or interest.

(Ord. No. 790, 6-14-2001)

**Sec. 22-14. Actions stayed by injunction or prohibition.**

When the commencement of an action is stayed by an injunction or prohibition imposed by ordinance of the Tribe or an order of the Cherokee Court, the time during which the injunction or prohibition exists is not counted as part of the time for which the commencement of the action is limited.

(Ord. No. 790, 6-14-2001)

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## Chapter 25: Judgment Collection\*

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**\*Cross references:** Civil procedure, ch. 1.

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**Sec. 25-1. Purpose.**

The purpose of this Judgment Collection Ordinance is to provide the legal means to enforce judgments obtained through the Cherokee Court and to provide standardized procedures to ensure consistent and uniform due process.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

**Sec. 25-2. Definitions.**

As used in this chapter:

(a) *Affidavit* means a written statement of facts sworn to by the person signing it and verified by a notary public.

(b) *Aggregate value* means the sum total of the debtor's equity in the property.

(c) *Attachment* means a legal procedure before the Court whereby the Police are authorized and required to seize certain personal property belonging to a debtor in order to ensure that a creditor will be able to collect on a judgment when it is finally entered in the Court.

(d) *Court* means the Cherokee Court of Indian Offenses, or its successor Tribal Court.

(e) *Clerk or Clerk of Court* means the Clerk of the Cherokee Court of Indian Offenses or its successor.

(f) *Dependent* means any individual, including a spouse, who requires and is actually receiving substantial support and maintenance from the debtor.

(g) *Disposable earnings* means that part of earnings remaining after deducting federal, state, and social security taxes.

(h) *Earnings* means income whether designated as wages, salary, commission, or otherwise. Notwithstanding the foregoing, per capita distributions of net gaming revenues from the gaming enterprises of the Eastern Band of Cherokee Indians shall not be considered earnings for purposes of judgment collection, except as specifically set forth in section 16-23 of the Cherokee Code.

(i) *Earnings garnishment* means the legal process through which the earnings of a debtor are required to be withheld by a third party for payment of a Court sanctioned judgment.

(j) *Equipment* means goods used or bought for use primarily in a business.

(k) *Equity* means the fair market value of property, less any liens on that property.

(l) *Execution* means the legal procedure that takes place after the Court has entered a judgment, whereby the Police are authorized and required to enforce the Court's judgment by seizing certain personal property of the judgment debtor.

(m) *Exempt* means free from any lien obtained by judicial proceedings and not liable to seizure or sale on execution or on any provisional or final process issued from any Court.

(n) *Foreign courts* means the courts of the various federal, state, and federally recognized Indian Tribes of the United States.

(o) *Judge* means a Judge of the Court who was appointed by the Eastern Band of Cherokee Tribal Council with the responsibility for administration of the Court.

(p) *Judgment* means:

(1) The determination of the action. It may be final or interlocutory.

(2) Each judgment shall specify the relief granted or other determination of the action, and the name and place of residence of each party to the action.

(3) Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings. If there is no answer the relief granted to the plaintiff shall not exceed that demanded in the complaint. If the amount of money sought was excluded from the demand for judgment, the Court shall require the plaintiff to specify the amount of money claimed and provide that information to the Court and to the other parties prior to the Court rendering judgment.

(q) *Judgment creditor* means the person who has obtained a Court judgment against a debtor.

(r) *Judgment debtor* means the person against whom a Court judgment has been obtained.

(s) *Order* means any final action, mandate, precept, command or direction authoritatively given, or ruling of a Court on a pleading, motion, finding, objection, sentence, writ, etc. Order also includes any direction of a Court or a Judge made or entered in writing, and not included in a judgment, which determines some point or directs some step in the proceedings.

(t) *Partial judgment* means the order and/or ruling of the Court which only disposes of part of the action against one or some of the parties. Partial judgment will be appropriate when there are several parties to a lawsuit.

(u) *Petitioner* means the person who files a petition, i.e., initiates a proceeding in the Court.

(v) *Police* means the Police Department of the Eastern Band of Cherokee.

(w) *Service or served* means delivery of legal documents which must be presented in either of the following manners:

(1) Document(s) personally hand delivered to the named party; or

(2) Sent by certified mail.

All service must be documented and a copy must be delivered to the Clerk of the Court.

(x) *Writ* means an order of the Court.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

### **Sec. 25-3. Examination of judgment debtor.**

(a) Within five years of the date a judgment has been entered, the judgment creditor may file a Motion for Examination of the Judgment Debtor with the Court requesting the personal appearance of the judgment debtor in the Court to answer specific questions regarding the judgment debtor's personal assets. A Motion for Examination of Judgment Debtor must be served on the debtor at least 21 days before the hearing.

(b) At the examination the Judge shall swear the judgment debtor under oath and the judgment creditor and/or the Judge may ask questions directly related to the judgment debtor's personal assets and finances. The judgment creditor may request a subpoena from the Court for relevant financial documentation, such as, bank records, payroll stubs, tax returns, etc., to be provided by the judgment debtor at the hearing.

(c) If the judgment debtor fails to appear after notice of the hearing, the judgment debtor shall be subject to the civil contempt powers of the Court.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

### **Sec. 25-4. Reserved.**

### **Sec. 25-5. Enforcement of foreign judgments.**

(a) Full faith and credit shall be given to judicial proceedings of all federal Courts, state

Courts, and Courts of the federally recognized Indian nations, Tribes, or bands, including Courts of Indian offenses that extend full faith and credit to judgments and orders of the Eastern Band of Cherokee Court. The purpose of this chapter is to promote justice, encourage better relations between the Eastern Band and other jurisdictions, and to encourage reciprocal action by foreign Courts. Additionally, the Court may enforce a foreign judgment under principles of comity when it would serve justice to do so.

(b) Any person who has obtained a foreign court judgment shall be entitled to seek enforcement of the judgment through the Court. The judicial orders and judgments of foreign Courts, unless objected to, have the same effect and are subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as judgments of the Eastern Band of Cherokee Court and shall be enforced or satisfied in like manner.

(c) The petitioner shall file a written petition with the Clerk of the Court, which shall be accompanied by an authenticated copy of the foreign Court's judgment sought to be enforced. The petition shall set forth the following:

- (1) The names of all parties to the foreign Court judgment sought to be recognized and their respective addresses;
- (2) The type of relief granted in the foreign Court's judgment;
- (3) The date the foreign Court's judgment was entered;
- (4) The record of any subsequent entries or Court actions affecting the foreign Court's judgment, such as levies, execution, garnishment, payments in partial satisfaction, etc.; and
- (5) Any additional information the petitioner believes relevant.

(d) Promptly upon the filing of the foreign judgment the Clerk of the Court shall serve notice of the filing of the foreign judgment to the judgment debtor. The judgment debtor shall have 15 days in which to file an objection to the recognition of the foreign Court judgment with the Court, if there is no such objection, the judgment shall be enforced.

(e) If recognition of a judgment is objected to by the judgment debtor, the Judge must be satisfied, upon application and proof by the judgment debtor with respect to subsections (1) through (5), that the following conditions are present:

- (1) The foreign court had personal and subject matter jurisdiction;
- (2) The order or judgment was obtained without, fraud, duress, or coercion;
- (3) The order of judgment was obtained through a process that afforded fair notice and fair hearing;
- (4) The order or judgment does not contravene the public policy of the Eastern Band of Cherokee Indians; and
- (5) The order or judgment is final, valid and enforceable under the laws and procedures of the rendering Court.

(f) If the Court is satisfied that the five elements listed above been met, then the Court shall enter a judgment in favor of the petitioner which shall entitle the petitioner to enforce his judgment against the judgment creditor in the Tribe's jurisdiction.

(g) Pursuant to 108 Stat. 1796, of the federal statutes, the Eastern Band of Cherokee Court shall give full faith and credit to all Protection Orders issued consistently with subsection (b) of said statute provided the Protection Order is filed with the Court and entered with law enforcement within 30 days of Court jurisdictional residency. However, law enforcement may immediately enforce a Protection Order during the interim when provided with notice and a copy of the Protection Order.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

**Sec. 25-6. Earnings garnishment remedies.**

(a) Within five years after a Court order or judgment has been entered against a judgment debtor, the judgment creditor may enforce the judgment in the Court by submitting a Motion for a Writ of Garnishment with the Court.

(b) The Motion for Writ of Garnishment shall be served on the judgment debtor 21 days before the date set to hear the Motion for Writ of Garnishment.

(c) The maximum portion of earnings of a judgment debtor that are subject to garnishment is 20 percent of disposable earnings.

(1) At the hearing, the judgment debtor may present evidence to establish by a preponderance of the evidence that garnishment of any wages will impose a substantial hardship upon the health and welfare of the judgment debtor.

(2) The judgment debtor may also put on evidence that because of substantial hardship a lesser amount than the 20 percent set forth above in subsection (c) should be garnished.

(3) Upon the presentation of substantial hardship evidence by the judgment debtor, the Judge shall determine whether or not a substantial hardship has been demonstrated and whether a smaller portion of the debtor's wages should be subject to garnishment.

(4) If a garnishment is defeated or reduced by a judgment debtor, the financial status of the judgment debtor will be evaluated every 60 days upon request of the judgment creditor, to determine whether the judgment debtor is able to pay the garnishment amount sought.

(d) The judgment debtor may establish by a preponderance of the evidence that the garnishment was wrongful either by showing there was inadequate service or no valid judgment in effect or that the judgment debtor has already satisfied the debt for which the garnishment was issued or for any other legally valid reason.

(1) If the judgment debtor establishes that it was a wrongful garnishment, the judgment creditor may be fined up to \$500.00 and all attorney's fees and Court costs incurred by the judgment debtor shall be paid by the judgment creditor.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

**Sec. 25-7. Attachment remedy.**

(a) At the time of the issuance of a summons and complaint in a civil action, or at any time



prior to final judgment, a creditor may file with the Clerk of the Court a request for a prejudgment Order of Attachment.

(b) All requests for prejudgment Order of Attachment shall be accompanied by an affidavit of the creditor which shall contain the following facts:

(1) The nature and specific amount of the debt that is owed to the creditor by the debtor; and

(2) That the personal property being attached must be specifically identified as nontrust personal property belonging to the debtor; and

(3) That the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized, or removed from Cherokee jurisdiction prior to payment of a final judgment and such loss, damage, vandalism or removal of the property would jeopardize the ability of the creditor to collect on the judgment that may later be obtained.

(c) If the Judge or Court is satisfied after reviewing the complaint and affidavit, the Judge or Court may issue an Order of Attachment of the designated personal property. The Police shall be given the Order of Attachment, and the Police shall seize any property identified by the order.

(1) Seized property shall be kept in storage under the control of the Police or in the event that a motor vehicle is seized, said seized vehicle shall be kept in the parking lot of the Police.

(2) Said personal property shall be held by the Police pending any further order of the Court.

(d) If a creditor prevails on the complaint against the debtor, the judgment creditor must follow section 25-8 in regards to the sale of seized property.

(e) An Order of Attachment shall not be issued until the creditor has filed with the Clerk a surety bond or cash bond in the sum of \$500.00. Said bond shall be necessary to provide adequate security to the debtor for any damages the debtor may sustain by reason of the attachment, and shall be filed with the Court to the effect that if the debtor recovers the judgment the creditor shall pay all damages which the debtor may sustain by reason of the attachment.

(f) The debtor shall be served with the Order of Attachment at the time the Police seize the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's home, and a copy sent by certified mail to the debtor. Such service shall be documented for Court records.

(g) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that Order by filing a Response to Order of Attachment. At the time that the response is filed with the Clerk of the Court, the Court shall note a hearing, and notice of said hearing shall be served on the creditor at least 15 days before that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

(1) The specified personal property sought to be attached would not be likely to be lost, damaged, vandalized, or removed from the Cherokee jurisdiction prior to final judgment; or

(2) That said loss, damage, vandalism, or removal of property would not result in hindering the ability of the creditor to collect on a judgment if one should subsequently be obtained; or

(3) That no debt is owned to the creditor; or

(4) That the property sought to be attached is exempt under section 25-10.

(h) If the Court determines that the prejudgment Order of Attachment was wrongfully issued, the Court may impose a fine up to \$500.00 and order payment of the debtor's attorney fees and costs.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

### **Sec. 25-8. Execution remedy.**

(a) A judgment which requires payment of money or the delivery of property may be enforced by an Order of Execution in the Court within five years after judgment is entered.

(1) A judgment creditor shall file a written Motion with the Clerk of the Court containing a concise statement of facts regarding the judgment and the judgment creditor's interest in seizing and executing upon the personal property to satisfy the judgment.

(2) The Motion shall be personally served on the judgment debtor at least 15 days prior to the hearing.

(b) At the hearing, if the Judge is satisfied that the judgment creditor remains unsatisfied and there exists personal property of the judgment debtor that is not exempt under section 25-10, the Judge shall issue an Order of Execution. The Order of Execution shall specify the personal property that may be seized by the Police.

(1) Personal property that is seized by the Police shall be held in storage or in the case of a motor vehicle in the parking lot under the control and authority of the Police and shall not be removed pending further order of the Court.

(2) Any property so seized shall be itemized in a receipt by the Police, and a copy of said receipt will be delivered to the Clerk of the Court.

(c) Reserved.

(d) Within 14 days after seizure of the property seized under the Writ of Execution, the Clerk of Court shall post at the place designated by the Cherokee Tribal Council for the posting of legal notices and at least two public places within the Cherokee Indian Reservation, notices of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale.

(1) The sale shall be held not less than ten, nor more than 20, days after the posting of notice as provided above.

(2) The sale shall be conducted between the hours of 9:00 a.m. and 4:00 p.m. at the Cherokee Courthouse or such other public place as may be designated by the Clerk.

(3) The Clerk of the Court shall sell the property publicly to the highest bidder for cash.

(e) The Clerk shall pay into the Court the expenses of the sale and any unpaid Court costs of either party from the proceeds of sale and shall pay the balance up to the full amount of the judgment to the judgment creditor. Any excess shall be returned to the judgment debtor. The Clerk shall deliver a bill of sale or deed, whichever shall be appropriate, to the buyer upon request.

(f) If the Clerk is unable to sell the property seized under an Order of Execution, the Clerk may hold the property for 14 additional days after the scheduled sale.

(1) If the property remains unsold after the additional 14-day period, then upon request of the judgment creditor and payment of all costs, said seized personal property may be released to the judgment creditor and it shall be credited against the amount owed on the judgment.

(2) If the property remains unsold and unclaimed by the judgment creditor, the Clerk shall declare the property back to the judgment debtor by written notice. If said seized property is not assumed by the judgment debtor within 30 days, the property may be deemed abandoned and destroyed by the Clerk.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

### **Sec. 25-9. Repossession remedy.**

(a) A creditor shall repossess personal property when the debtor is in default on the outstanding balance due on an installment contract only by initiating legal proceedings through the Court which leads to a Court order authorizing repossession.

(1) The creditor shall file a complaint for repossession which shall contain a concise statement of the creditor's claim against the debtor. The complaint shall be served on the debtor at least 15 days before the hearing.

(2) The debtor may file an answer to the creditor's complaint at any time prior to the hearing.

(b) At the hearing both creditor and debtor may present documentary evidence and witnesses to support their positions in the debt dispute. If the Judge determines at the hearing that the repossession is in fact justified, the Judge shall issue an order authorizing the creditor to repossess the personal property involved. Any such order shall direct that a creditor may repossess the property only when accompanied by a Police Officer.

(c) If a creditor fails to abide by these rules for repossession and seeks to seize the personal property of a debtor without a written Order of Repossession from the Court, the creditor may be subject to one or more of the following sanctions:

(1) Business license or permit to transact business on the reservation shall be suspended for a period of 30 days;

(2) A fine shall be imposed in an amount not to exceed \$1,000.00;

(3) The personal property unlawfully seized shall be returned to the debtor pending a hearing on repossession.

(d) A creditor may repossess personal property that is subject to a valid security interest without a court order, provided that the repossession is authorized by the voluntary written

consent of the debtor given after a default on an installment contract. A pre-default consent shall be void and unenforceable. Attempted use of a pre-default consent, or any breach of the peace by the creditor or his agent, shall be subject to sanctions under subsection (c) of this section.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

### **Sec. 25-10. Property exemptions.**

(a) This section shall be construed to secure its full benefit to debtors and to advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to sustain life and the opportunity to avoid becoming public charges.

(b) No property of a judgment debtor shall be seized except pursuant to a valid Order of Execution entered by the court pursuant to section 25-8.

(c) The debtor's interest in or right to receive the following property is exempt:

(1) *Homestead and real property.* The designated place of residence by the family. This homestead exemption does not apply in the case of a judgment creditor who holds a valid security interest in the judgment debtor's home or residential lease, through a mortgage, deed of trust, or other written agreement securing a loan. All other real property in which the debtor owns a possessory interest in is also entitled to a full exemption from any collection process. The homestead and real property exemption is automatic and no filing of any documents shall be necessary to preserve it.

(2) *Consumer goods.* Household goods and furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals or other tangible personal property held primarily for the personal, family or household use of the debtor or a dependent of the debtor, not to exceed \$5,000.00 in aggregate value.

(3) *Business property.* Equipment, inventory, and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed \$5,000.00 in aggregate value.

(4) *Child support, family support or maintenance payments.* Alimony, child support, family support, maintenance or separate maintenance payments to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

(5) *Motor vehicle.* One motor vehicle not to exceed \$2,000.00 in equity value. As such, if the fair market value of the vehicle less any liens on the vehicle is less than \$2,000.00 then the vehicle is exempt.

(6) *Provisions for burial.* Cemetery lots, above ground burial facilities, burial monuments, tombstones, coffins or other articles for the burial of the dead owned by the debtor and intended for the burial of the debtor or the debtor's family.

(7) *Per capita distributions.* Per capita distributions of net gaming revenues from gaming enterprises of the Eastern Band of Cherokee shall be completely exempt from any garnishment or execution, except as set forth in the section 16-23 of the

Cherokee Code. This per capita distribution exemption is automatic and no filing of any documents shall be necessary to preserve it.

(8) *Bonuses and casino winnings.* Bonuses and casino winnings shall be exempt.

(d) Other than the homestead, real property, and per capita exemptions, exempt property is not exempt unless affirmatively claimed as exempt. A debtor shall affirmatively claim an exemption of select specific property. The debtor may make the claim at the time of seizure of property or within a reasonable time after the seizure, but shall make the claim prior to the disposition of the property by sale. With respect to property partially exempt under this section, the claiming of an exemption includes the process of selection required of the debtor.

(1) The debtor or a person acting on the debtor's behalf shall make any required affirmative claim, in writing, to the Court or a Police Officer seeking to impose a lien by court action upon the property in which an exemption is claimed.

(2) A debtor waives his or her exemption rights by failing to follow the procedures under this section. A contractual waiver of exemption rights by any debtor before judgment on the claim is void.

(3) Upon a claim of exemption rights by the debtor to the Court or the Police Officer the Clerk shall set the matter for hearing by the Court and give at least 15 days' notice to the parties. The Court, in making a determination as to the extent property is reasonably necessary for the support of the debtor and the debtor's dependents, is not limited to the standard of living to which the debtor and the debtor's dependents have become accustomed.

(Ord. No. 333-A, 11-5-1998; Ord. No. 548, 5-13-1999)

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## Chapter 28: Inheritance

### **Sec. 28-1. Inheritance laws of North Carolina adopted.**

For purposes of determining the identity of the lawful heirs of Tribal members for the inheritance of both personal and real property, the Tribal Council does hereby adopt the laws of intestate succession and other inheritance laws of the State of North Carolina. Exception to North Carolina inheritance law: The Tribe follows "per stirpes" distribution rather than the North Carolina rule of per capita distribution.

(Res. No. 10, 10-11-1935; Res. No. 57, 11-2-1937; Ord. No. 113, 2-28-2000)

### **Sec. 28-2. First Generation heirs.**

(a) *Definition.* The Charter and Governing Document of the Eastern Band of Cherokee Indians, as enacted and adopted May 8, 1986, and amended by Tribal referendum on October 8, 1987, provides in section 16 for the First Generation of an enrolled member to enjoy all property, both real and personal, that is held in an enrolled member's possession at their death. By definition in the Charter, a First Generation Descendent shall include all children born to or adopted by an enrolled member.

(b) *Use.* A First Generation Descendent of an enrolled member of the Eastern Band of Cherokee Indians shall be allowed to use or occupy Cherokee trust lands that were validly

assigned to their enrolled parent on the date of their death. Such use shall be permitted only if the enrolled parent assigns such right to a non-enrolled child by a valid written will. Use or occupancy shall include, but not be limited to: the right to occupy a house or dwelling, to operate a business owned or operated by an enrolled parent and located on lands assigned to them by the Tribe, to make agricultural use of lands assigned to such enrolled parent.

(c) *Prohibited use.* A First Generation Descendant shall not be authorized to decrease the value of their parents holding by either altering or removing permanent improvements, by selling or depleting any minerals, or by selling or cutting timber. First Generation Descendants shall have the right to cut wood for their personal non-business use.

(d) *Transfer valuation.*

(1) A First Generation Descendant shall have the right to rent, lease, or transfer a possessory holding to an enrolled member.

(2) All such rentals, leases or transfers must be approved by the Tribe and must be at fair market value. The Business Committee shall not approve a lease of such property for a First Generation Descendant for a period of time longer than the actuarial life expectancy of any individual descendant lessor.

(e) *Determination of value.* In the event of a dispute concerning the fair market rental value of property to be rented, leased, or transferred by a non-enrolled First Generation Descendant, the value shall be established by professional appraisal. In the event the appraisal value is not agreed upon by the Descendant, the Tribe and the BIA, the fair market value shall be established by arbitration, with the costs of arbitration to be shared equally between the descendants and the Tribe.

(f) *Certificate.* The Realty Office shall issue a certificate for use of trust lands to be identified as "First Generation Heir Certificate," to each such Descendant who applies and qualifies. The issuance of each certificate must be specifically approved by the Tribal Business Committee, as well as all leases entered with First Generation Descendants as lessors. The forms of the certificate itself shall be approved by the Business Committee, which shall contain the pertinent provisions of this chapter on the reverse side of the certificate form.

(Ord. No. 365, 7-19-1989)

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## Chapter 40: Eminent Domain\*

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\***Cross references:** Real property, ch. 47; roads and highways, ch. 136A.

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### **Sec. 40-1. Condemnation of land for public purpose.**

The Tribe shall have the power to condemn land within the Cherokee Indian Reservation whenever such land is deemed by the Tribal Council to be necessary for a public purpose. The exercise of eminent domain shall be initiated by the Tribal Council passing a resolution identifying the land to be taken for a public purpose, the possessory holder and leasehold tenants and the purpose for which the land will be used.

**Sec. 40-2. Compensation of land holder.**

The possessory holder or leasehold tenant shall be compensated for such condemnation by payment of the value of the improvements or betterments placed on the land.

**Sec. 40-3. Determination of land value.**

If the possessory holder or leasehold tenant does not agree with the Tribe on the value of the improvements or betterments, the Tribe shall file suit in the Cherokee Court and deposit with the Clerk a sum equal to the Tribe's appraised value of the improvements or betterments. The actual value shall be determined by a jury of six Tribal members.

**Sec. 40-4. Construction while suit is pending.**

The Tribe may proceed with construction of the public purpose while the suit is pending but not without having first obtained the agreement of the possessory holder or leasehold tenant or having filed suit and deposited an amount equal to the appraised value of improvements or betterments.

(Charter, § 24; Ord. No. 19, 11-7-1991)

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## Chapter 44: Housing\*

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**\*Cross references:** Utilities, ch. 62; supplemental needs distribution, ch. 130B.

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**Sec. 44-1. Authority.**

Pursuant to the Authority vested in the Eastern Band of Cherokee Indians of North Carolina (hereinafter referred to as the EBCI), by virtue of its inherent powers of self-government, and its authority to provide for the health, safety, morals and welfare of the EBCI, hereby establishes a public body known as the Qualla Housing Authority (hereinafter referred to as the "Authority"), and enacts this chapter which shall establish the purposes, powers and duties of the Authority.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-2. Purpose.**

(a) In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this chapter.

(b) A copy of the chapter, duly certified by the Secretary of the Tribal Council, shall be admissible in evidence in any suit, action or proceeding.

(c) It is the purpose and intent of this chapter to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or cooperation of any project by

the Authority.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-3. Declaration of need.**

It is hereby declared:

(a) There exist on the lands owned by the EBCI insanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy insanitary, unsafe and overcrowded dwelling accommodations;

(b) These conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

(c) The shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprises;

(d) The providing of decent, safe and sanitary dwelling accommodations for persons of low income are public uses and purposes, for which money may be spent and private property acquired and are governmental functions of EBCI concern;

(e) The residential construction activity and a supply of acceptable housing are important factors to general economic activity, and that the undertakings authorized by this chapter to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

(f) The necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-4. Duties.**

(a) Remedying unsafe and insanitary housing conditions that are injurious to the public health, safety and morals;

(b) Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and

(c) Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-5. Definitions.**



The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) *Area of operation* means all areas within the jurisdiction of the EBCI.

(b) *Board* means Board of Commissioners of Qualla Housing Authority.

(c) *EBCI Tribal Council* means the governing body of the Eastern Band of Cherokee Indians of North Carolina that is representative of the general membership. There are 12 Tribal Council members and they are the only people who can represent the wishes of, speak for, or contract for the Eastern Band of Cherokee Indians of North Carolina in any official capacity.

(d) *Federal government* includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) *Homebuyer* means a person who has executed a lease-purchase agreement with the Authority, and who has not yet achieved home ownership.

(f) *Housing project or project* means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental, sale of individual units in single-family or multi-family structures under conventional condominium, or cooperative sales contracts or lease-purchase agreements; loans; or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

(g) *Obligations* means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this chapter.

(h) *Obligee* includes any holder of an obligation, agent or trustee for any holder of an obligation or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the Authority in respect to a housing project.

(i) *Persons of low income* means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe and sanitary dwellings for their use.

(j) *Representative Governing Body* means the EBCI Tribal Council.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-6. Board of Commissioners.**

(a) (1) The affairs of the Authority shall be managed by a Board of Commissioners composed of seven persons.

(2) The Board of Commissioners shall be appointed, and may be reappointed, by the Tribal Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any Board of Commissioners member shall be conclusive evidence of the due and proper appointment of the member.

(3) A Board of Commissioners member must be a member of the EBCI, and may be a member or non-member of the Tribal Council.

(4) No person shall be barred from serving on the Board of Commissioners because he is a tenant or homebuyer in a housing project of the Authority. However, any homebuyer or tenant with a history of payment delinquencies shall not be eligible to serve on the Board. Such Board of Commissioners members shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him as well. However, no such Board of Commissioners member shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or homebuyer) or to be counted or treated as a member of the Board of Commissioners, concerning any matter involving his individual rights, obligations or status as a tenant or homebuyer.

(b) The seven-member Board shall consist of six members of the Tribal Council, and the seventh member shall be appointed by the Principal Chief of the Eastern Band of Cherokee Indians.

(c) The Chief of the Eastern Band of Cherokee Indians shall appoint a Chairman of the Board. This Chairman shall be from the Executive Committee and shall serve for a four-year term. In the event the Chairman resigns, dies or is otherwise unable to complete his term, the Chief shall reappoint a new Chairman to complete the vacated term. The Board of Commissioners shall select from among its members a Vice-Chairman and a Secretary, and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and the Vice-Chairman, the Secretary shall preside.

(d) A member of the Board of Commissioners may be removed by the appointing power for serious inefficiency or neglect of duty, misconduct in office or for homebuyer delinquencies in excess of three consecutive months, but only after a hearing before the appointing power and duly after the member has been given a written notice of the specific charges against him at least ten days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses in his behalf. In the event of removal of any Board of Commissioners member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power, and a copy thereof sent to the appropriate office of the Department of Housing and Urban Development.

(e) Except for the community member appointed by the Principal Chief, Board of Commissioners members shall not receive compensation for their services, but shall be entitled to compensation for their expenses, including travel expenses, incurred in the discharge of their duties. In addition to expenses, the community member appointed by the

Principal Chief shall receive a stipend, as established by the Board of Commissioners, not to exceed \$100.00 per month. This amount will be paid by the Authority.

(f) A majority of the full Board of Commissioners (i.e., notwithstanding the existence of any vacancies) shall constitute a quorum for the transaction of business, but no Board of Commissioners action shall be taken unless there is a majority agreement among the members present.

(g) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board of Commissioners.

(h) The Executive Director shall keep full and accurate financial records, submit periodic reports to the Board of Commissioners and the Tribal Council, and submit a complete annual report, in written form, to the Board, as required by section 44-9(a) of this chapter.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995; Ord. No. 83, 1-13-2000)

#### **Sec. 44-7. Meetings.**

Meetings of the Board of Commissioners shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours' actual notice and business transacted, provided that at least a quorum exists.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

#### **Sec. 44-8. Powers.**

(a) The Authority shall have perpetual succession in its corporate name.

(b) The Tribal Council hereby gives its irrevocable consent to allow the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this chapter and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have, but the Eastern Band of Cherokee Indians of North Carolina shall not be liable for the debts or obligations of the Authority.

(c) The Authority shall have the following powers which it may exercise consistent with the purpose for which it is established:

(1) To adopt and use a corporate seal.

(2) To enter into agreements, contracts and understandings with any governmental agency, federal, state or local (including the Representative Governing Body) or with any person, partnership, corporation or Indian Tribe; and to agree to any conditions attached to federal financial assistance.

(3) To agree, notwithstanding anything to the contrary contained in this chapter or in any other provision of law, to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the Authority may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to maximum hours of labor, and comply

with any conditions which the federal government may have attached to its financial aid to the project

(4) To obligate itself, in any contract with the federal government for annual contributions to the Authority, to convey to the federal government possessions of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project funds in accordance with the terms of such contract, provided: that the contract requires that, as soon as practicable, after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract the federal government shall reconvey to the Authority the project as then constituted.

(5) To lease property from the EBCI and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(6) To borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of section 44-8(a) of this chapter.

(7) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(8) To purchase land or interest in land or take the same by gift: to lease land or interests in land.

(9) To undertake and carry out studies and analyses of housing needs, to prepare housing needs, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extensions, alteration or repair of any project or any part thereof.

(10) With respect to any dwellings, accommodations, lands, buildings, or facilities embraced within any project (including individual cooperative or condominium units): To lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to make sure further rules and regulations as the Board of Commissioners may deem necessary and desirable to effectuate the powers granted by this chapter.

(11) To finance the purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development.

(12) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement and to bring action for eviction against such tenant or homebuyer.

(13) To establish income limits for admission that ensure that dwelling accommodations in a housing project shall be made available only to persons of low income.

(14) To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

(15) To invest such funds as are not required for immediate disbursement.

(16) To establish and maintain such bank accounts as may be necessary or convenient.

(17) To employ an Executive Director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require, and to delegate to such officers and employees such powers or duties as the Board of Commissioners shall deem proper.

(18) To take such further actions as are commonly engaged in by public bodies of this character as the Board of Commissioners may deem necessary and desirable to effectuate the purposes of the Authority.

(19) To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a state or another Tribe in the exercise, either jointly or otherwise, of any or all the powers of the Authority and such other public housing agency or agencies for the purposes of financing (including, but not limited to, the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies.

(20) To adopt such By-laws as the Board of Commissioners deems necessary and appropriate to ensure the development of policies to effectuate good management practices.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

#### **Sec. 44-9. Obligations.**

(a) The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable:

(1) Exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the federal government in aid of such project;

(2) Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations;  
or

(3) From its revenues generally.

Any such obligation may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

(b) Neither the Board of Commissioners members of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

(c) The notes and other obligations of the Authority shall not be a debt of the EBCI and the obligation shall so state on their face.

(d) Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the EBCI. The tax exemption provisions of this chapter shall be considered part of the security for the repayment of obligations and shall constitute by virtue of this chapter and without necessity of being restated in the obligations, a contract between (1) the Authority and the EBCI, and (2) the holders of obligations and each of them, including all transferees of the obligations from time to time manner:

(e) Obligations shall be issued and sold in the following manner:

(1) Obligations of the Authority shall be authorized by a resolution adopted by the Board of Commissioners and may be issued in one or more series.

(2) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such Agreement may provide.

(3) The obligations may be sold at public or private sale at not less than par.

(4) In case any of the Board of Commissioners members whose signatures appear on any obligations cease to be members before the delivery of such obligations, the signature shall nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

(f) Obligations of the Authority shall be fully negotiable. In any suit action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this chapter shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purpose and provisions of this chapter.

(g) In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this chapter, may:

(1) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(2) Provide for the powers and duties of obliges and limit their liabilities; and provide the terms and conditions on which such obliges may enforce any covenant or rights securing or relating to the obligations.

(3) Covenant against pledging all or any part of its rents, fees and revenues or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(4) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(5) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(6) Covenant as to what other or additional debts or obligations may be incurred by it.

(7) Provide for the replacement of lost, destroyed or mutilated obligations.

(8) Covenant against extending the time for the payment of its obligations or interest thereon.

(9) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(10) Covenant concerning the rents and fees to be charged in the operations of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

(11) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds.

(12) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders or which must consent thereto, and the manner in which such consent may be given.

(13) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(14) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(15) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(16) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(17) Exercise all or any part or combination of the powers granted in this section.

(18) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(19) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

#### **Sec. 44-10. Reporting requirement.**

(a) The Authority shall submit an annual report, prepared by the Executive Director and signed by the Chairman of the Board, to the Tribal Council showing (1) a summary of the year's activities, (2) the financial condition of the Authority, (3) the condition of the properties, (4) the number of units and vacancies, (5) any significant problems and accomplishments, (6) plans for the future, and (7) such other information as the Authority shall deem pertinent.

(b) During his or her tenure and for one year thereafter, no Board of Commissioners member, officer or employee of the Authority, or any member of the governing body of the EBCI, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the Board of Commissioners member, officer, or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. If any Board of Commissioners member, officer, or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a Board of Commissioners member, officer, or employee the Board of Commissioners member, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority; and such disclosure shall be entered upon the minutes of the Authority, and the Board of Commissioners member, officer, or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board of Commissioners as provided in section 44-8(a). (The original text of the ordinance references a section which does not exist.)

(c) Each project developed or operated under a contract providing for federal financial



assistance shall be developed and operated in compliance with all requirements of such contract and applicable federal legislation, and with all regulations and requirements prescribed from time to time by the federal government in connection with such assistance.

(d) The Authority shall obtain or provide for the obtaining of adequate fidelity bond handling cash, or authorize issuance of checks or certify vouchers.

(e) The Authority shall not construct or operate any project for profit.

(f) The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the EBCI.

(g) All property including funds acquired or held by the Authority pursuant to this chapter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgement against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues, or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this chapter or the right of the Authority to bring eviction actions in accordance with section 44-7(c).

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

#### **Sec. 44-11. Cooperation with Tribal government.**

(a) For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the EBCI hereby agrees that:

(1) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project of the Authority.

(2) It will furnish or cause to be furnished to the Authority and the occupants of the projects all services and facilities of the same character and to the same extent, as the EBCI furnishes from time to time without cost or charge to other dwellings and inhabitants.

(3) Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing codes of the EBCI, as are reasonable and necessary, to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development of such project, and the surrounding territory.

(4) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(5) The EBCI Government hereby declares that its powers shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations including action through the appropriate courts.

(6) The Tribal Courts of the State of North Carolina shall have jurisdiction to hear

and determine an action for eviction of a tenant or homebuyer. The EBCI Government hereby declares that the powers of the State of North Carolina Tribal Courts shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations.

(b) The provisions of this chapter shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed or modified without the consent of the Department of Housing and Urban Development, so long as (1) the project is owned by a public body or governmental agency and is used for low income housing purposes, (2) and contract between the Authority and the Department of Housing and Urban Development for loans or annual contributions, or both in connection with such project remains in force and effect, or (3) any obligations issued in connection with such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest.

(c) If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing including the federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-12. Secretarial approval.**

With respect to any financial assistance contract between the Authority and the federal government, the Authority shall obtain the approval of the Secretary of the Interior of the United States of America or his designee.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-13. Autonomy.**

No ordinance or other enactment of the EBCI with respect to the acquisition, operation, or disposition of EBCI property shall be applicable to the Authority in its operations pursuant to this chapter.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-14. Interpretation.**

The provisions of this chapter, being necessary for the benefit of the EBCI and its members, shall be liberally construed to effect the purpose and objectives thereof.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-15. Effective date.**

This chapter is effective upon enactment.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

**Sec. 44-16. Enforcement.**

This chapter shall be enforced by the Governing Body of the Eastern Band of Cherokee Indians of North Carolina.

(Ord. No. 573, 10-4-1993; Ord. No. 9, 11-21-1995)

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## Chapter 47: Real Property\*

**\*Cross references:** Eminent domain, ch. 40; zoning, ch. 61; skeletal remains and burial site preservation, ch. 70; mineral rights, ch. 74; burial, ch. 90; roads and highways, ch. 136A; building codes and flood control, ch. 143.

### **Sec. 47-1. Control of property.**

The Tribal Council shall direct the management and control of all property, either real or personal belonging to the Eastern Band of Cherokee Indians.

(Charter, § 23; Ord. No. 19, 11-7-1991)

### **Sec. 47-2. Land development project review.**

(a) *Purpose.* The process of project construction review described herein is established by the Tribal Council of the Eastern Band of Cherokee Indians to promote the health, safety and general welfare of the inhabitants of Tribal lands. Further, this project construction review process is established to facilitate the adequate provision of water and sanitary sewage, roads and highways, schools, storm drainage, parks and other Tribal (public) improvements throughout the entirety of the Cherokee Indian Reservation.

(b) *Jurisdiction.* The project construction review process shall be required by the Tribal Council of the Eastern Band of Cherokee Indians and conducted only for those construction projects specified herein and which are to be located on the Tribal lands of the Eastern Band of Cherokee Indians prior to beginning site preparation and/or construction.

(c) *Administration.* The administration of the construction review process shall be the responsibility of the Tribal Business Committee. In addition, in the event that Tribal Funds are to be expended for extension of public utilities, or streets and roads, or similar public improvements, the Tribal Council shall approve the project plans prior to the commencement of construction. The Tribal Planning Division will serve as the primary staff for the review process and offer recommendations to assist in the administration of this review process. To assist the Business Committee in the review process these steps will be followed by those individuals seeking approval of a site plan:

(1) All site plans will be submitted to the Tribal Planning Division for review prior to being submitted to the Planning Board and the Business Committee for their review.

(2) Following the review by the planning staff and such other departments as may be applicable, the applicant's site plan will be forwarded to the Business Committee for review.

(3) At the review of the site plan by the Business Committee, one of the following actions may be taken:

(A) Approval of the site plan;

(B) The Committee may request additional information prior to taking final action;

(C) The Committee may request that the applicant redesign all or part of the site plan prior to taking final action; or

(D) Deny approval of the applicant's plan.

(4) If the applicant's site plan is denied an appeal may be filed with the Tribal Council within 30 days after the Committee's decision. All appeals shall be submitted to the Tribal Council in writing. The Tribal Council shall have the option of hearing the appeal at a regularly scheduled meeting or letting the decision of the Business Committee stand.

(5) Note: Construction or working drawings are not required for this review.

(d) *Construction projects requiring review.* The construction review process will be required for development projects to be located upon the Tribal lands of the Eastern Band of Cherokee Indians which involve new construction or any substantial structural alterations or reconstruction of a building or structure, privately owned, Tribally owned or owned by any public or semipublic corporation or body which falls into one or more of the following categories:

(1) A building or structure meeting the following size standard:

(A) Industrial buildings or structures with a gross floor area of 25,000 square feet or more.

(B) Commercial buildings or structures with a gross floor area of 5,000 square feet or more.

(C) Office or institutional buildings or structures with a gross floor area of 5,000 square feet or more.

(2) A project involving the location of more than one principal building on a lot or tract of land where said buildings are of a commercial, industrial, office, or institutional use.

(3) Any manufactured housing park, camper-trailer, recreational vehicle park, or multifamily residential building or structure containing three or more units.

(e) *Exemptions.* Any building, structure, or manufactured home used for single family occupancy is exempt. However, each dwelling unit shall comply with all provisions of the Cherokee Code including but not limited to the flood plain provisions and erosion and sedimentation control.

(Ord. No. 222, 11-7-1996)

**Sec. 47-3. Rights reserved to Tribe when possessory holding issued.**

The following rights shall be reserved by the Tribe when possessory holdings are issued to individual Tribal members:

(a) Legal title to land shall remain vested in the United States of America in Trust for the Eastern Band of Cherokee Indians.

(b) The power and responsibility to control the leasing of, the transfer of, and the manner and method of inheritance and devise of the possessory holding.

(c) All minerals are reserved to the Tribe together with the right to issue mineral leases and permits and to draw the income therefrom or allocate the income therefrom between the Tribe and the possessory holder.

(d) The power and responsibility to control the cutting of timber on the possessory holding.

(e) To grant or create easements and rights-of-way for roads, streets, alleys, water lines, sewer lines, electric and telephone lines, or any other public utility over the possessory holding.

(f) The right to zone, from time to time, the land area within which the possessory holding may be situated and to control type and nature of the use thereof.

(Res. No. 373, 10-14-1960)

**Sec. 47-4. Rights granted to member when possessory holding issued.**

The following rights shall be granted by the Tribe to a Tribal member when a possessory holding is issued:

(a) Recognition by the Tribal Council that the possessory holding has been assigned to the holder, assuming the holder has complied with the terms and conditions under which the assignment was made.

(b) The possessory holder may construct a building or other improvements on this possessory holding for residential, business, industrial, or other purposes subject to the approval of the Business Committee.

(c) The possessory holder may collect for damages or destruction of any improvement as the result of the issuance of an easement or right-of-way over this holding for any purpose by the Tribe.

(d) The possessory holder may collect for the disturbance of the surface of this holding or the interference of the use thereof as a result of the Tribe's issuance of a mineral lease or permit.

(e) The possessory holder may transfer all or any part of this holding to another recognized member of the Band under such conditions as may be prescribed by the Tribal Council.

(f) The possessory holder may grant leases or permits on this possessory holding to a member, or nonmember of the Band for a definite period of time and for a prescribed consideration in accordance with the then applicable rules and regulations of the Bureau of Indian Affairs, and the Tribe and subject to the approval of the

Business Committee and the Secretary of the Interior or his authorized representative. Such consideration shall be divided between the possessory holder and the Tribe in percentages established by the Tribal Council.

(g) Any improvements placed on the land are considered the personal property of the possessory holder in which the Tribe has no interest. They may be bequeathed by will, or absent a will, shall be distributed to the next of kin in the manner provided by the laws of the State of North Carolina.

(1) If the holder of the possessory right shall die and leave surviving a wife or a husband who is also a member of the Band, the survivor shall have a life interest in the possessory holding.

(2) If the holder of the possessory right shall die and leave surviving a wife who is not a member of the Tribe, the surviving widow shall, at the option of the Tribal Council, be permitted to use and occupy the holding during her lifetime if she does not remarry, but will not be recognized to have any possessory rights in the holding.

(3) If the holder of the possessory right shall die and leave a surviving husband or wife who is a nonmember, together with surviving minors who are Tribal members, the surviving spouse may use the possessory holding and improvements for the benefit of such minors during the period of their minority; then the possessory holding shall, with the approval of the Tribal Council, be partitioned by agreement to the heirs. A surviving nonmember wife shall, with the approval of the Tribal Council, be permitted to use a portion equal to a child's share under conditions set forth in section 47-4(g)(2). A surviving nonmember husband shall, with the approval of the Tribal Council, be permitted to use a portion equal to a child's share under conditions set forth in section 47-4(g)(4).

(4) If the holder of the possessory right shall die and leave a surviving husband or children or heirs other than a nonmember wife who are nonmembers of the Tribe, but who under state law would be entitled to inherit personal property from the holder of the possessory right, the Tribal Council, at their option, shall (A) purchase the improvements recognized to be the personal property of the holder of the possessory rights at their fair appraised value, or (B) give Tribal approval for a permit or lease to the surviving husband or other nonmember for use of the improvements and premises on which they are located for such period of time as will enable the nonmember husband or other nonmember heirs to amortize the value of such improvements under leasing and permitting regulations.

(5) In any event as described in section 47-4(g)(1)--(4), this certificate must be surrendered to the officers of the Tribe who shall issue new certificates to the new possessory holder or rightful users thereof in such manner as to show their interest therein.

(6) The above rights of the holder or user of possessory rights are subject to any Tribal laws of general application which may be enacted by the Tribal Council and which by reference are made a part hereof.

(Res. No. 373, 10-14-1960)

**Sec. 47-5. Reserved.**

**Editor's note:** Ord. No. 225, adopted May 16, 2000 completely repealed the provisions of § 47-5 which pertained to possessory assignments from Tribal lands and derived from the Res. of Oct. 18, 1932.

**Sec. 47-6. Abandonment.**

Any Tribal member who abandons such assigned lands and fails to utilize it during a period of five years shall forfeit all right, title and interest to said lands which shall revert to the Tribe.

**Sec. 47-7. Transfer of lease.**

These conditions shall not restrict the Tribal member from leasing the possessory holding or selling the possessory right to another Tribal member according to custom and subject to approval of the Business Committee.

(Res. Of 10-18-1932)

**Sec. 47-8. Reserved.**

**Editor's note:** Ord. No. 225, adopted May 16, 2000 completely repealed the provisions of § 47-8 which pertained to possessory holdings of aged and helpless Tribal members and derived from Res. Res. No. 314, adopted Feb. 1, 1960.

**Sec. 47-9. Transfer of possessory holdings.**

No transfer of a possessory holding shall be valid unless the transfer is consented to and approved by both a husband and wife. However, the consent and approval of nonmember spouse shall not be required inasmuch as such spouse has no right of ownership to Tribal lands.

(Res. No. 74, 10-16-1956)

**Sec. 47-10. Posting of land transfers between members.**

(a) Any Tribal member desiring to transfer a possessory holding shall have a notice posted at the Indian Agency Office and at the Cherokee Post Office for ten days in advance of the regular monthly meeting of the Business Committee. The notice shall set out a full description of the land intended to be transferred.

(b) The Business Committee shall not approve any land transfer that has not met the above notice posting requirement.

(Res. No. 33, 10-14-1946)

**Sec. 47-11. Assignment of home sites.**

Upon resolution, the Tribal council may assign Tribal land to Tribal members on the condition that the Tribal member constructs a permanent dwelling on the land within three years after the assignment is made. If a permanent dwelling is not constructed within this

time period, the land shall automatically revert back to the Tribe and any money paid to the Tribe by the member for this land shall be refunded. The Tribe shall apply the following standards when assigning Tribal land to Tribal members:

(1) Lots may only be assigned to Tribal members who do not own a possessory holding suitable for a home site, who are head of a household, and who have never received such an assignment from the Tribe.

(2) The transfer of possessory holding shall not be effective until the Tribal member has made full payment for the land. The Tribal member shall be given 90 days from the date the Principal Chief ratifies the above resolution to fulfill this obligation of payment.

(3) Three years after the date of transfer, an inspection will be made by the Tribe to ensure that a dwelling has been constructed on the assigned land. If this requirement is not met, the assigned land will automatically revert back to the Tribe, the assignee will be notified, and upon request, the assignee will be reimbursed for the purchase price of the land.

(4) Once the transfer has been made to the member purchasing the property, that member may not transfer or sell the property to any member of the Tribe. They have to come back before the Lands Committee, which will come back before Tribal council, within a three-year time frame.

(Res. No. 168, 5-11-1976; Ord. No. 225, 5-16-2000)

#### **Sec. 47-12. Assignments as security for home loans.**

(a) Tribal members with possessory holdings shall have the right to assign or pledge a leasehold interest in such holding as security for a loan which is used to provide a home for the member.

(b) Leasehold mortgages shall be assignable only in the event of default.

(c) Leasehold mortgages for homes shall only include that portion of the possessory holding upon which the house or improvement is located, together with road rights-of-way.

(Res. No. 426, 8-31-1961)

#### **Sec. 47-13. Assignment as security for loans other than homes.**

Tribal members with possessory holdings shall have the right to assign a leasehold interest through a leasehold mortgage as security for small business loans, building repair loans, building expansion loans, operating loans, or other business related loans.

(Res. No. 484, 2-9-1962)

#### **Sec. 47-14. Trustee's fees.**

(a) The fees charged in connection with any loan secured by a deed of trust on a leasehold interest on the Cherokee Indian Reservation for any collection, foreclosure or attorney's fees, shall not exceed five percent of the gross proceeds of the sale.

(b) All deeds of trust secured by a leasehold interest in Cherokee trust lands shall designate



a trustee's fee of no more than five percent of the sale proceeds, which together with actual expenses incurred as filing and advertising fees, shall be the only fees or expenses deemed valid or enforceable in the event of a foreclosure sale of leasehold interests in Cherokee trust lands.

(c) No loan or deed of trust shall be approved or be valid that provides for such fees in excess of five percent.

(Ord. No. 29, 10-27-1981)

**Sec. 47-15. Assignment of Cherokee County lands.**

(a) Those enrolled members who live on Cherokee trust lands in Cherokee County who do not have a record of an assignment or transfer of a possessory holding shall be recognized as owners of lands they occupy not to exceed 15 acres.

(b) The Realty Office shall survey and record the ownership of all such possessory holdings in Cherokee County that are not a matter of record.

(Res. No. 146, 6-17-1980; Res. No. 236, 10-15-1980)

**Sec. 47-16. Boundaries of Tribal Reserve.**

The boundaries of the Tribal Reserve are as follows:

Beginning at a point 1.4 miles from the Soco Gap, at the boundary line of the Reservation on Cranberry Branch, from this point proceed to the State Highway across Soco Creek. From the State Highway to Jumper Gap, from Jumper Gap to the point indicated on the map as one mile above Charlie Sampson's house on Jenkins Creek. From this point on Jenkins Creek through the Littlejohn Gap and across Bigwitch to the Wrights Creek Gap, from the Wrights Creek Gap straight across to the mouth of the Heintooga Creek, from the mouth of Heintooga Creek straight up the Reservation line by the Soco Gap back to the starting point on Cranberry Branch.

(Res. No. 39, 10-22-1941; Res. No. 433, 6-20-1977)

**Sec. 47-17. Lands reserved for Tribal use.**

(a) Lots 76, 77, 78, and 79 of the Qualla Boundary as surveyed and subdivided by M.S. Temple, being four lots in Soco Gap, have commercial value and shall be reserved for Tribal use or for commercial lease by the Tribe.

(b) Such portion of the land around Soco Falls and within a radius of half a mile from the falls shall be reserved for the benefit of and use of the Tribe.

(c) Other tracts of land that in the opinion of the Business Committee are of commercial value to the Tribe may be withheld by the Business Committee for the sole use and benefit of the Tribe.

(d) Consideration of any commercial lease on unassigned Tribal lands shall be restricted to a maximum use of ten acres to protect the Tribal Reserve land base for the benefit of an use of the Tribe.

(Res. Of 10-18-1932; Ord. No. 399, 11-21-1996)

**Sec. 47-18. Road rights-of-way.**

In order to prevent encroachments and ensure proper maintenance to BIA roads within the Cherokee Indian Reservation, there is hereby reserved a right-of-way to the Tribe for 30 feet from the centerline of each BIA road and control of the 60-foot road right-of-way is granted to the Roads Department of the Cherokee Indian Agency.

(Res. No. 46, 10-21-1946)

**Sec. 47-19. Easements and holdings bordering roadways.**

(a) The boundary line of all possessory holdings that border upon any road or highway shall run with the right-of-way or easement line of such road or highway.

(b) So long as any such road or highway is maintained and used, the property within the right-of-way or boundary lines of such road or highway shall be and remain the property of the Tribe, and may be used for any lawful purpose as authorized by the Tribal Council, subject to the road or highway use right.

(c) In the event any road or highway shall be permanently closed or abandoned as a road or highway, at that time the boundary lines of the possessory holdings on either side of such road or highway shall be extended to the centerline of the abandoned road or highway, subject to any then existing public rights or uses in the lands within the abandoned area.

(Res. No. 684, 12-16-1963)

**Sec. 47-20. Encroachment of road permit.**

(a) Before any construction shall be started within 30 feet of the centerline of any road on the Cherokee Reservation, a written request for an Encroachment Permit shall be submitted to the Roads Division of the Cherokee Indian Agency. Such permit shall require approval of the Tribal Roads Committee.

(b) For purposes of this section, construction shall include, but not be limited to, fence building, home construction, trenching, laying electric power lines, water lines, telephone cable, septic tank, drain fields, signs, access road and driveway intersections.

(Res. No. 33, 12-4-1973)

**Sec. 47-21. Reversionary rights; - housing authority.**

(a) Upon payment in full of loans made to the Qualla Housing Authority by H.U.D. under the Mutual Help Housing Program, the Tribal Council shall assign possessory holdings to the tribal member or members who have signed and are listed as "homebuyer" and, if any, "homebuyer's spouse" on the Mutual Help and Occupancy Agreement, as amended at the time of the loan pay-off, and any reversionary interests of prior occupants of such home, including the original contributor of the home site, shall be null and void.

(b) The Qualla Housing Authority shall have policies and procedures for adding, changing, or removing homebuyers or homebuyers' spouses from the Mutual Help and Occupancy

Agreement in the event of marriage, divorce, death, or other change of family status.

(Res. No. 329, 1-9-1981; Res. No. 79, 1-10-1992; Ord. No. 505, 4-8-1999)

**Sec. 47-22. Eviction.**

(a) The Cherokee Court shall have authority to evict persons living in houses built by the Qualla Housing Authority or in other rental housing, when such persons are in arrears on their rental payments.

(b) The Cherokee Court shall have authority to evict persons occupying residences or buildings used for commercial or industrial purposes where such premises are occupied under lease and the occupant, tenant or lessee:

(1) Is in default or arrears on their lease or rent payments; or

(2) Is continuing to occupy the leased premises after the term of the lease has expired; or

(3) Has done or committed any act by which, according to the condition of the lease, their leasehold or rental estate has ceased; or

(4) Does not have a valid lease approved by the Tribe and Bureau of Indian Affairs in effect; or

(5) Has vacated or abandoned the property for a period of 30 days.

(c) The Cherokee Court shall have authority to evict persons occupying residences or buildings used for commercial or industrial purposes when such premises are subject to a leasehold deed of trust or mortgage and the Cherokee Court has entered an Order of Foreclosure in favor of a leasehold mortgage holder.

(d) Pleadings, notice and service of process requirements for eviction proceedings shall comply with the Rules of Civil Procedure adopted and applicable to the Cherokee Court.

(e) At the termination of the lease term to Qualla Housing Authority for mutual help housing program units, only the Tribal Council shall have authority to reassign the possessory interest in the land.

(Ord. No. 337, 1-22-1990)

**Sec. 47-23. Camping and picnicking.**

(a) Camping and picnicking shall be restricted to designated areas on the Cherokee Indian Reservation. Camping and picnicking shall be limited to those areas specifically provided by the Tribe for such purposes or to such campground and picnic areas operated as commercial businesses by Tribal members or leasehold tenants.

(b) The Cherokee Police Department shall advise all persons camping or picnicking in an unauthorized area that they are violating a Tribal ordinance and direct them to an authorized area for such activities.

(Res. No. 43-S, 7-31-1968)

#### **Sec. 47-24. Home Improvement Program.**

(a) Tribal members selected to participate in the Program shall assign a house site of approximately one-half acre to the Tribe. Participants shall thereafter be tenants of the Tribe.

(b) All participants in the Home Improvement Program must sign an agreement setting forth the consideration received by them in exchange for their assigning their possessory rights to said house site together with any rights to transfer or convey the house site except with the approval of the Tribe.

(c) Participants must continuously occupy and live in the improved house. Participants may not sell, rent, lease, transfer or convey the house or any part thereof. If participants vacate the improved house, or purport to sell, rent, lease, transfer or convey the property, the Tribe shall have the right to reassign the home and house site.

(d) If a participant is residing in the improved house at the time of his death, the improvements shall revert to the participant's enrolled heirs in accordance with his will, or in the absence of a will, to those enrolled heirs recognized by the Tribe as being entitled thereto. If the participant has no direct heirs, the house site and all improvements thereon shall remain the property of the Tribe.

(e) The above restrictions shall be binding upon the participants for 15 years following execution of their agreement with the Tribe. If the participants continue to occupy the home at the end of the 15-year period, such participants may then transfer or convey the house site and improvements to another Tribal member.

(f) The participant shall convey a right-of-way to the house site to the Tribe which shall be valid for the duration of the restriction period.

(g) All restrictions shall be binding on only the original participant.

(Res. No. 112, 1-22-1982)

#### **Sec. 47-25. Leases.**

The Business Committee shall negotiate, approve and execute in behalf of the Tribe all leases or permits for both assigned and unassigned Tribal lands in compliance with existing Tribal law and federal law and regulations appertaining thereto and based on the merits of each application.

(Res. Of 10-11-1912; Res. Of 10-17-1932; Res. Of 11-8-1933; Res. Of 2-5-1941; Res. No. 84, 10-18-1956; Res. No. 102, 12-18-1956; Res. No. 640, 10-10-1963; Res. No. 44, 4-28-1967; Res. No. 63, 12-12-1967; Res. No. 8-S, 1-12-1968; Res. No. 49-S, 7-31-1968)

#### **Sec. 47-26. Lease rental bonds.**

Where security in the form of a rental bond on properties leased by the Tribe is required by federal regulations, neither the Tribal Council nor any Council committee shall have authority to postpone, suspend or waive a rental bond.

(Res. No. 458, 1-9-1987)

**Sec. 47-27. Reserved.**

(Res. Of 2-11-1931; Res. No. 55, 10-24-1949; Res. No. 715, 3-2-1964; Res. No. 350, 5-3-1979; Res. No. 261, 11-7-1980; Res. No. 343, 4-2-1981; Ord. No. 668, 9-7-1999)

**Sec. 47-28. Churches.**

Those churches on Reservation lands which presently hold under lease shall be assigned those parcels of land on which a church is located, with such assignments recorded in the Cherokee Agency Realty Office. When such lands cease to be used for church purposes the land and improvements shall revert to Tribal status.

(Res. No. 588, 4-6-1987)

**Sec. 47-29. Cherokee foreclosure ordinance.**

(a) *Jurisdiction.* The Cherokee Court shall have jurisdiction over all foreclosure proceedings which concern leasehold interests in Cherokee Indian trust lands located within the State of North Carolina.

(b) *Federal approval.* Foreclosures of leasehold interests in Cherokee Indian trust lands located in North Carolina shall be filed in and heard by the Cherokee Court, consistent with the terms and conditions of 25 U.S.C. 483a.

(c) *Applicable foreclosure laws.* Foreclosure of deeds of trust or mortgages on leasehold interests in Cherokee Indian trust lands shall be conducted in accordance with the foreclosure laws and statutes of the State of North Carolina, subject to rights of redemption by the lessor, including the Eastern Band of Cherokee Indians, contained in such mortgage or deed of trust.

(Ord. No. 338, 1-22-1990)

**Sec. 47-30. Deed of trust lien.**

(a) The filing and recording of a leasehold deed of trust or mortgage on parcels of Cherokee Indian trust land within the State of North Carolina shall constitute a valid and enforceable first lien on such leasehold.

(b) Perfection of leasehold deed of trust lien shall be accomplished by recording both a lease and deed of trust or mortgage in the Books of Miscellaneous Records in the Realty Office of the Cherokee Bureau of Indian Affairs.

(Ord. No. 339, 1-22-1990)

**Sec. 47-31. Background check; nonmember lessees.**

(a) All businesses, as well as persons who are not enrolled members of the Eastern Band of Cherokee Indians who wish to enter into any type of lease, nonenrolled spouses of enrolled members who wish to enter into business leases and nonenrolled persons who serve as president, vice president, or treasurer of business or hold an interest of 33 percent or more in the business applying for the lease that desire to enter into any type of lease with an enrolled member of the Eastern Band of Indians will have a background check performed at

the direction of the Cherokee Police Department.

(b) First generation heirs of enrolled members of the Eastern Band of Cherokee Indians who are known to the community and wish to enter into a residential lease with their enrolled member parent(s) shall be allowed to apply to the Tribal Business Committee for an exemption from the requirement of undergoing a background check.

(c) The prospective lessee will be responsible for the cost of the investigation and this cost shall be paid within one week of application for the lease. The cost may vary depending upon the extent of the investigation required.

(d) No lease transaction will be authorized until the favorable results of the background check are received by the Tribal Business Committee via the Cherokee Police Department.

(Res. No. 329, 9-16-1996; Ord. No. 567, 1-12-2001)

### **Sec. 47-32. Public access to bridges.**

Any bridge built for a private citizen by the Cherokee Roads Commission requires said private citizen to grant public access to said bridge and grant right-of-way to public use. As such, the easement shall be by the least intrusive method upon the private citizen and the least expensive.

(Ord. No. 526, 3-3-1997)

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## Chapter 48: Adoption (Reserved)\*

**\*Editor's note:** Former chapter 48 which pertained to adoption was repealed by Ord. No. 284, effective August 9, 1996.

Cross references: Juvenile code, ch. 7A.

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## Chapter 49: Enrollment\*

**\*Cross references:** Exclusion powers of Tribe, ch. 2.

### **Sec. 49-1. Authority of chapter.**

This chapter is enacted pursuant to the authority of the Tribe to establish and regulate membership and enrollment under its sovereign powers as a federally recognized Indian Tribe as well as existing federal statutory law and regulatory authority contained in Title 25 C.F.R. part 75.1-75, 1994, Revision of the Membership Roll of the Eastern Band of Cherokee Indians, North Carolina. This chapter governs future membership, loss of membership, and adoption of members into the Eastern Band of Cherokee Indians.

(Ord. No. 284, 8-2-1996)

### **Sec. 49-2. Qualifications for enrollment.**

The membership of the Eastern Band of Cherokee Indians shall consist of the following:

(a) All persons whose names appear on the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and approved pursuant to the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518);

(b) All direct lineal descendants of persons identified in section 49-2(a) who were living on August 14, 1963; who possess at least 1/32 degree of Eastern Cherokee blood, who applied for membership prior to August 14, 1963, and have themselves or have parents who have maintained and dwelt in a home at sometime during the period from June 4, 1924, through August 14, 1963, on lands of the Eastern Band of Cherokee Indians in the Counties of Swain, Jackson, Graham, Cherokee and Haywood in North Carolina;

(c) All direct lineal descendants of persons identified in section 49-2(a) who apply for membership after August 14, 1963, and who possess at least 1/16 degree of Eastern Cherokee blood.

(Ord. No. 284, 8-2-1996; Ord. No. 352, 12-3-1998; Ord. No. 645, 8-5-1999)

### **Sec. 49-3. In other Indian Tribes.**

Dual enrollment is prohibited.

(a) Any person who applies for membership after the effective date of this chapter (9-11-1995) who otherwise qualifies for membership in the Eastern Band but who has been enrolled as a member of another federally recognized Indian Tribe may be enrolled as a member of the Eastern Band of Cherokee Indians provided:

1. They have not shared in any benefits of land or money of another Tribe;
2. Provided further that they relinquish, in writing, their membership in the other Indian Tribe;
3. Provided still further that such applicant is admitted to membership by a majority vote of the Tribal Enrollment Committee.

(b) Any member of the Eastern Band of Cherokee Indians who subsequent to enrollment with the Eastern Band becomes a member of another Tribe and shares in any benefits of land or money of such other Tribe, shall be disenrolled from the Eastern Band; however, any member of the Eastern Band of Cherokee Indians who subsequent to enrollment with the Eastern Band becomes a member of another Tribe but has not shared in any benefits from that Tribe, shall be given an opportunity, to relinquish such other membership in order to prevent disenrollment in the Eastern Band. Failure to relinquish will result in disenrollment from the Eastern Band.

(Ord. No. 284, 8-2-1996)

### **Sec. 49-4. Enrollment Committee.**

The Tribal Council shall appoint either from within or without the membership of the Council, but not from without the membership of the Band, a Committee of six persons, one from each township, to serve as the Enrollment Committee. The Enrollment Committee shall

review all applications for enrollment filed in accordance with existing regulations and shall determine the qualifications of the applicant for enrollment with the Band. The Enrollment Committee may perform such other functions relating to the enrollment and membership in the Band as the Tribal Council may from time to time direct.

(Ord. No. 284, 8-2-1996; Ord. No. 30, 11-24-1999)

**Sec. 49-5. Applications for enrollment.**

(a) *Who must file.* All persons who meet the membership requirements contained in section 49-2 but who are not listed on the membership roll of the Eastern Band of Cherokee Indians, who request membership in the Eastern Band of Cherokee Indians must file an enrollment application. Applications for minors or incompetents may be filed by parents, guardians, or other sponsors such as social workers. No one will be considered for enrollment unless an enrollment application has been filed by the individual or a sponsor.

(b) *When and where to file an application.* All enrollment applications must be filed with the Enrollment Clerk or such other person as may be designated by the membership committee of the Eastern Band of Cherokee Indians. Application forms may be obtained by oral or written request from the Eastern Band Tribal Enrollment Office. Applications for membership may be filed at any time. However, in order to be considered for the per capita payment to be distributed in December of the current year, applications and all documentation required to establish lineage and blood degree must be received by September 15 of the current year. Any applications received after September 15 or any applications received before September 15 without all the required documentation will be processed for consideration for inclusion on the membership roll to be used for distribution of payments in subsequent years.

(c) *What the application must contain.* Each enrollment application must be completed in its entirety and must contain sufficient personal information to properly determine the applicant's eligibility for enrollment. Applications must show the following:

- (1) All names by which the applicant is known;
- (2) The address of the applicant;
- (3) The applicant's degree of Eastern Cherokee blood;
- (4) The names of Eastern Cherokee ancestors whose names appear on the 1924 Baker Roll of the Eastern Band, together with the names of Eastern Cherokee ancestors in generations between that roll and the applicant;
- (5) The name of the Tribe and degree of Indian blood of any Tribe other than Eastern Cherokee, as certified by other Tribe;
- (6) The Social Security Number and a copy of the Social Security card of the applicant or a copy of the completed application for a Social Security card. An application shall not be considered incomplete due solely to a delay by the Social Security Administration in issuing Social Security cards;
- (7) The county and state of birth and a county certified birth certificate (state certified birth certificates will only be accepted when the county does not issue birth certificates);



- (8) The status of natural or adopted applicant;
- (9) The signature of the applicant or sponsor;
- (10) The date of the filing of the application; and
- (11) A completed, signed, and dated IRS Form W-9.

(d) *Proof of lineage.* The burden of proof is on the applicant. The application for membership must be accompanied by the original copy of a certified birth certificate issued by the appropriate governmental entity where the birth occurred. In addition, the Enrollment Committee may, at its discretion, require the submission of one or more of the following documents to establish to its satisfaction that the applicant has the lineage and blood quantum required by Tribal law:

- (1) A marriage license for the parents of the applicant;
- (2) A notarized paternity affidavit signed by the biological mother and biological father of the applicant;
- (3) A court order determining paternity;
- (4) The results of DNA test signifying the probability of paternity; and/or
- (5) Other similar documents which are needed for a specific applicant.

*Effect of court order of paternity.* An order determining paternity issued by the court of the Eastern Band is evidence of lineage and shall be given due deference by the Enrollment Committee. An order determining paternity issued by a court other than the court of the Eastern Band shall be appropriately weighed, along with other evidence, by the Enrollment Committee. If information submitted in support of an application for enrollment does not include an order determining paternity issued by the court of the Eastern Band or does not establish, in the discretion of the Enrollment Committee, that the applicant has the lineage and blood quantum required by Tribal law, the Enrollment Committee shall require DNA testing of the applicant and other necessary persons.

(e) *Adopted Eastern Band of Cherokee Indians child.* An adopted person's eligibility for enrollment is determined through one or both of the natural parents. Documentary evidence submitted to support an adopted person's application for enrollment must show relationship to the natural parent through whom eligibility for enrollment is determined. The information shall be contained in locked file cabinets, and adequate safeguards shall be installed to ensure that the confidentiality of these records shall not be violated.

(f) *Adoptions by this Tribe of Indian children from other federally recognized Indian Tribes.* It is recognized that some persons have been adopted into membership in the Eastern Band of Cherokee Indians pursuant to Tribal Resolution 381 (1977) and that such persons are entitled to retain their membership. However, Resolution No. 381 (1977) is hereby rescinded as of the effective date of this amendment to the enrollment ordinance (8-9-1996), and persons who do not possess the required lineage and the required degree of Eastern Cherokee Indian blood shall not be adopted into membership regardless of their degree of other Tribal blood or their status as legally adopted children of Eastern Band members.

(Ord. No. 284, 8-2-1996; Ord. No. 566, 1-12-2001; Ord. No. 670, 3-17-2001)

**Sec. 49-6. Processing of the application.**

(a) *By enrollment staff.* All applications shall be received by the Enrollment Office personnel. The actions taken by the enrollment staff shall include:

- (1) Stamp the application form with the date on which it is received and acknowledge receipt of it.
- (2) Make a folder for the application and supporting documents.
- (3) Make sure the application is complete. If not, notify the applicant of what is required.
- (4) If applicant possesses blood of any other Tribe(s), check on possible enrollment.
- (5) Compute degree of Eastern Cherokee blood. The degree of Eastern Cherokee Indian blood shown on the 1924 Baker Roll shall be used in all cases for computing the degree of Eastern Cherokee Indian blood for new enrollees for enrollment purposes.
- (6) As completely as possible, verify other claimed Indian blood.
- (7) Separate applications into two stacks:
  - a. Applicants descended from Eastern Cherokee base roll who also meet other requirements; and
  - b. Applicants who do not meet requirements or who do not have proper documentation.
- (8) Prepare certifications accepting or rejecting applications for consideration of Enrollment Committee.  
The above actions shall be completed by the staff within 45 days of receipt of the application.

(b) *By Enrollment Committee.* Actions taken by the Enrollment Committee shall include:

- (1) Examine applications and documentation presented by Enrollment Staff.
- (2) Determine accuracy and sufficiency of research, requiring additional action by staff if necessary.
- (3) Decide to accept or reject applicants.
- (4) Direct the staff to notify accepted applicants of action, informing them of the roll number assigned.
- (5) Direct the staff to notify rejected applicants of Enrollment Committee's action, by certified mail, return receipt requested, and of their right to appeal this decision to the Tribal Council, through the Appeals Officer appointed by the Tribal Council.

The above actions shall be completed by the Enrollment Committee within 30 days of its receipt of the material from the staff.

(Ord. No. 284, 8-2-1996)

**Sec. 49-7. Appeals for adverse ruling of Enrollment Committee.**

(a) *For membership purposes only.*

(1) Applicants who are determined ineligible by the Enrollment Committee shall be notified of their rejection by certified mail, return receipt requested. The rejection notice shall state the specific reason they do not qualify. Each rejected applicant shall also be advised of the right to appeal the decision of the Enrollment Committee to the Tribal Council through the Appeals Officer. The applicant shall be advised to submit with the appeal any supporting evidence not previously furnished. Any appeal must be received by the Appeals Officer no later than 30 days from the date of receipt of the notice of rejection by the Enrollment Committee. No person shall have the right to appeal an adverse decision after the expiration of 30 days from the date notice was served on applicant. A final decision by either the Committee, appeals officer or Tribal Council is Res Judicata and shall not be brought on for rehearing by any Tribal body or Committee.

(2) When an appeal is received, the Appeals Officer shall review the Enrollment Committee decision and base his decision solely upon documentary evidence presented with the application and the appeal which established that the applicant does or does not qualify for membership pursuant to the provisions of this chapter 49. The decision of the Appeals Officer, if it is the same as that of the Enrollment Committee, shall be final. The decision of the Appeals Officer, if it is different from the Committee's decision, shall be returned to the Committee for further discussion and action. The Committee may then either uphold its earlier adverse decision or honor the Appeals Officer reversal of the Committee's earlier decision. If the Committee upholds its earlier adverse decision, then the applicant's appeal shall be forwarded to the Tribal Council for consideration. All decisions of the Tribal Council shall be final.

(b) *To share in distribution of trust assets.* Applicants who are determined ineligible by the Enrollment Committee when a roll is being prepared for distribution of Tribal judgment funds or other trust assets shall be notified of their right to appeal to the Secretary of the Interior. That appeal must be in writing addressed to the Secretary of the Interior and mailed to the Superintendent of the Cherokee Indian Agency. All appeals must be filed within 30 days from the date of receipt of the notice of the decision of the Enrollment Committee.

(Ord. No. 284, 8-2-1996)

**Sec. 49-8. Recordkeeping.**

(a) *Content of individual folder.* An individual folder shall be established for each Tribal member. This folder shall contain the following items:

(1) Application form;

(2) Family tree;

(3) County certified birth certificate; (state certified birth certificates will only be accepted when the county does not issue birth certificates);

- (4) Correspondence;
- (5) All other documentation on the person pertinent to membership in the Tribe;
- (6) Marriage license/legal name change;
- (7) Copy of the applicants Social Security card;
- (8) Current completed, signed, and dated Form W-9.
- (9) Death certificate, if applicable.

(b) *Confidentiality and access to records and roll.*

(1) *Confidentiality.* Information in individual folders shall be considered confidential. It shall not be available to anyone except the individual member (or their guardian) and to Enrollment Staff, Enrollment Committee members, and Tribal Council members when such examination is necessary in considering enrollment decisions.

(2) *Access to records.* The Tribe's membership roll may be viewed only by authorized personnel of the enrollment office. Neither the roll nor any portion thereof may be copied or distributed to any person or organization except by permission granted by the Eastern Cherokee Enrollment Committee. The Enrollment Committee shall use its discretion in using or releasing information from the roll for the benefit of Tribal members or Tribal programs.

(c) *Updating records.* Upon receipt of appropriate documentation, the Enrollment Staff is authorized to update the information on the Tribal roll. The following documentation is deemed adequate for such actions to be taken:

(1) Name change: marriage license, divorce decree, court order changing name, Social Security card stating name change.

(2) Address change: written statement signed by Tribal member or their guardian.

(3) Death: death certificate, Bureau of Indian Affairs records, mortuary records, hospital records, obituary notice from newspaper, written, signed statement from someone who attended funeral or who saw the grave marker and can provide the date of death.

(d) *Changes.* Any change for which none of the above documents are available must be approved by the Enrollment Committee. A copy of that statement, stating the reason for the change without usual documentation shall be placed in the individual's folder.

(e) *Updating records.* To ensure accurate and complete records, every enrolled member must keep his or her enrollment documentation current. (For instance, enrolled members are responsible for notifying the Enrollment Office whenever there is a change of name through marriage or divorce or when there is a change of address). Also, as directed by the Enrollment Committee, the Enrollment staff may require enrolled members to update any documentation set forth in this section.

(Ord. No. 284, 8-2-1996; Ord. No. 566, 1-12-2001)

**Sec. 49-9. Loss of membership.**

(a) *Relinquishments.*

(1) Any adult member of the Eastern Band of Cherokee Indians may voluntarily relinquish his/her membership. Such a relinquishment must be in writing, and the signature must either be notarized or witnessed by two persons. A person who has relinquished his/her membership in Eastern Band as an adult, over the age of 18, may not reapply for membership.

(2) The membership of any member of the Eastern Band of Cherokee Indians who is not at least 18 years of age may not be relinquished by anyone. The only exception is when the parent or guardian desires to enroll the minor child into another federally recognized Indian Tribe. However, this may only be accomplished on a conditional relinquishment form. A person whose membership in the Eastern Band was relinquished by a parent or guardian while the person was a minor may reapply for membership after reaching the age of 18.

(3) Any member wishing to relinquish will be encouraged to do so on a conditional relinquishment form. In such case, the relinquishment will become effective upon the acceptance of that individual into membership of another Tribe. The member's name will not be removed from the Eastern Cherokee Tribal Roll until documentation of the acceptance into the other Tribe's membership is received.

(4) Should a member insist upon relinquishing in writing, without using the conditional relinquishment form, the Tribe will comply with the member's wishes and will remove the member's name from the Eastern Cherokee Tribal Roll on the effective date specified in the relinquishment submitted.

(b) *Disenrollments.* The Enrollment Staff shall bring to the attention of the Enrollment Committee the names of such Tribal members as an examination of the records of the enrollment office indicate, might be subject to disenrollment. Should the Enrollment Committee determine that disenrollment action is necessary, the procedures described in this section shall be followed. Any person whose disenrollment has been completed shall not be eligible to reapply for membership.

(1) *Grounds for disenrollment.* A Tribal member may be subject to disenrollment if records reveal one or more of the following conditions exist:

(A) The member was erroneously enrolled (that is, he/she did not meet the eligibility criteria in existence at the time of his/her enrollment).

(B) The member has accepted benefits of land or money (or if a minor, a parent or guardian has accepted benefits of land or money on the minor's behalf) as an enrolled member of another Indian Tribe after the effective date of this chapter (9-11-1995).

(C) The member is currently enrolled with another Indian Tribe and has either refused to relinquish membership in the other Tribe or has failed to respond to a notice of the requirement to relinquish membership in the other Tribe.

(2) *Procedures for disenrollment.* Members identified as being subject to disenrollment pursuant to subsection (1) of this section shall be notified by certified mail, return receipt requested, of the intent to disenroll. Included in the notice shall be the date set for a hearing before the Enrollment Committee to consider the

matter. Following the hearing, whether or not the affected member makes any appearance or response, the Enrollment Committee shall determine if the member shall be disenrolled. The disenrolled member shall be notified of the action taken by certified mail, return receipt requested. Such notice shall include the right to appeal the Enrollment Committee's decision to the Tribal Council within 30 days of the date of the receipt of the notice. Should such an appeal be timely filed, the Tribal Council shall make a decision on the disenrollment. The decision of the Tribal Council shall be final. If no appeal is timely filed, the decision of the Enrollment Committee shall be final.

(Ord. No. 284, 8-2-1996; Ord. No. 645, 8-5-1999)

**Sec. 49-10. Conflicting ordinances or resolutions.**

All ordinances or resolutions in conflict with any provision of this chapter are hereby rescinded.

(Ord. No. 284, 8-2-1996)

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## Chapter 50: Family Law

### ARTICLE I. MARRIAGE

**Sec. 50-1. Marriage.**

The institution of marriage between a man and a woman is recognized in the territory of the Eastern Band and shall be officially solemnized by any ordained minister or any judicial official of the Cherokee court. For a marriage to be legally recognized, a couple seeking to marry shall obtain a marriage license from, and record it with, the register of deeds in their county of residence. Alternatively, members of the Eastern Band may elect to obtain a marriage license from, and record it with, the Cherokee court.

(Ord. No. 504, 12-20-2000)

**Sec. 50-2. Full faith and credit.**

A marriage duly solemnized under the laws of North Carolina or any other state or Indian nation shall be given full faith and credit within the Eastern Band's territory.

(Ord. No. 504, 12-20-2000)

**Secs. 50-3--50.9. Reserved.**

### ARTICLE II. DIVORCE

**Sec. 50-10. Divorce.**

Either spouse in a marriage may obtain a divorce, without a showing of fault by either spouse, by filing an action in the Cherokee court showing the following:

- (a) One of the parties has resided within the territory of the Eastern Band of Cherokee for at least 30 days; and

(b) The parties have lived separately from each other for a period of at least 30 days unless they mutually voluntarily consent to the divorce; and

(c) The party seeking the divorce believes that the bonds of marriage are irretrievably broken.

(Ord. No. 504, 12-20-2000)

**Sec. 50-11. Property distribution.**

(a) Either former spouse may file an action in the Cherokee court seeking equitable distribution of personal property owned or acquired jointly by the parties during the marriage. Such action shall be filed no later than three years after a judgment for divorce has been entered by the court.

(b) At any time after a judgment for divorce is granted, either former spouse may file a resolution with the Tribal council seeking equitable division of any possessory holding of Eastern Cherokee trust property owned or acquired jointly by the parties during the marriage, unless a final determination of the property ownership as between the spouses has already been made by the Tribal council.

(c) In determining the division of property, the court and Tribal council shall make all reasonable efforts to divide the jointly owned or acquired property so that each party receives a share of equal value, or to equalize the distribution by award of compensation from one former spouse to the other.

(d) Nothing in this section shall be deemed to recognize or grant any rights in Cherokee trust land to any person who is not an enrolled member of the Eastern Band, other than those rights recognized by other provisions of Cherokee law.

(Ord. No. 504, 12-20-2000)

**Sec. 50-12. Other family law issues.**

(a) Either spouse may file an action for child custody, child support, and spousal support. An action for child custody or child support shall be filed on or before the date the child reaches age 18. An action for spousal support shall be filed no later than three years after a judgment for divorce has been entered.

(b) There shall be no action for divorce from bed and board.

(c) Actions for protection from domestic violence shall be filed pursuant to chapter 50B of the Cherokee Code.

(Ord. No. 504, 12-20-2000)

**Sec. 50-13. Choice of law.**

Except as set forth in this chapter or another provision of the Cherokee Code, the parties to a marriage and parties seeking a divorce, property distribution, child custody, child support, or spousal support shall have all rights provided by the laws of North Carolina. The court

shall look to the laws of North Carolina for guidance in resolving any family law matter not specifically governed by the Cherokee Code.

(Ord. No. 504, 12-20-2000)

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## Chapter 50B: Domestic Violence Prevention

### **Sec. 50B-1. Purposes; definitions.**

(a) The purpose of this Domestic Violence Prevention Code is to recognize that domestic abuse is a serious crime against society, the Eastern Band of Cherokee Indians, and the family, and to provide the victim of domestic violence the maximum protection from further abuse which the law can provide. The strength of the Eastern Band of Cherokee Indians is founded on healthy families, and families damaged by domestic abuse, must be healed by the immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services. Violent behavior will not be excused or tolerated within the territory of the Eastern Band. Intoxication of the abuser is irrelevant. The laws preventing domestic abuse shall be enforced regardless of marital status, cohabitation or the existence of a current relationship.

(b) As used in this chapter, these terms have the following meanings:

(1) *Domestic violence* means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(A) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(B) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(C) Forcing the aggrieved party or a member of the aggrieved party's family or household to engage in sexual activity by force, threat of force, or duress.

(2) *Personal relationship* means a relationship wherein the parties involved:

(A) Are current or former spouses.

(B) Are persons who live together or have lived together, and are or were in a dating relationship while living together.

(C) Are related as parents and children, including persons acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16.

(D) Have a child in common.

(E) Are current or former household members.

(F) Are persons who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one



wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(3) *Advocate* means an employee of a program that provides services to victims of domestic violence.

(4) *Bodily injury* means physical pain, illness, or an impairment of a physical condition.

(5) *Cherokee Court or Court* means the Cherokee Court of Indian Offenses or any successor Court established by the Eastern Band of Cherokee Indians.

(6) *Ex parte order* means an emergency order entered before notice can be given to the other party.

(7) *Pro se* means without the assistance of an attorney.

(8) *Territory of the Eastern Band of Cherokee Indians* means all lands within the Qualla Boundary, and all lands held by the United States for the benefit of the Eastern Band of Cherokee or any member of the Eastern Band of Cherokee, and all additional lands acquired by the Eastern Band of Cherokee notwithstanding the issuance of any right-of-way.

(Ord. No. 640, 8-5-1999)

**Sec. 50B-2. Institution of civil action; jurisdiction; motion for emergency relief; temporary orders.**

(a) Any person residing in the Territory of the Eastern Band of Cherokee Indians may seek relief under this chapter by filing a civil action, or by filing a motion in any existing family law action, alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this chapter may file a civil action and proceed *pro se*, without the assistance of legal counsel.

(b) The Cherokee Court shall have original jurisdiction over actions instituted under this chapter. Either a trial judge or a magistrate of the Court may hear and decide any and all matters filed under this chapter.

(c) Emergency relief: A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child.

(1) A hearing on a motion for emergency relief, where no *ex parte* order is entered, shall be held after seven days' notice of the hearing to the other party or after seven days from the date of service of process on the other party, whichever occurs first.

(2) If the party is proceeding *pro se* and does not request an *ex parte* hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(d) Ex parte orders: Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts; provided, however, that a temporary order for custody prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse.

(1) Upon the issuance of an ex parte order under this subsection, a hearing shall be held within ten days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later.

(2) If an aggrieved party acting pro se requests ex parte relief, the Clerk of Court shall schedule an ex parte hearing with the Court by the end of the next day on which the Court is in session. If the Court is not in session, the clerk shall arrange for a magistrate or judge to hear the motion for ex parte relief within 24 hours.

(3) Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(4) At the time of the hearing, the defendant may request and the Court may grant a continuance for good cause. During the time of any such continuance, the ex parte order shall remain in effect.

(5) At the time of the hearing, if the defendant is represented by an attorney and the aggrieved party is not, then the aggrieved party may request and the Court may grant a continuance for the aggrieved party to retain an attorney. During the time of any such continuance, the ex parte order shall remain in effect.

(e) Forms: The Clerk of Court shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section.

(Ord. No. 640, 8-5-1999)

### **Sec. 50B-3. Relief.**

(a) The Court may grant any protective order or approve any consent agreement to stop and prevent acts of domestic violence. The orders or agreements may:

(1) Direct a party responsible for domestic violence to refrain from such acts.

(2) Grant to an aggrieved party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party responsible for domestic violence to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights.

(5) Order the eviction of a party responsible for domestic violence from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order a party responsible for domestic violence to make payments for the support of a spouse or to pay the spouse's expenses such as rent or mortgage, medical expenses, health insurance coverage for the aggrieved party or the minor children, and other necessary expenses.

(8) Provide for possession of personal property of the parties, including granting an aggrieved party use of a vehicle and other essential personal effects, regardless of which party holds title to such property.

(9) Order a party responsible for domestic violence to refrain from doing any or all of the following:

(A) Threatening, abusing, or following the other party,

(B) Harassing the other party, including by telephone, by visiting the home, workplace or any other place where the aggrieved party is likely to be, or by other means,

(C) Coming within a certain distance of the other party at any time, or

(D) Otherwise interfering with the other party.

(10) Award costs and attorneys' fees to either party.

(11) Prohibit a party who is responsible for domestic violence from using, possessing or purchasing a firearm for a time fixed in the order.

(12) Order a party responsible for domestic violence to attend and complete an abuser treatment program recognized and approved by the Eastern Band of Cherokee Indians or the Tribe's program for victims of domestic violence as based on an effective established model that has a sensitivity to and focus on the Native American experience.

(13) Order a party to participate in drug or alcohol assessment and treatment.

(14) Order a party to maintain, and refrain from removing funds beyond a certain limit from, the parties' bank account.

(15) Include any additional prohibitions or requirements the court deems necessary to protect an aggrieved party or a minor child.

(b) Protective orders entered or consent orders approved pursuant to this chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year.

(c) Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(d) A copy of any order entered and filed under this article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the Cherokee Police Department and/or the city of the victim's residence. If the victim does not reside in a city or resides in a city with no Police Department, copies shall be issued to and retained by the sheriff, and the county Police Department, if any, of the county in which the victim resides.

(e) The Cherokee Police Department shall provide for immediate entry of the order onto the Division of Criminal Information Network and shall provide for access of such orders to magistrates and judges on a 24-hour-a-day basis. Modifications of the order shall also be entered.

(Ord. No. 640, 8-5-1999)

#### **Sec. 50B-4. Enforcement of orders.**

(a) A party may file a motion for contempt for violation of any order entered pursuant to this chapter. The party may file and proceed with such motion pro se, using forms provided by the Clerk of Court.

(1) Upon the filing of a pro se motion for contempt under this subsection, the clerk shall schedule and issue notice of a show cause hearing with the Court at the earliest possible date.

(2) The clerk shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in section 50B-3(a)(9), and if the victim, or someone acting on the victim's behalf, presents the law enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities.

(1) Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest.

(2) The person arrested shall be brought before the Court at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested may be released on bail as determined by the Court.

(c) Valid protective orders entered pursuant to this section shall be enforced by all law enforcement agencies without further order of the Court.

(d) Valid protective orders that are entered by the courts of another state or Indian Tribe and are consistent with 18 U.S.C. 2265 shall be accorded full faith and credit by the Cherokee Court and shall be enforced by the Cherokee Police Department.

(Ord. No. 640, 8-5-1999)

#### **Sec. 50B-5. Emergency assistance.**

(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of the Cherokee Police Department, and the Police Department shall respond to the request for assistance as a high priority matter.

(1) The police officer responding to the request for assistance shall take whatever steps are reasonably necessary to protect the victim and his or her minor children from harm, including without limitation:

(A) Advise the victim of sources of shelter, medical care, counseling and other services;

(B) Transport the victim to appropriate facilities such as hospitals, the Court, or public or private facilities for emergency shelter;

(C) Upon request, accompany the victim to his or her residence, so that the victim may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the victim and any minor children who are presently in the care of the victim to remain elsewhere pending further proceedings;

(D) Confiscate any weapon involved in the alleged domestic violence;

(E) Give the victim adequate notice of rights, remedies and services available;

(F) Arrest the alleged perpetrator as may be required by section 14-40.1(e) of the Cherokee Code;

(G) Enforce all valid protective orders entered by the Court without further order of the Court; and

(H) Give full faith and credit to valid protective orders entered by the courts of any state or Indian Tribe and enforce those orders without further order of the Court.

(b) In providing the assistance required by subsection (a), no officer may be held criminally or civilly liable on account of reasonable measures taken under authority of subsection (a). (Ord. No. 640, 8-5-1999)

#### **Sec. 50B-6. Construction of chapter.**

This chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This chapter shall not be construed as relieving any person or institution of the duty to report to the appropriate authorities if the person or institution has cause to suspect that a child is abused or neglected.

(Ord. No. 640, 8-5-1999)

#### **Sec. 50B-7. Remedies not exclusive.**

The remedies provided by this chapter are not exclusive but are additional to remedies provided elsewhere in the Cherokee Code.

(Ord. No. 640, 8-5-1999)

**Sec. 50B-8. No defense to criminal prosecution.**

The granting of a protective order, approval of a consent agreement, or the granting of any other relief or the institution of any other enforcement proceedings under this chapter shall not be construed to afford a defense to any person or persons charged with a crime pursuant to the criminal laws of the Eastern Band of Cherokee Indians or other law.

(Ord. No. 640, 8-5-1999)

**Sec. 50B-9. Domestic violence center fund.**

Domestic violence prevention funding is established within the Eastern Band of Cherokee Indians Finance Department. The funds shall be used to make grants to the tribally recognized center providing services for victims of domestic violence as appropriated by the Cherokee Tribal Council. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

(1) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night.

(2) It shall be a nonprofit corporation or a local governmental entity.

(Ord. No. 640, 8-5-1999)

**Sec. 50B-10. Severability.**

If a court finds any clause or section of this chapter to be invalid, such clause or section shall be severed, and the remainder of this chapter shall remain in full force and effect.

(Ord. No. 640, 8-5-1999)

**Sec. 50B-11. Repeal of inconsistent law.**

Ordinance 97, effective February 8, 1990, Ordinance 355-C (1998), Chapter 50C of the Cherokee Code, and all other ordinances or resolutions that are inconsistent with this chapter are hereby repealed.

(Ord. No. 640, 8-5-1999)

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## Chapter 53: Consumer Credit

### ARTICLE I. GENERAL PROVISIONS

**Sec. 53-1. Definitions.**

As used in this Chapter, the term:

*Cashing* means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

*Check-cashing service* means any person engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration, or offering deferred deposit loans, except as provided in section 53-11.

*Credit* means a loan or advance of funds, or a deferred payment for merchandise purchased, in exchange for an agreement to pay an additional amount whether denominated as interest, fees, or simply a higher price for the goods purchased. The term shall not include a loan by family or friends with no interest or other charge to the borrower.

*Deferred deposit loan* includes any arrangement in which a person accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.

*Person* means an individual, partnership, association, or corporation, or other business entity of any type.

(Ord. No. 22, 11-24-1999)

### **Sec. 53-2. Usury.**

Except as specifically allowed by this chapter, within the territory of the Eastern Band of Cherokee Indians, no person shall:

- (1) Extend credit to another person at an effective annual percentage rate exceeding 36 percent, if the credit is unsecured.
- (2) Extend credit to another person at an effective annual percentage rate exceeding 24 percent, if the credit is secured.
- (3) Extend credit to another person without disclosing the annual percentage rate, finance charge, amount financed, and total of payments as provided by Regulation Z of the Federal Truth in Lending Act, regardless of whether that Act would otherwise apply to the transaction.

(Ord. No. 22, 11-24-1999)

### **Sec. 53-3. Trader's permit.**

No person shall extend credit on the territory of the Eastern Band of Cherokee Indians, or secured by any property held in trust for the Eastern Band, without a valid trader's permit approved by the Bureau of Indian Affairs.

(Ord. No. 22, 11-24-1999)

### **Sec. 53-4. Business Committee rules.**

The Business Committee may adopt rules necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist the public in interpreting and complying with this article.

(Ord. No. 22, 11-24-1999)

**Secs. 53-5--53-9. Reserved.**

## **ARTICLE II. CHECK CASHING SERVICES**

### **Sec. 53-10. License and trader's permit required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without obtaining and maintaining a license from the North Carolina State Banking Commission under N.C.G.S. § 53-276, and a valid trader's permit to operate on the Cherokee Indian Reservation. No person or other entity providing a check-cashing service may avoid the requirements of this article by providing a check or other currency equivalent instead of currency when cashing payment instruments.

(Ord. No. 22, 11-24-1999)

### **Sec. 53-11. Exemptions.**

(a) This article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; or

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services with a valid trader's permit, who not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars is charged for the service.

(Ord. No. 22, 11-24-1999)

### **Sec. 53-12. Maximum fees for service; fees posted; endorsement of checks cashed.**

(a) Notwithstanding any other provision of law, no check-cashing service shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Two percent of the face amount of the check or five dollars, whichever is greater, for checks issued by the federal government, Eastern Band of Cherokee Indians, State of North Carolina, or any agency of the state or federal government, or any county or municipality of North Carolina.

(2) Five percent of the face amount of the check or five dollars, whichever is greater, for personal checks, other checks, or money orders.

(b) A check cashing service may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. Except as provided by section 53-13, any check cashing service that cashes a check for a fee shall deposit the check no later than three business days from the date the check is cashed.

(c) A check cashing service shall ensure that in every location it conducts business, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A check cashing service shall further ensure that notice of the fees currently charged at every location shall be filed with the Business Committee.



(d) A check cashing service shall endorse every check, draft, or money order presented by the check cashing service for payment in the name of the check cashing service.

(Ord. No. 22, 11-24-1999)

**Sec. 53-13. Deferred deposit loans.**

(a) A check cashing service may provide a deferred deposit loan and defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.

(b) The face amount of any postdated or delayed deposit check accepted pursuant to this section shall not exceed \$300.00.

(c) Each deferred deposit loan made on the security of a postdated or delayed deposit check shall be documented by a written agreement that has been signed by the customer and the check cashing service. The written agreement shall state the annual percentage rate, finance charge, amount financed, and total of payments as provided by Regulation Z of the Federal Truth in Lending Act. The written agreement shall authorize the check cashing service to defer deposit of the personal check until a specific date no later than 31 days from the date the check is issued.

(d) A check cashing service shall not directly or indirectly charge any fee or other consideration for a deferred deposit loan, except as follows:

(1) The check cashing service may charge an administrative fee not to exceed five dollars.

(2) In addition to the administrative fee, the check cashing service may charge interest on the amount of cash delivered to the customer at an annual percentage rate (APR) no greater than 36 per annum. The rate charged on the outstanding balance after maturity shall not be greater than the rate charged during the loan term. Charges on loans shall be computed and paid only as a percentage of the unpaid principal balance or portion thereof. Principal balance means the balance due and owing exclusive of any interest, service or other loan-related charges.

(3) If there are insufficient funds to pay the check on the date of presentment, a check cashing service may charge a fee in the amount of \$15.00, or the fee imposed on the check cashing service by the financial institution, whichever is lower. Only one such fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. A fee charged under this subsection is the only charge allowed for late payment.

(e) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same check cashing service or any affiliate of the check cashing service. A check cashing service shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer.

(f) No check cashing service may extend another deferred deposit loan or any other form of credit to a customer if that customer has a loan outstanding with that check cashing service.

(g) No deferred deposit loan made under this section may be secured by an assignment of any per capita distribution or a pledge of any property other than the deferred deposit check.

(h) No person may threaten to use or use the criminal process in the Cherokee Court or any other court to collect a check that was tendered in exchange for a deferred deposit loan.

(Ord. No. 22, 11-24-1999)

**Sec. 53-14. Record keeping; receipt requirements.**

(a) Every check cashing service shall maintain books, accounts, and records separate from any other business in which the person is engaged, and such records shall be retained for a period of at least five years.

(b) Every check cashing service shall ensure that each customer cashing a check is provided a receipt showing the name or trade name of the check cashing service, the transaction date, amount of the check, and the fee charged.

(c) The Business Committee may examine the books, accounts, and records in order to determine whether the person is complying with this article, upon receipt of a complaint from a customer of the check cashing service.

(Ord. No. 22, 11-24-1999)

**Sec. 53-15. Prohibited practices.**

No check cashing service may do any of the following:

(1) Charge fees in excess of those authorized under this article.

(2) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(3) Conduct business at premises or locations other than locations provided in a valid trader's permit and lease.

(4) Engage in unfair, deceptive, or fraudulent practices.

(5) Cash a check, draft, or money order made payable to a payee other than a natural person unless the check cashing service has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(Ord. No. 22, 11-24-1999)

**Secs. 53-16--53-19. Reserved.**

**ARTICLE III. REMEDIES**

**Sec. 53-20. Cease and desist orders.**

If the Business Committee determines that a person has violated this chapter, then the Business Committee may, after notice and opportunity for hearing, order the person to cease and desist from the violations and to comply with this chapter. The Business Committee may enforce compliance with an order issued pursuant to this section by imposing and collecting civil penalties as authorized under this article.

(Ord. No. 22, 11-24-1999)

**Sec. 53-21. Civil penalties and restitution.**

The Business Committee may order and impose civil penalties upon any person for violations of this chapter. Civil penalties shall not exceed \$1,000.00 per violation. All civil money penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. The Business Committee may also order restitution of unlawful or excessive fees charged to customers. If a civil penalty or restitution is not paid within 30 days, then, in addition to other remedies provided by this chapter, the Eastern Band of Cherokee Indians may seek enforcement of the Business Committee's order in the Cherokee Court.

(Ord. No. 22, 11-24-1999)

**Sec. 53-22. Suspension and revocation of trader's permit or business lease; grounds; procedure.**

(a) The Business Committee may suspend or revoke any person's trader's permit and/or business lease if, after notice and opportunity for hearing, the Business Committee issues written findings that the check cashing service has engaged in any of the following conduct:

- (1) Violated this chapter or applicable state or federal law or rules on more than one occasion.
- (2) Made a false statement on the application for a trader's permit.
- (3) Refused to permit investigation by the Business Committee.
- (4) Failed to comply with an order of the Business Committee under this chapter.
- (5) Demonstrated incompetency or untrustworthiness to engage in the business of extending credit or check cashing.
- (6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(b) The Business Committee may not suspend or revoke any trader's permit or business lease unless the person has been given 30-days' notice and an opportunity for hearing.

(Ord. No. 22, 11-24-1999)

**Sec. 53-23. Criminal penalties.**

A violation of this chapter is a misdemeanor, punishable in the Cherokee Court by imprisonment of not more than one year and fine of not more than \$5,000.00. Each transaction involving the unlawful extension of credit or cashing of a check, draft, or money order constitutes a separate offense.

(Ord. No. 22, 11-24-1999)

**Sec. 53-24. Civil action.**

Any person who suffered actual damages as a result of a violation of this chapter shall have a right of action in the Cherokee Court against a person who has violated this chapter for actual damages. An party found liable for violation of this chapter may also be ordered to pay the injured party a statutory penalty of \$1,000.00 for each violation.

(Ord. No. 22, 11-24-1999)

**Sec. 53-25. Obligation void.**

In addition to any other remedies provided by law, any transaction that violates the terms of this chapter shall be void and unenforceable, and the person extending the credit shall have no right to recover any of the funds advanced or loaned as part of that transaction.

(Ord. No. 22, 11-24-1999)

**Sec. 53-26. Sovereign immunity.**

Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

(Ord. No. 22, 11-24-1999)

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## Chapter 55: Corporations

**Sec. 55-1. Purpose of incorporation and incorporators.**

A corporation may be formed under this chapter for any lawful business purpose. The incorporators of any corporation shall include at least one member of the Eastern Band of Cherokee Indians who is 18 years of age or older.

(Ord. No. 550, 5-13-1999)

**Sec. 55-2. Corporate name.**

The name of any corporation formed under this chapter shall not be the same or similar to any other named corporation formed under this chapter or chapter 55A. The name of the corporation shall end with the word "Corporation" or the word "Incorporated" or the word "Limited" or the abbreviation "Corp.", "Inc." or "Ltd."

(Ord. No. 550, 5-13-1999)

**Sec. 55-3. Articles of incorporation.**

The incorporators of a corporation must file Articles of Incorporation with the Tribal Operations Program of the Eastern Band and pay a filing fee of \$125.00 to the Tribal

Finance Office as a prerequisite to incorporation. The Articles of Incorporation must be signed by one or more members of the Eastern Band who are 18 years of age or older and may include such terms as the Incorporator(s) deem appropriate. The Articles shall include, at a minimum, the following:

ARTICLES OF INCORPORATION

I (We), the undersigned, being (a member) (members) of the Eastern Band of Cherokee Indians and being of full age for the purpose of forming a corporation under and pursuant to the provisions of the Cherokee Code, do hereby adopt the following Articles of Incorporation.

1. The name of the corporation is \_\_\_\_\_.
2. The purposes of the corporation are as follows:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
3. The period and duration of the corporation shall be \_\_\_\_\_ (number of years) (perpetual).
4. The name of the registered agent, the street address or physical location, and post office address of the registered office of the corporation on the Cherokee Indian Reservation is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. The total number of shares of stock which the corporation shall have the authority to issue shall be determined by resolution by the Board of Directors. The shares of stock may be paid for in money, property or services as prescribed by the Board of Directors.
6. The amount of capital with which the corporation shall begin a business shall be \_\_\_\_\_ (\$1,000.00 or more).
7. The names, post office addresses, and terms of office of the first directors are as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. The names and post office addresses of the incorporators are as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, (I)(we), have hereunto set (my hand) (our hands) this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

(Ord. No. 550, 5-13-1999; Ord. No. 666, 9-7-1999)

**Sec. 55-4. Certificate of incorporation.**

Upon filing the Articles of Incorporation and payment of the filing fee, the Tribal Operations Program, if the Articles are in conformity with this chapter, shall issue a Certificate of Incorporation. The Certificate of Incorporation shall be in the following form:

CERTIFICATE OF INCORPORATION

WHEREAS, Articles of Incorporation duly signed have been filed in the Tribal Operations Program of the Eastern Band of Cherokee Indians on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for incorporation of \_\_\_\_\_ (name of corporation); and

WHEREAS, the Articles of Incorporation are in conformity with the requirements of the Cherokee Code;

NOW, THEREFORE, I, \_\_\_\_\_, Director of the Tribal Operations Program of the Eastern Band of Cherokee Indians do hereby certify that the said \_\_\_\_\_ is a legally organized and validly existing corporation under the laws of the Eastern Band of Cherokee Indians.

\_\_\_\_\_  
Director, Tribal Operations Program

Upon the issuance of the Certificate of Incorporation, the corporate existence of the corporation shall begin. Certification assures that the corporation is in compliance with the organizational requirements of this chapter, but not that the corporation is in compliance with any other provision of law.

(Ord. No. 550, 5-13-1999)

**Sec. 55-5. Amended articles of incorporation.**

A corporation may file Amended Articles of Incorporation, upon approval by its Board of Directors and the shareholders. A filing fee of \$50.00 shall accompany that filing, and must be paid to the Tribal Finance Office. Provided those amended articles are consistent with this chapter, the Tribal Operations Program shall issue a Certificate of Amendment to the Corporation.

(Ord. No. 550, 5-13-1999; Ord. No. 666, 9-7-1999)

**Sec. 55-6. Bylaws.**

The corporation shall be governed by a set of bylaws. Unless there is submitted to the Tribal Operations Program of the Eastern Band a different form of bylaws, the bylaws shall be as follows:

BYLAWS OF \_\_\_\_\_

*ARTICLE I. PRINCIPAL PLACE OF BUSINESS*

The principal place of business of the corporation shall be located within the boundaries of the Cherokee Indian Reservation at the registered office of the corporation.

*ARTICLE II. SHAREHOLDERS*

**Section 1. Annual Meetings.**

The annual meeting of the shareholders shall be on the 15th day of the month of January each year at 10:00 a.m. at the registered office of the corporation for the purpose of

electing directors and for the transaction of any business which may properly come before a meeting of the shareholders. If the annual meeting is not held at the time above designated, an alternative meeting of the shareholders shall be designated by the president of the corporation.

### **Section 2. Voting Rights.**

Each owner of a share of stock of the corporation shall be entitled at the meeting of the shareholders to one vote for each share standing in his name. A majority of the outstanding shares of the corporation represented in person shall constitute a quorum at the meeting of the shareholders and a majority of all the votes cast at any meeting of the shareholders shall be decisive of any action.

### **Section 3. Notice of the Meeting.**

Notice stating the place, day and hour of the meeting and the purpose for which the meeting has been called shall be given to all shareholders. Written notice stating the place, day and hour of meeting shall be delivered not less than five business days prior to the date of meeting by mail to the shareholders. Notice shall be deemed delivered when deposited in the United States mail.

## *ARTICLE III. BOARD OF DIRECTORS*

### **Section 1. Powers.**

The affairs of the corporation shall be managed by a Board of Directors.

### **Section 2. Number of Directors.**

The number of directors of a corporation shall be not less than three. Each director shall hold office until (a) the next annual meeting of the shareholders and until his successor has been duly elected and qualified or (b) until his death or (c) until he shall resign or shall have been removed from office by affirmative vote of the majority of the outstanding shareholders. A director may resign at any time by filing his written resignation with the secretary of the corporation.

### **Section 3. Meetings.**

The annual meeting of the Board of Directors shall be held without any notice other than these bylaws immediately after and at the same place as the annual meeting of the shareholders or immediately after any adjourned session thereof.

### **Section 4. Special Meetings.**

Special meetings of the Board of Directors may be called at the request of the President or any two directors. Notice of the special meeting shall be given to all directors of the corporation personally.

### **Section 5. Quorum.**

The majority of the number of directors in section 2 shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors. The act of the majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

#### **Section 6. Vacancies.**

Any vacancies occurring on the Board of Directors shall be filled by affirmative vote of the remaining directors then in office, though less than a quorum of the Board of Directors.

#### **Section 7. Compensation.**

The Board of Directors may establish reasonable compensation for all directors for services rendered to the corporation as directors.

### *ARTICLE IV. OFFICERS*

#### **Section 1. Number.**

The Board of Directors shall elect a President, Secretary, and a Treasurer, and such officers and agents as they may so desire. Any two offices may be held by the same person.

#### **Section 2. Election.**

The officers of the corporation shall be elected by the Board of Directors and shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the shareholders or any adjournment thereof.

#### **Section 3. Removal and Vacancies.**

Any officer appointed by the Board of Directors may be removed by the Board of Directors with or without cause. A vacancy in any of the principal offices because of death, resignation, removal or disqualification or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

#### **Section 4. President.**

The President shall be the principal executive officer of the corporation and shall supervise and control all of the business affairs of the corporation subject to the direction and control of the Board of Directors.

#### **Section 5. Secretary.**

The Secretary shall:



- (a) Keep all minutes of the shareholders' meetings and of meetings of the Board of Directors;
- (b) See that all notices are duly given in accordance with the provisions set forth in these bylaws;
- (c) Be custodian of the corporate records; and
- (d) In general, perform all duties incident to the office of secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned by the President or by the Board of Directors.

#### **Section 6. Treasurer.**

The Treasurer shall be the chief financial officer of the corporation and shall exercise general supervision over the receipt, custody, and disbursement of corporate funds.

#### **Section 7. Salaries.**

The salaries of the principal officers shall be fixed from time to time by the Board of Directors. The salaries so fixed must be reasonable in relation to the services rendered.

#### *ARTICLE V. AMENDMENTS*

These bylaws may be altered, amended or repealed and new bylaws may be adopted by the shareholders at any annual or special meeting of the shareholders.

(Ord. No. 550, 5-13-1999)

#### **Sec. 55-7. Dissolution.**

A corporation formed pursuant to this chapter may be dissolved whenever a resolution is adopted by at least two-thirds of the shareholders requesting dissolution and a certified copy of the resolution is filed with the Tribal Operations Program of the Eastern Band. The resolution may designate a trustee or trustees to conduct the winding up of the corporation's affairs. The trustee or trustees appointed shall, as speedily as practicable after appointment, proceed to:

- (1) Collect all sums due or owing to the corporation;
- (2) Sell and convert into cash all corporate assets; and
- (3) Pay all debts and liabilities of the corporation.

Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the shareholders.

(Ord. No. 550, 5-13-1999)

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## Chapter 55A: Non-Profit Corporations

#### **Sec. 55A-1. Purpose of incorporation and incorporators.**

A non-profit corporation may be formed under this chapter for any lawful purpose not involving pecuniary gain to its members or directors and not paying dividends or other pecuniary remuneration, directly or indirectly, to its members as such. The incorporators of any non-profit corporation shall include at least one member of the Eastern Band of Cherokee Indians who is 18 years of age or older.

(Ord. No. 550, 5-13-1999)

**Sec. 55A-2. Corporate name.**

The name of any corporation formed under this chapter shall not be the same or similar to any other named corporation formed under this chapter or chapter 55. The name of the corporation shall end with the word "Corporation" or the word "Incorporated" or the word "Limited" or the abbreviation "Corp.", "Inc." or "Ltd."

(Ord. No. 550, 5-13-1999)

**Sec. 55A-3. Articles of incorporation.**

The incorporators of a non-profit corporation must file Articles of Incorporation with the Tribal Operations Program of the Eastern Band and pay a filing fee of \$75.00 to the Tribal Finance Office as a prerequisite to incorporation. The Articles of Incorporation must be signed by one or more members of the Eastern Band who are 18 years of age or older and may include such terms as the Incorporator(s) deem appropriate. The Articles shall include, at a minimum, the following terms:

ARTICLES OF INCORPORATION

I (We), the undersigned, being (a member)(members) of the Eastern Band of Cherokee Indians and being of full age for the purpose of forming a corporation under and pursuant to the provisions of the Cherokee Code, do hereby adopt the following Articles of Incorporation.

1. The name of the corporation is \_\_\_\_\_.
2. The purposes of the corporation are as follows:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
3. The corporation does not afford pecuniary gain, incidentally or otherwise, to its members.
4. The period and duration of the corporation shall be \_\_\_\_\_ (number of years) (perpetual).
5. The name of the registered agent, the street address or physical location, and post office address of the registered office of the corporation on the Cherokee Indian Reservation is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. The corporation (does) (does not) have members.

7. The names, post office addresses, and terms of office of the first directors are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. The names and post office addresses of the incorporators are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, (I)(we), have hereunto set (my hand) (our hands) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

Note: Non-profit corporations seeking certification to receive tax deductible contributions under section 501(c)(3) or other provisions of the Internal Revenue Code must include additional provisions as required by the Internal Revenue Service.

(Ord. No. 550, 5-13-1999; Ord. No. 666, 9-7-1999)

**Sec. 55A-4. Certificate of incorporation.**

Upon filing the Articles of Incorporation with the Tribal Operations Program and payment of the necessary filing fee, the TOP, if the Articles are in conformity with this ordinance, shall issue a Certificate of Incorporation. The Certificate of Incorporation shall be in the following form:

CERTIFICATE OF INCORPORATION

WHEREAS, Articles of Incorporation duly signed have been filed for record in the Tribal Operations Program of the Eastern Band of Cherokee Indians on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, for incorporation of \_\_\_\_\_ (name of corporation); and

WHEREAS, the Articles of Incorporation are in conformity with the requirements of the Cherokee Code;

NOW, THEREFORE, I, \_\_\_\_\_, Director of the Tribal Operations Program of the Eastern Band of Cherokee Indians do hereby certify that the said \_\_\_\_\_ is a legally organized and validly existing non-profit corporation under the laws of the Eastern Band of Cherokee Indians.

\_\_\_\_\_  
Director, Tribal Operations Program

Upon the issuance of the Certificate of Incorporation, the corporate existence of the corporation shall begin. Certification assures that the corporation is in compliance with the organizational requirements of this chapter, but not that the corporation is in compliance

with any other provision of law.

(Ord. No. 550, 5-13-1999)

**Sec. 55A-5. Amended articles of incorporation.**

A non-profit corporation may file Amended Articles of Incorporation, upon approval by its Board of Directors and the members, if any. A filing fee of \$25.00 shall accompany that filing, and must be paid to the Tribal Finance Office. Provided those amended articles are consistent with this chapter, the Tribal Operations Program shall issue a Certificate of Amendment to the Corporation.

(Ord. No. 550, 5-13-1999; Ord. No. 666, 9-7-1999)

**Sec. 55A-6. Bylaws.**

A not-for-profit corporation created pursuant to this chapter may adopt such bylaws at it deems necessary and appropriate. Unless there is submitted to the Tribal Operations Program of the Eastern Band a different form of bylaws, the bylaws shall be as follows:

BYLAWS OF \_\_\_\_\_

*ARTICLE I. PRINCIPAL PLACE OF BUSINESS*

The principal place of business of the corporation shall be located within the boundaries of the Cherokee Indian Reservation at the registered office of the corporation.

*ARTICLE II. MEMBERS (if any)*

**Section 1. Annual Meetings.**

The annual meeting of the members (if any) shall be on the 15th day of the month of January each year at 10:00 a.m. at the registered office of the corporation for the purpose of electing directors and for the transaction of any business which may properly come before a meeting of the members. If the annual meeting is not held at the time above designated, an alternative meeting of the members shall be designated by the president of the corporation.

**Section 2. Voting Rights.**

Each member (if any) shall be entitled at the meeting of the members to one vote. A majority of the members represented in person or by proxy shall constitute a quorum at the meeting of the members and a majority of all the votes cast at any meeting of the members shall be decisive of any action.

**Section 3. Notice of the Meeting.**

Notice stating the place, day and hour of the meeting and the purpose for which the meeting has been called shall be given to all members. Written notice stating the place, day and hour of meeting shall be delivered not less than five business days prior to the date of meeting by mail to the members. Notice shall be deemed delivered when deposited in the United States mail.

*ARTICLE III. BOARD OF DIRECTORS*

### **Section 1. Powers.**

The affairs of the corporation shall be managed by a Board of Directors.

### **Section 2. Number of Directors.**

The number of directors of a corporation shall be not less than five. Each director shall hold office until (a) until his successor has been duly elected and qualified or (b) until his death or (c) until he shall resign or shall have been removed from office by affirmative vote of the majority of the outstanding members or by a two-thirds vote of the full Board of Directors. A director may resign at any time by filing his written resignation with the secretary of the corporation.

### **Section 3. Meetings.**

The annual meeting of the Board of Directors shall be held without any notice other than these bylaws immediately after and at the same place as the annual meeting of the members or immediately after any adjourned session thereof.

### **Section 4. Special Meetings.**

Special meetings of the Board of Directors may be called at the request of the President or any two directors. Notice of the special meeting shall be given to all directors of the corporation personally.

### **Section 5. Quorum.**

The majority of the number of directors in section 2 shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors. The act of the majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

### **Section 6. Vacancies.**

Any vacancies occurring on the Board of Directors shall be filled by affirmative vote of the remaining directors then in office, though less than a quorum of the Board of Directors.

### **Section 7. Compensation.**

The Board of Directors may establish reasonable compensation for all directors for services rendered to the corporation as directors.

## *ARTICLE IV. OFFICERS*

### **Section 1. Number.**

The Board of Directors shall elect a President, Secretary, and a Treasurer, and such officers and agents as they may so desire. Any two offices may be held by the same person.

## **Section 2. Election.**

The officers of the corporation shall be elected by the Board of Directors and shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of the shareholders or any adjournment thereof.

## **Section 3. Removal and Vacancies.**

Any officer appointed by the Board of Directors may be removed by the Board of Directors with or without cause. A vacancy in any of the principal offices because of death, resignation, removal or disqualification or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

## **Section 4. President.**

The President shall be the principal executive officer of the corporation and shall supervise and control all of the business affairs of the corporation subject to the direction and control of the Board of Directors.

## **Section 5. Secretary.**

The Secretary shall:

- (a) Keep all minutes of the membership meetings and of meetings of the Board of Directors;
- (b) See that all notices are duly given in accordance with the provisions set forth in these bylaws;
- (c) Be custodian of the corporate records; and
- (d) In general, perform all duties incident to the office of secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned by the President or by the Board of Directors.

## **Section 6. Treasurer.**

The Treasurer shall be the chief financial officer of the corporation and shall exercise general supervision over the receipt, custody, and disbursement of corporate funds.

## **Section 7. Salaries.**

The salaries of the principal officers shall be fixed from time to time by the Board of Directors. The salaries so fixed must be reasonable in relation to the services rendered.

## *ARTICLE V. AMENDMENTS*

These bylaws may be altered, amended or repealed and new bylaws may be adopted by the members (if any) at any annual or special meeting of the members. If there are no members, the bylaws may be altered, amended, or repealed and new bylaws may be adopted by the Board of Directors at any annual or special meeting of the Board.

(Ord. No. 550, 5-13-1999)

**Sec. 55A-7. Dissolution.**

A corporation formed pursuant to this chapter may be dissolved whenever a resolution is adopted by the Board of Directors requesting dissolution, approved by a majority of the members, if any, and a certified copy of the resolution is filed with the Tribal Operations Program of the Eastern Band of Cherokee Indians. The resolution may designate a trustee or trustees to conduct the winding up of the corporation's affairs. The trustee or trustees appointed shall, as speedily as practicable after appointment, proceed to:

- (1) Collect all sums due or owing to the corporation;
- (2) Sell such assets as are necessary to pay the debts and liabilities of the corporation; and
- (3) Pay all debts and liabilities of the corporation.

Any assets remaining after discharging the debts and liabilities of the corporation shall be distributed to another non-profit corporation organized for the same or similar purposes as the corporation, or to the Eastern Band of Cherokee Indians for public and charitable purposes.

(Ord. No. 550, 5-13-1999)

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## Chapter 61: Zoning\*

**\*Cross references:** Real property, ch. 47; skeletal remains and burial site preservation, ch. 70; mineral rights, ch. 74; burial, ch. 90; pollution control and environment, ch. 113A; signs and billboards, ch. 136; roads and highways, ch. 136A; building codes and flood control, ch. 143.

**Sec. 61-1. Scope.**

The provisions of this chapter shall govern the nature and location of certain public gatherings and events within a specific area of the Qualla Boundary and upon specific areas of Tribal trust land maintained, reserved, or operated by or for the benefit of the Tribal Government.

(Ord. No. 280, 7-7-1996)

**Sec. 61-2. Purpose.**

The provisions of this chapter are intended to:

(a) Prohibit certain public activities within a specific portion of the Qualla Boundary of the Cherokee Indian Reservation in order to control traffic or motor vehicles within the business district of the Cherokee community;

(b) To prohibit from such area events which have been deemed by Tribal Council to constitute a nuisance to the residents of the community; and

(c) To restrict the use of lands and facilities maintained, reserved, or operated for the direct benefit of the Eastern Band of Cherokee Indians and its members.

(Ord. No. 280, 7-7-1996)

### **Sec. 61-3. Business zone.**

For the purposes of this chapter, the Business Zone of the Qualla Boundary shall be defined as that geographical area including:

(1) On and along US 19 from the intersection of Old Mission Road running in a westerly direction to Owl Branch Road;

(2) On and along US 441 access road and US 441 bypass from the exterior boundary line of the Cherokee Indian Reservation to the intersection with US 19;

(3) On and along old US 441 from the exterior boundary line of the Cherokee Indian Reservation to the intersection with US 19;

(4) On and along US 441 running from Cherokee Main Street to the entrance of the Great Smoky Mountain National Park;

(5) On and along Acquoni Road; and

(6) The state-maintained portions of Big Cove Road.

(Ord. No. 280, 7-7-1996)

### **Sec. 61-4. Prohibited events or activities.**

(a) No event or activity shall be permitted within the Business Zone which shall sponsor the gathering of motorized vehicles for purpose of display or racing or events commonly referred to as "swap meets" or "rallies" or similar events under different names, at which motorized vehicles, parts or accessories are placed on display for view or sale without specific approval of the Tribal Council in a Tribal Council session with a quorum present.

(b) No event or activity involving the gathering of motorized vehicles, their parts, or accessories for display, racing or sale shall be permitted on any site, parcel or area of land that is owned or used by the Eastern Band of Cherokee Indians in its Tribal capacity or upon which is located any building or facility of the Tribal government or any federal agency. Such prohibited areas shall include, but not be limited to: Council House grounds, Ceremonial Grounds, BIA facilities, elementary or high school grounds.

(Ord. No. 280, 7-7-1996)

### **Sec. 61-5. Violations.**

Any contract or lease entered into in violation of this chapter shall be deemed null and void



and shall not be enforceable through the Cherokee Court. Violation of this chapter shall subject the violator to a civil fine in an amount equal to any income or revenue derived from such event or activities. Violators of this chapter subject to the criminal jurisdiction of the Cherokee Court shall be subject to criminal punishment in the form of a fine in an amount equal to any income or revenue derived from such event or activities and imprisonment for up to six months per offense. Both civil and criminal jurisdiction over such violations is vested in the Cherokee Court.

(Ord. No. 280, 7-7-1996)

**Sec. 61-6. Effective date.**

The chapter shall be effective on the date enacted by the Tribal Council and ratified by the Principal Chief.

(Ord. No. 280, 7-7-1996)

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## Chapter 62: Utilities\*

**\*Cross references:** Housing, ch. 44; pollution control and environment, ch. 113A; health and sanitation, ch. 130; Cherokee water code, ch. 131; roads and highways, ch. 136A; wastewater discharge, ch. 145.

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### ARTICLE I. IN GENERAL

**Sec. 62-1. Tribal Utilities Commission.**

(a) Inasmuch as the Cherokee Water and Sewer Enterprise furnishes public utility service, the user shall be afforded a periodic impartial review of the utility rates and charges. To carry out this review the Tribal Utility Rate Commission is hereby created.

(b) Membership shall consist of two business utility consumers and one residential utility consumer. Each member shall be appointed by the Tribal Council. Appointment shall be for three-year terms, with terms to be staggered among the members. No member of the Commission shall be an elected Tribal official.

(c) The Commission shall be charged with the duty of reviewing the utility rates, connection charges and other fees charged by the utility, to determine the equity of such charges based on the essential operating requirements of the Cherokee Water and Sewer Enterprise, together with similar rates and charges of other comparable communities and utilities.

(d) The Commission shall be charged with the duty of setting the utility rates, connection charges and other fees for the utility.

(e) After setting rates, charges and fees, the Commission shall make a report to the Tribal Council for any adjustment or change which the Commission recommends to be made. Final authority for establishing or changing such rates, charges and fees shall be vested in the Tribal Council.

(f) All expenses incurred by the Commission shall be reviewed and authorized by the Tribal

Credit Committee and shall be paid by the Tribe.

(g) All private or institutional owners and possessory holders with buildings or facilities designed for human use that are within the service area of any water or sewer system of the Cherokee Water and Sewer Enterprise at the time public notice is given that such services are available shall be required to connect to the available system within one year from the date of such notice, unless connection may be required sooner where Tribal or Indian Health Service authorities have condemned individual sanitation systems.

(h) All private or institutional owners and possessory holders starting new construction after the date of public notice of availability of services shall be required to connect to the available system at the time of construction unless connection is not deemed feasible by the Enterprise.

(i) Questions of whether specific buildings or facilities can be feasibly served by either or both the Water and Sewer Systems of the Enterprise may be submitted to the Tribal Credit Committee. The Committee's determination on such questions shall be final.

(j) The Community Services Committee shall appropriate one-half of one percent of the Tribal Levy, or an amount equal to 1/12 of the Levy, to be used exclusively for the operation and furtherance of the Cherokee Water and Sewer Enterprise.

(Res. No. 517, 10-11-1962; Res. No. 273, 2-1-1979; Rescinded by Res. No. 253, 7-15-1988; Reinstated by Res. No. 255, 7-15-1988)

**Sec. 62-2. Disconnection of service.**

(a) The Cherokee Water and Sewer Enterprise shall be authorized to disconnect services to any house or building when payment of service fees are not paid by the last day of the month in which a statement is rendered.

(b) Prior to disconnecting either water or sewer service to any house or building the Cherokee Water and Sewer Enterprise shall notify the customer that such service shall be disconnected on a specific date unless payment for services is brought current prior to that date.

(c) Prior to disconnecting either water or sewer service to any house or building, the Cherokee Water and Sewer Enterprise shall notify the customer that they may appeal to the credit committee to show cause why the service should not be disconnected.

(d) In the event any customer, occupant, owner, tenant or other person, after either water or sewer service has been disconnected by the Cherokee Water and Sewer Enterprise, shall reconnect such service, or in any way cause the water or sewer service to be reconnected to their house or building, without having first paid in full for past services and fees, including any disconnection or reconnection fees, they shall be assessed a civil penalty of \$100.00, and service shall not be reconnected until such penalty is paid.

(e) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall have jurisdiction to enforce this section against all persons who violate its provisions.

(Res. No. 276, 2-1-1979)

**Secs. 62-3--62-10. Reserved.**

## **ARTICLE II. EMERGENCY TELEPHONE SERVICE**

### **Sec. 62-11. Authority.**

The Eastern Band of Cherokee Indians adopts this Emergency Telephone Service Code pursuant to its inherent sovereign authority.

(Ord. No. 331-A, 10-26-1998)

### **Sec. 62-12. Purpose.**

The Tribal Council declares it to be in the public interest to provide a tollfree number through which individuals on the Eastern Band of Cherokee Indians Reservation can gain rapid, direct access to public safety assistance. The number shall be provided with the objective of reducing response time to situations requiring law enforcement, fire, medical, rescue, or other public safety service.

(Ord. No. 331-A, 10-26-1998)

### **Sec. 62-13. Short title.**

This article shall be known as the Emergency Telephone Service Act.

(Ord. No. 331-A, 10-26-1998)

### **Sec. 62-14. Definitions.**

As used in this article, the following terms shall have the following definitions:

(a) *Address* shall mean the numerical address and street name given to each location within the Reservation which receives 911 service from the Eastern Band of Cherokee Indians.

(b) *Exchange access facility* shall mean the access from a particular telephone subscriber's premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks and centrex network access registers all as defined by tariffs of telephone companies as approved by the Eastern Band of Cherokee Indians. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, or Wide Area Telecommunications Service (WATS), Foreign Exchange (FX) or incoming only lines.

(c) *911 system or 911 service* shall mean an emergency telephone system that provides the user of the public telephone system the ability to reach a public safety answering point by dialing the digits 911. The terms 911 system or 911 service also include Enhanced 911 Service, which means an emergency telephone system that provides the user of the public telephone system with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features.

(d) *911 charge* shall mean a contribution to the local government for the 911 service

startup equipment costs, subscriber notification costs, addressing costs, billing costs, and nonrecurring and recurring installation, maintenance, service, and network charges of a service supplier providing 911 service pursuant to this article.

(e) *Public agency* shall mean any Tribal government authority located within the external boundaries of the Eastern Band of Cherokee Reservation.

(f) *Public safety agency* shall mean a functional division of a public agency which provides firefighting, law enforcement, medical suicide prevention, civil defense, poison control, or other emergency services.

(g) *Service supplier* shall mean a person or entity who provides exchange telephone service to a telephone subscriber.

(h) *Telephone subscriber or subscriber* shall mean a person or entity to whom exchange telephone service, either residential or commercial, is provided and in return for which the person or entity is billed on a monthly basis. When the same person, business, or organization has several telephone access lines, each exchange access facility shall constitute a separate subscription.

(i) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(Ord. No. 331-A, 10-26-1998)

#### **Sec. 62-15. 911 charges.**

(a) Subject to the provisions of subsections (b) through (c) of this section, the Tribal government shall impose a monthly 911 charge upon each exchange access facility subscribed to by telephone subscribers whose exchange access lines are in the area served or which would be served by the 911 service. The 911 charge must be uniform and may not vary according to the type of exchange access facility used.

(b) The rate may be set after a public hearing regarding the matter. The rate shall be based upon the following:

(1) The cost to maintain the system;

(2) The cost to operate the system;

(3) The availability of Tribal funds to supplement the program; and

(4) The ability of the community to pay a fee for use of the system.

(c) The Tribal Council shall set a date for the commencement of the imposition of the fees.

(Ord. No. 331-A, 10-26-1998)

#### **Sec. 62-16. Payment and collection of charges.**

(a) The subscriber of an exchange access facility will be billed for the monthly 911 charges, if any, imposed with respect to that facility. Each service supplier shall, on behalf of the local government, collect the charges from those subscribers to whom it provides exchange telephone service in the area served by the 911 service. As part of its normal monthly billing process, the service supplier shall collect the charges for each month or part of the month an exchange access facility is in service, and it may list the charge as a separate

entry on each bill. If a service supplier receives a partial payment for a monthly bill from a subscriber, the service supplier shall apply the payment against the amount the subscriber owes the service supplier first.

(b) A service supplier has no obligation to take any legal action to enforce the collection of the 911 charges for which any subscriber is billed. However, a collection action may be initiated by the Tribe. The Tribe may commence an action to collect the fee, and any reasonable cost associated with the action.

(c) The Tribe maintains all responsibility to the service supplier for all 911 installation service, equipment, operation, and maintenance charges owed to the service supplier. Upon request by the Tribe, the service supplier shall provide the Tribe with a list of amounts uncollected along with the names and addresses of telephone subscribers who have not paid the 911 charge.

(d) Any taxes due on 911 service provided by the service supplier will be billed to the local government subscribing to that service.

(Ord. No. 331-A, 10-26-1998)

#### **Sec. 62-17. Administration.**

Each service supplier that collects the 911 charges on behalf of a local government is entitled to a one percent administrative fee as compensation for collecting the charges. The service supplier shall remit the remainder of the charges it collects during a month to the fiscal officer of the Tribe within ten days after the last day of the month.

(Ord. No. 331-A, 10-26-1998)

#### **Sec. 62-18. Emergency telephone system fund.**

The fiscal officer to whom 911 charges are remitted shall deposit the charges in a separate restricted fund. The Fund shall be known as the Emergency Telephone System Fund. The fiscal officer may invest money in the Fund in the same manner that other Tribal funds may be invested. The fiscal officer shall deposit any income earned from such an investment in the Emergency Telephone System Fund.

(Ord. No. 331-A, 10-26-1998)

#### **Sec. 62-19. Payments from fund.**

(a) Money from the Emergency Telephone System Fund shall be used only to pay for:

(1) The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software and database provisioning, addressing and nonrecurring costs of establishing a 911 system; and

(2) The rates associated with the service suppliers 911 service and other service supplier recurring charges.

(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real property, cosmetic remodeling, emergency dispatch centers, hiring, training, and compensating dispatchers, and the purchase of mobile communication vehicles, ambulances, fire engines, or other emergency vehicles.

(c) A Tribe may contract with a service supplier for any term negotiated by the service supplier and the Tribe may make payments from the Emergency Telephone System Fund to provide any payments required by the contract.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-20. Telephone records.**

(a) Each telephone service supplier shall provide subscriber telephone numbers, names, and service addresses to 911 systems when required by a local government. Although customer numbers, names and service addresses shall be available to 911 systems, such information shall remain the property of the disclosing service supplier. The total cost of the system shall include expenses paid to service suppliers to provide and maintain 911 information. This information shall be used only in providing emergency response services to 911 calls. Neither the Tribe nor its agents may release a telephone number required to be provided under this section to any person for purposes other than including the number in the emergency telephone system database or providing the number to permit a response to police, fire, medical, or other emergency situation.

(b) To the extent necessary to provide 911 service private listing customers of a service supplier in a 911 service area waive the privacy afforded by nonlisted and nonpublished numbers when the 911 service is established.

(c) No service supplier, or agent or employees of a service supplier, shall be liable to any person provided 911 service established under this article for release for emergency telephone purposes of information specified in this section that is not already part of the public record, including nonlisted or nonpublished telephone numbers.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-20.1. Recordings of 911 calls--ANI and ALI information.**

(a) The following records are confidential and shall not be disclosed to the public except as provided in subsection (b):

(1) The audio recording of a call placed to a 911 system for the purpose of requesting service from a public safety agency; and

(2) Automatic number identification (ANI) and automatic location identification (ALI) information that consists of the name, address, and telephone numbers of telephone subscribers contained in a 911 database;

(b) The records described in subsection (a) may be disclosed under the following circumstances only:

(1) Disclosure is ordered by the Cherokee Court;

(2) A public safety agency has requested disclosure and has under its jurisdiction a pending criminal or internal investigation to which the requested records are relevant, and the request is provided in writing to the custodian of the record and sufficiently identifies a call so that a copy of the record can be made that does not include other confidential information.

(3) The caller or his representative executes a written release of confidential information, on a form to be provided by the custodian of the records, and the release sufficiently identifies the record so that a copy can be made that does not include other confidential information.

(c) The custodian of audio recordings of a call placed to a 911 system is not required to maintain those recordings for more than 30 calendar days from the date of the call, except upon order of the Cherokee Court.

(d) Public safety agencies shall create, maintain and follow operational guidelines consistent with this section.

(e) For purposes of this section, "custodian" means the manager of the emergency management/911 addressing program.

(Ord. No. 918, 9-13-2001)

**Sec. 62-21. Limitations of liability.**

(a) A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system.

(b) This article is not a waiver of the Tribe's sovereign immunity.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-22. Misuse of 911 system; penalty.**

Any person who intentionally calls the 911 number for other than purposes of obtaining public safety assistance commits a misdemeanor, subject to a fine of up to \$5,000.00 and imprisonment not to exceed one year.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-23. Severability.**

In the event of a court finding of invalidity of any clause or section of this article, such invalid clause or section shall be severed from the remaining body of the article, and the remainder of this article shall remain in full force and effect.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-24. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this article are specifically repealed.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-25. Rules and regulations.**

The Tribal Council may enact rules and regulations as necessary to enforce this article.

(Ord. No. 331-A, 10-26-1998)

**Sec. 62-26. Effective date.**

This article shall be effective immediately upon execution by the Principal Chief.

(Ord. No. 331-A, 10-26-1998)

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## Chapter 70: Skeletal Remains and Burial Site Preservation\*

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\***Cross references:** Real property, ch. 47; zoning, ch. 61; burial, ch. 90.

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### ARTICLE I. IN GENERAL

**Sec. 70-1. Excavation of skeletal remains.**

(a) The graves of Cherokee people and their ancestors are sacred and shall not be disturbed or excavated.

(b) In the event skeletal remains of a Cherokee are excavated, such remains shall be reburied, together with all associated grave artifacts as soon as shall be reasonable possible. All such remains disinterred outside Cherokee trust lands shall be reburied in a manner consistent with procedures set forth by the NAGPRA Committee with the procedures being first approved by the Tribal Council of the Eastern Band of Cherokee Indians.

(c) The remains of Cherokee people shall not be subjected to destructive skeletal analysis.

(d) All unassociated funerary objects shall be treated in a manner consistent with procedures set forth by the NAGPRA Committee with the procedures being first approved by the Tribal Council of the Eastern Band of Cherokee Indians.

(Res. No. 92, 1-30-1983; Ord. No. 57, 2-1-1996)

**Sec. 70-2. Sanctity of ancestors who are buried throughout the aboriginal Cherokee lands.**

The joint policy of the Tribal Council of the Cherokee Nation and the Eastern Band of Cherokee is as follows:

(a) The graves of our ancestors are sacred and we desire that they not be disturbed.

(b) In the event the remains of Cherokee ancestors are excavated, such remains shall be reburied together with all associated grave artifacts, as soon as shall be reasonable.



(c) The remains of Cherokee ancestors should not be subjected to destructive skeletal analysis.

(d) The remains of Cherokee ancestors and associated grave artifacts which have been disinterred and are now in possession of museums, universities, federal agencies or other institutions and persons, should be returned to the proper tribes for reburial.

(e) Such remains should be buried at the original site where possible.

(Res. No. 121, 4-5-1990; Res. No. 301, 5-29-1991)

### **Sec. 70-3. Historic preservation of skeletal remains.**

(a) All persons or institutions who seek to conduct study or research on the people or institutions of the Eastern Band of Cherokee Indians, including but not limited to Tribal members, Tribal organizations, Tribal government and Tribal lands and natural resources shall be required to obtain approval from the Eastern Band of Cherokee Indians prior to conducting such research on Cherokee trust lands.

(b) All persons or institutions seeking to conduct a study or research on Cherokee Indian trust lands shall submit a written request to the Office of the Principal Chief, with the request describing the nature and purpose of the proposed study or research. The written request shall be forwarded by the Office of the Principal Chief to the Tribal Research Committee for review and approval. The Research Committee shall give written authorization only after reviewing the proposal.

(c) As a condition of receiving written authorization from the Committee, all persons or institutions must agree, in writing, to provide to the Tribe, at the conclusion of the study or research, a copy of all collected data, completed reports or publications, including copies of audio or video tapes or recordings obtained in the course of such study or research.

(d) Unless otherwise provided for by the Tribal Council, all such data, reports, publications, video or audio tapes or recordings shall be deposited for permanent storage with the Museum of the Cherokee Indian.

(e) This section shall become effective upon ratification by the Principal Chief.

(Ord. No. 176, 7-9-1992)

**Secs. 70-4--70-100. Reserved.**

## **ARTICLE II. BURIAL SITES PRESERVATION**

### **DIVISION 1. GENERALLY**

#### **Sec. 70-101. Title.**

The title of this article shall be the Burial Sites Preservation Code.

(Ord. No. 345-A, 10-13-1998)

#### **Sec. 70-102. Purpose.**

The purpose of this article is to amend this chapter 70, Skeletal Remains, adopted on April 5, 1990, and amended on May 29, 1991, rescind any portions of this chapter which are inconsistent with this article; and to establish a registry providing for the recording and cataloging of burial sites of Tribal members and to preserve and protect such sites from disturbance, disinterment, or other destructive activities.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-103. Authority.**

This article is enacted pursuant to section 23 of the Tribe's Charter and Governing Document.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-104. Effective date.**

This article shall take effect on the day following adoption by the Cherokee Tribal Council.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-105. Abrogation and greater restriction.**

Where this article imposes greater restrictions than those contained in other ordinances, codes, or resolutions of the Tribe, as well as relevant federal laws and regulations, this article shall govern.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-106. Interpretation.**

In the interpretation and application of the provisions of this article, said provisions shall be held to the minimum requirements and shall be liberally construed in favor of the Tribe and shall not be deemed a limitation or repeal of any other power or authority of the Tribe.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-107. Nonliability and severability.**

If any section, provision, or portion of this article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees that may occur as a result of reliance upon the conformance with this article.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-108. Sovereign immunity.**

This article shall not be construed as a waiver, limited or otherwise, of the Tribe's sovereign immunity.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-109. Applicability.**

The policies in this article shall apply to all members and employees of the Tribe, all activities on lands owned by the Tribe or held in trust by the United States for the benefit of the Tribe, all individuals occupying Tribal lands, and all lands owned in fee by the Tribe or a member of the Tribe within the boundaries of the Tribe's Reservation.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-110. Definitions.**

(1) *Agricultural or silvicultural activities* means those normal agricultural or silvicultural practices that do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(2) *Burial site* means any place of interment, by any means, natural or a physically prepared location, whether originally below, on, or above the surface of the earth, where human remains or associated funerary objects are deposited, as part of the death rites or ceremonies of the Tribe.

(3) *Cemetery* means a burial site in which two or more individuals were interred.

(4) *Cultural patrimony* is defined as an object having ongoing historical, traditional, or cultural importance central to the Tribe or its culture.

(5) *Duly authorized law enforcement official* means any law enforcement personnel of the Cherokee Police Department or any law enforcement officer delegated authority to enforce the laws of the Tribe pursuant to chapter 15, section 3, "Cooperative Law Enforcement Arrangements."

(6) *Disturb* includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating, or molesting in any way.

(7) *Grave goods* means objects, that as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later.

(8) *Human remains* means any part of the body or deceased person in any stage of decomposition.

(9) *Person* means any individual or entity, including a governmental operation or political subdivision of a state or Tribe, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(10) *THPO* means the Tribal Historic Preservation Officer.

(Ord. No. 345-A, 10-13-1998)

**Secs. 70-111--70-200. Reserved.**

**DIVISION 2. TRIBAL HISTORIC PRESERVATION OFFICE**

**Sec. 70-201. Generally.**

(a) A Tribal Historic Preservation Office shall be established to increase efforts in the location, documentation and evaluation of ancient, cultural, and historic properties. This information will provide a record of the past for future generations of the Tribe and shall be incorporated into the Tribe's planning and development approval process.

(b) A Tribal Historic Preservation Officer shall be appointed to develop a file of identified historic properties within the exterior boundaries of the Eastern Band of Cherokees. This file will also contain a history of areas that have been surveyed and found not to comprise historical or cultural properties. The Tribal Historic Preservation Officer shall be solely responsible for the active collection and cataloging of known historic properties, surveyed areas and the locations of potential archaeological sites.

(c) The Tribal Historic Preservation Officer shall be responsible for the issuance of Permits to Proceed with Ground Disturbing Activities on Tribal Lands (see division 4 of this article).

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-202. Registry.**

From the file of identified historic properties under section 70-201(b), the Tribal Historic Preservation Office shall establish a Registry for any Tribal member to view. Any information in the Registry related to the location of any burial site, the disclosure of which would be likely to result in a disturbance of the burial site, is not subject to disclosure under this section.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-203. Repository.**

The Museum of the Cherokee Indian shall be the permanent repository for any items of cultural patrimony discovered on Tribal lands that the Tribe decides not to reinter. Access to, and the use of, such materials collected for educational and research purposes shall be controlled by the Board of Directors (or whichever body is delegated this responsibility) under policies and procedures it shall develop, subject to the approval of the Cherokee Tribal Council.

(Ord. No. 345-A, 10-13-1998)

**Secs. 70-204--70-300. Reserved.**

**DIVISION 3. BURIAL SITES AND TREATMENT OF HUMAN REMAINS**

**Sec. 70-301. Nondisturbance of burial sites, cemeteries, human remains, and grave goods.**

No person shall knowingly excavate or disturb a burial site, cemetery, human remains, or grave goods. No person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. A person shall immediately notify the Historic Preservation Office if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to this article. This article does not prohibit agricultural or silvicultural activities.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-302. Permitted removal and disturbance to burial sites, cemeteries, human remains, and grave goods.**

(a) Only in the extreme cases of imminent destruction or accidental discovery may burial sites, cemeteries, human remains or grave goods be approved for intentional disturbance. When disturbance is found to be necessary, Tribal spiritual leaders and the Tribal Council and individuals approved to conduct the excavation or exposure will discuss the importance of what is being contemplated and agree to a procedure in writing under which the disturbance shall be carried out.

(b) At all times during the process of disturbing any human remains, a representative of the Tribe shall be available on-site to assist and ensure that the parties employed to remove or expose any human remains or grave goods carry out the procedure along the guidelines set forth in the consultation meeting as required in section 70-302(a).

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-303. Burial and scientific analysis.**

Reserved for discussion and/or future use.

(Ord. No. 345-A, 10-13-1998)

**Secs. 70-304--70-400. Reserved.**

**DIVISION 4. PERMITS TO PROCEED WITH GROUND DISTURBING ACTIVITIES ON TRIBAL LANDS AND WATERS**

**Sec. 70-401. Permit requirements.**

Prior to beginning any ground disturbing activities on Tribal lands and waters, all Tribal members, Tribal employees, lessees, individuals and organizations contracting with the Tribe, and individuals representing government agencies shall have a signed permit to proceed from the Tribal Historic Preservation Office.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-402. Procedures for obtaining a permit to proceed.**

(a) *Submission of application for permit to proceed.* Prior to beginning any ground disturbing activities on Tribal lands and waters, all Tribal members, Tribal employees, lessees, individuals and organizations contracting with the Tribe, and individuals representing government agencies shall complete and submit an application form for a permit to proceed from the Tribal Historic Preservation Officer. The Tribal Historic Preservation Officer shall review the application, and determine, following a review of the existing Tribal Historic Preservation Office files covering that area, if an archaeological field investigation will be required. The THPO shall notify the applicant within 30 days of a decision to deny such permit.

(b) *Archaeological review.* All areas on Tribal lands and waters to undergo earth disturbing activities, not specifically excluded below under section 70-404, and not previously

investigated for the presence of archaeological, historical, or cultural remains, shall be subject to the archaeological review process to determine the presence of such remains as part of the application for a Permit to Proceed. The THPO shall notify the applicant within 30 days of any decision to deny such a permit. The archaeological review consists of the following:

(1) *File search*. Prefield investigations--THPO staff check files and atlas recording the locations of identified historic properties and the locations of areas previously investigated.

(2) *Field archaeology*. The project area presented in the permit application is investigated by a qualified archaeologist to record and describe any identified historic properties.

(c) *Permit contingencies*. Based on the results of the archaeological review, the Tribal Historic Preservation Officer will determine whether or not a Permit to Proceed will be granted for the commencement of the ground disturbances related to the project being considered. The Tribal Historic Preservation Officer shall determine:

(1) Permit to Proceed granted, no contingencies;

(2) Permit to Proceed granted, with contingencies;

(3) Permit to Proceed not granted, project may not proceed following plans presented to the Tribal Historic Preservation Officer.

The permit applicant may resubmit a new application based upon changes made in consultation with the THPO to remove or minimize any impacts to identified historic properties.

(Ord. No. 345-A, 10-13-1998)

### **Sec. 70-403. Appeal of denied permits to proceed.**

Any denied permits may be appealed by the applicant by requesting a hearing in writing within 14 days to the Tribal Council. Said determination from the Tribal Council shall be final.

(Ord. No. 345-A, 10-13-1998)

### **Sec. 70-404. Tribal lands and waters that may be excluded from field archaeology investigation.**

The Tribal Historic Preservation Officer may permit the following areas to be excluded from field archaeology investigations:

1. Garden construction and gardening in general.
2. Projects less than one square meter in size (i.e., digging postholes, planting trees).
3. Projects that will not disturb the ground (i.e., mowing lawn, winter logging with snow coverage).
4. Swampy areas or areas with mucky soils.

5. Locations directly on slopes which would prohibit construction of dwellings or settlements.
6. Maintenance activities including, but not limited to: basic road maintenance, grading and snowplowing.
7. Areas already disturbed to a depth greater than three feet (i.e., gravel pits).
8. Any area that has previously undergone an archaeological survey the result of which no cultural materials were found.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-405. Payment for field archaeology surveys of Tribal lands leased by Tribal members.**

Required Field Archaeological Surveys of individual or business leases held by Tribal members shall be paid for by the developer, to be arranged by the Tribal Historic Preservation Officer. Projects receiving funding from federal agencies are not covered by this Tribal resolution and must provide the cost of required field archaeology surveys independently.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-406. Requirement of qualified archaeologist.**

Archaeological surveys shall be completed by an archaeologist meeting the Department of Interior's Standards for Archaeologists, or by a Tribal Archaeology Para-Professional under the supervision of a qualified archaeologist.

(Ord. No. 345-A, 10-13-1998)

**Secs. 70-407--70-500. Reserved.**

**DIVISION 5. PERMITS TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS**

**Sec. 70-501. Required.**

All individuals intending to conduct archaeological investigations or engaging in the excavation or removal of archeological materials from Tribal lands must have a Permit to Conduct Archaeological Investigations signed by the Tribal Historic Preservation Officer. In addition to requesting and acquiring a Permit to Conduct Archaeological Investigations, the individual(s) must follow the process outlined in division 4 of this article titled, "Permits to Proceed with Ground Disturbing Activities on Tribal Lands and Waters."

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-502. ARPA permits for nonTribal members.**

Any individual that is not a Tribal member must have a valid ARPA permit signed by the Area Director of the BIA-MAO as required in 25 C.F.R. § 262.4.

(Ord. No. 345-A, 10-13-1998)

**Sec. 70-503. Permits to conduct field archaeology on fee land within the exterior boundaries of the Reservation (if applicable).**

Any individual wishing to conduct field archaeology on fee land within the boundaries of the Reservation should contact the Office of the State Archaeologist of North Carolina to determine the need for and process of applying for a state permit or license to conduct field archaeology and provide notice to the Eastern Band of Cherokee Tribal Historic Preservation Office of project plans and location of ground disturbing activities.

(Ord. No. 345-A, 10-13-1998)

**Secs. 70-504--70-600. Reserved.**

**DIVISION 6. ENFORCEMENT AND PENALTIES**

**Secs. 70-601--70-603. Reserved.**

**Sec. 70-604. Penalties.**

(1) Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site as required under subsection (3) shall forfeit not less than \$100.00 nor more than \$1,000.00.

(2) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the Tribe shall forfeit not less than \$500.00 nor more than \$2,000.00.

(3) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the Tribe without the authorization shall forfeit not less than \$1,000.00 nor more than \$5,000.00.

(4) Any person who disturbs a burial site for commercial gain not related to the use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this article may be fined not to exceed two times the gross value gained or two times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(Ord. No. 345-A, 10-13-1998)

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**Chapter 74: Mineral Rights\***

**\*Cross references:** Real property, ch. 47; zoning, ch. 61.

**Sec. 74-1. Mineral reward.**

(a) Any Tribal member who finds or discovers a commercially workable deposit of minerals on Tribal land will be paid a reward of \$250.00. The reward is contingent upon finder



reporting the finding to the Business Committee who shall then obtain samples through a qualified mineralogist. If the mineralogist confirms the commercial nature of the discovery, the Business Committee shall promptly pay the reward from Tribal funds.

(b) The Tribe shall receive not less than ten percent of the net proceeds from the sale of such minerals or ore mineral from any trust land.

(Res. No. 43, 11-20-1936)

#### **Sec. 74-2. Uranium mining.**

(a) All prospecting permits and mining leases shall be executed on forms approved by the Secretary of the Interior or his duly authorized representative.

(b) A fee of \$25.00 shall be charged for each nonexclusive prospecting permit, which sum must be paid to the Tribe at the time of application for such permit.

(c) All nonexclusive prospecting permits shall be issued for a prescribed period of time of six months duration or less and within the period from January 1 to June 30 and from July 1 to December 31 for each year. Applicants for nonexclusive prospecting permits who apply at any time other than at the start of one of the six-month periods shall receive a permit covering only the remaining term in the then current permit period. It is the purpose of this section that all permits shall terminate on the same date in order that a review of the circumstances may be made at the end of each permit period.

(d) The permit area may be defined as to any part of or may include the entire reservation of the Eastern Band of Cherokee Indians in North Carolina.

(e) The nonexclusive prospecting permit may grant to the permittee a right, exercisable at any time during the term of said permit, upon a discovery of ore in commercial quantities, to apply for a mining lease on one parcel of not to exceed 40 acres of the land embraced in said permit.

(f) If an ore discovery is made and a lease is approved covering said discovery, lands in the proximity to said discovery may be included in an advertised sale of either mining leases or exclusive prospecting permits containing a right to select a lease or leases on 960 acres, subject to the acreage limitation of federal regulations. However, if there is no competitive interest in an advertised sale and it is to the advantage of the Tribe, mining leases may be negotiated and approved without advertising.

(g) Permits and leases shall be granted pursuant to federal law and regulation and must comply with all laws and regulations applicable to mineral leases on Indian lands.

(Res. No. 34, 12-5-1955)

#### **Sec. 74-3. Timber.**

The Tribal Council hereby adopts a timber cutting policy which shall be enforced by the Bureau of Indian Affairs and the Tribe.

(a) The Cherokee Agency Forester shall make an inspection of all timber prior to any cutting by lessees on Tribal and leased property.

(b) Any timber cut on Tribal lands which are leased from the Tribe shall be designated for use by the Tribe or distribution to the senior citizens or needy members of the Tribe.

(c) Any person or firm violating the provisions of this chapter regarding timber shall be subject to a fine of \$500.00.

(d) The Tribal Business Committee is authorized to enforce this policy by collecting the subject fine of \$500.00 from any person or firm violating the provisions of this chapter regarding timber.

(Ord. No. 154, 4-19-1990)

**Sec. 74-4. Timber policy.**

(a) *Scope.* This policy addresses the changes and additions necessary for harvesting of forest products to continue, from both Tribal lands as well as possessory holdings. This policy statement applies to all Eastern Band of Cherokee Indian trust lands, and specifically to those lands which are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover.

(b) *Purpose.* This policy statement sets forth measures to control and monitor the harvest of lesser value forest products through a permit system (paid and free use), as well as providing an avenue of harvesting higher value forest products by means of timber sales. These procedures for harvesting any forest product will protect the Eastern Band of Cherokee Indians forest resource.

(c) *Definitions.*

(1) *Tribal member* shall mean a person who is officially enrolled as a member of the Eastern Band of Cherokee Indians.

(2) *Trust land* shall mean those lands whose title is held by the United States government for the benefit of the Eastern Band of Cherokee Indians.

(3) *Tribal land* shall mean the Eastern Band of Cherokee Indian land which is in unassigned status, generally regarded as Tribal Reserve.

(4) *Possessory holding* shall mean an assignment of land made through Tribal regulations which grants an individual Tribal member or a group of Tribal members the right of use and occupancy to a specified area and acreage of Eastern Band of Cherokee Indian trust lands.

(d) *Limits to cutting.* No person may cut timber on any Eastern Band of Cherokee trust lands except enrolled members and their immediate families.

(e) *Permits.*

(1) *Free use permits--possessory holdings:* A free use permit will be issued to any possessory holder for the purpose of removing products for his or her personal use. Products cut under this authority are not to be sold or exchanged for other goods or services. The stumpage value which may be cut in a calendar year shall not exceed \$4,500.00. Permits shall be issued by the Agency Forester.

(2) Tribal Reserve: A free use permit will be issued to enrolled Tribal members who are 18 years or older for the purpose of removing products for his/her personal use. Products cut under this authority are not to be sold or exchanged for other goods or services.

(3) Free use permits for Tribal Reserve products are subject to the following stipulations:

(A) The Bureau of Indian Affairs Branch of Forestry will designate areas or trees to be cut.

(B) Trees will be utilized down to a four-inch top (logs excluded).

(C) All slash and debris caused by harvesting of products will be kept out of or removed from streams and roadways.

(D) The stumpage value which may be cut in a calendar year shall not exceed \$2,500.00.

(4) Paid permits--possessory holdings: Paid permits may be issued to a possessory holder when total stumpage for the forest products is less than \$10,000.00. The area for harvest will be marked and trees to be cut will be marked. After marking the trees, an appraisal value will be set, as well as harvesting procedures, including a general environmental assessment.

(f) *General timber use rules and regulations for all permits (free use or paid).*

(1) Forest products cut under timber permits shall conform to federal regulations, 25 C.F.R. general forest regulations and 53 B.I.A.M. regulations.

(2) Authorized Tribal representatives and the Agency Superintendent or his authorized representative will execute and issue permits.

(3) Immediate family members who are not members of the Eastern Band of Cherokee Indians can participate in the harvest of forest products when accompanying a family member who has been granted a permit (free use or paid).

(4) Permits are issued as a service to meet the needs of Tribal members but must be consistent with sound silvicultural and economic principles that maintain and enhance productivity of the timber stands and the land base.

(5) Permits are subject to closure due to road conditions or fire danger as determined by the Agency Superintendent.

(6) Timber marked for harvest will be 18 inches DBH or larger unless a specified silvicultural treatment justifies a reduction in the DBH limit.

(7) If the permittee damages any roads, bridges, culverts, ditches, fences or other improvements in the permit area, or used as access to the permit area, they will repair them to their original condition to the satisfaction of the Agency Superintendent or his authorized representative.

(8) The permit area will be kept clear of all litter and garbage. Access roads within

the permit area will be kept open at all times. Streams and roadways will be kept free of litter at all times.

(9) The holder of any permit must have the permit in their possession at all times when cutting or hauling permit materials. Permits are nontransferable.

(10) Any stumpage owed on a permit must be paid in full before another permit will be issued.

(11) Stumpage for paid permits is as follows:

- Sawlogs - current appraised log prices
- Pulpwood - \$0.01 per cubic foot
- Firewood - \$0.01 per cubic foot
- Posts - \$0.02 each

(12) Unauthorized harvesting of any nature is subject to trespass as outlined in 53 B.I.A.M. Supplement 7, 25 C.F.R. § 163.22 and Cherokee Tribal Code.

(13) Neither the Bureau of Indian Affairs nor the Eastern Band of Cherokee Indians will be liable for any actions by the permittee while operating under a permit (free use or paid). All cutting will be under the direction of the Agency Forester or his staff.

(14) By accepting any permit (free use or paid), the permittee and their associates shall be deemed to have consented to the jurisdiction of the Tribal Court of the Eastern Band of Cherokee Indians and also to any resolutions of the Tribal Council or directives from the Principal Chief.

(15) Possessory holders who obtain permits shall request the Forestry Department to mark the areas or trees, which shall be marked within five working days of filing a written request with the Forestry.

(g) *Timber sales.*

(1) *Possessory holding timber sales.* Any possessory holding which is determined to have timber, the stumpage value of which is greater than \$10,000.00, will be sold under a timber sale as set forth in 25 C.F.R. and 53 B.I.A.M. Sales may or may not be advertised. The area will be marked and trees to be cut will be marked. A timber cruise will determine the minimum acceptable stumpage rate. A Forest Officer's report will be prepared as well as an Environmental Assessment and other studies as necessary. No timber sale will be conducted without the written consent, or at the request of, the possessory holder, obtained through the Tribal Council.

(2) *Tribal land timber sales.* All harvesting of products from Tribal lands shall be done under a timber sale (except for free use permits.) Sales will be kept as small as practical and will be advertised. A Forest Officer's report shall set forth all pertinent information of the proposed sale. This shall include, but not be limited to, an analysis of the tract of timber, silvicultural treatment to be incorporated, design of harvest operations, appraisal and cruise data, and Environmental Assessments. A contract shall be drawn which conforms to 25 C.F.R. and 53 B.I.A.M. requirements. All timber sales shall require a valid Tribal Council resolution, unless authority for consent is granted to the Timber Committee.

(h) *Timber sale rules and regulations.*

(1) Sales will be conducted in accordance with 25 C.F.R. And 53 B.I.A.M. Requirements

(2) Stumpage due and any performance bonds will be collected according to 25 C.F.R. §§ 163.14 and 163.15.

(Res. No. 444, 5-8-1985)

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## Chapter 75: Newspapers

### **Sec. 75-1. Tribal newspaper.**

The Cherokee One Feather is hereby designated and recognized as the official publication of the Eastern Band of Cherokee Indians for the instruction and information of the Cherokee community.

(Res. No. 13, 4-3-1953; Res. No. 28, 12-4-1973; Res. No. 10, 10-18-1983)

### **Sec. 75-2. Policy.**

It shall be the policy of the Cherokee One Feather to publish news articles and other materials and information judged by the editorial staff to have general value to the Cherokee community. Such news articles shall include a resume of Tribal Council business, Executive Committee and Business Committee actions and action taken by other Tribal committees, boards and enterprises. All news articles, editorials or other matters dealing with controversial subjects shall be submitted to the editorial board for consideration and approval prior to publication.

(Res. No. 13, 4-3-1953; Res. No. 28, 12-4-1973; Res. No. 10, 10-18-1983)

### **Sec. 75-3. Employment information.**

It shall be mandatory for all organizations located on the Cherokee Indian Reservation to advertise all vacant positions for employment in the Cherokee One Feather.

(Res. No. 13, 4-3-1953; Res. No. 28, 12-4-1973; Res. No. 10, 10-18-1983)

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## Chapter 90: Burial\*

**\*Cross references:** Real property, ch. 47; zoning, ch. 61; skeletal remains and burial site preservation, ch. 70.

### **Sec. 90-1. Expenses.**

(a) The Tribe shall contribute the sum of \$500.00 toward the burial expenses of Tribal members who are at least 65 years old, who are indigent and without an estate adequate to pay for their burial.

(b) For purposes of this section, the term "indigent" shall mean without resources or

financial means to pay for burial. Persons with property, income, assets or an estate sufficient to pay for burial expense shall not be deemed to be indigent.

(c) In the case of indigent members who die while living away from the Reservation but whose family desire an on-Reservation burial, the Tribe shall also pay reasonable transportation expenses to return the deceased member to the Reservation.

(Res. No. 35, 10-18-1948; Res. No. 62, 10-24-1950; Res. No. 899, 9-21-1965; Res. No. 82, 10-30-1981)

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## Chapter 91: Pawnbroker

### **Sec. 91-1. Definitions.**

As used in this chapter, the following definitions shall apply:

(a) *Pawn or pawn transaction* means a written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

(b) *Pawnbroker* means any person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

(c) *Pawnshop* means the location at which, or premises in which a pawnbroker regularly conducts business.

(d) *Person* means any individual, corporation, joint venture, association, or any other legal entity, however organized.

(e) *Pledged goods* means tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(f) *Purchase* means any item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item.

(Ord. No. 442, 12-5-1996)

### **Sec. 91-2. License.**

(a) To be eligible for a pawnbroker's license an applicant must:

(1) Be of good moral character; and

(2) Not have been convicted of a felony within the last ten years.

(b) Every person, firm or corporation desiring to engage in the business of pawnbroker shall petition the Tribal Business Committee for a license to conduct such business. Such petitions shall provide:

(1) The name and address of the person, and in a firm or corporation, the names and addresses of the persons composing such firm or of the officers, directors, and stockholders of such corporation, excluding shareholders of publicly traded

companies;

(2) The name of the business and the street and the mailing address where the business is to be operated;

(3) A statement indicating the amount of net assets or capital proposed to be used by the petitioner in operation of the business; this statement shall be accompanied by an unaudited statement from an accountant or certified public accountant verifying the information contained in the accompanying statement;

(4) An affidavit by the petitioner that he has not been convicted of a felony; and

(5) A certificate from the Chief of Police or Sheriff of a North Carolina county, or the State Bureau of Investigation that the petitioner has not been convicted of a felony.

(c) Any license granted under this chapter may be revoked after a hearing before the Business Committee for substantial abuses of this chapter by the licensee. There is a right to appeal the decision of the Business Committee within ten days to the Tribal Council.

(Ord. No. 442, 12-5-1996)

### **Sec. 91-3. Bonding or surety requirement.**

(a) Every person, firm, or corporation licensed under this chapter shall, at the time of receiving the license, file a bond payable to the Eastern Band of Cherokee Indians, the sum of \$5,000.00, to be executed by the licensee, and by two responsible sureties or a surety company licensed to do such business in the State of North Carolina to be approved by the Tribe which shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed.

(b) The bond shall be forfeited to the Tribe upon breach thereof.

(c) Any person, who obtains a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied, may maintain an action in his own name upon the bond, to satisfy the judgment.

(Ord. No. 442, 12-5-1996)

### **Sec. 91-4. Authorization of pawnbroker license.**

A pawnbroker licensee is authorized to:

(1) Make loans on pledges of tangible personal property;

(2) Deal in bullion stocks;

(3) Purchase merchandise for resale from dealers, traders, and wholesale suppliers;  
and

(4) Use its capital and funds in any lawful manner within the general scope and purpose of its creation.

Notwithstanding the provisions of this section, no pawnbroker has the authority enumerated in this section, unless s/he has fully complied with the laws regulating the particular transactions involved.

(Ord. No. 442, 12-5-1996)

**Sec. 91-5. Required records.**

(a) Every pawnbroker shall keep consecutively numbered records of each and every pawn transaction, which shall correspond in all essential particulars to a detachable pawn ticket or copy thereof attached to the records.

(b) The pawnbroker shall, at the time of making the pawn or purchase transaction, enter upon the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:

- (1) A clear and accurate description of the property, including model and serial number if indicated on the property;
- (2) The name, residence address, phone number, and date of birth of the pledgor;
- (3) Date of the pawn transaction;
- (4) Type of identification and the identification number accepted from pledgor;
- (5) Description of the pledgor including approximate height, weight, sex, and race;
- (6) Amount of money advanced;
- (7) The date due and the amount due;
- (8) All monthly pawn charges, including interest, annual percentage rate on interest and total recovery fee; and
- (9) Agreed upon "stated value" between pledgor and pawnbroker in case of loss or destruction of pledged item; unless otherwise noted, "stated value" is the same as the loan value.

(c) The following shall be printed on all pawn tickets:

- (1) The statement that "ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN CHEROKEE TERRITORY IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF 60 DAYS PAST MATURITY DATE OF THE ORIGINAL CONTRACT. NO FURTHER NOTICE IS NECESSARY";
- (2) The statement that "THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS NOR ENCUMBRANCES, AND IS THE PLEDGOR'S TO SELL OR PAWN";
- (3) The statement that "THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET OR BY IDENTIFICATION OF THE PERSON MAKING THE PAWN"; and
- (4) A blank line for the pledgor's signature and the pawnbroker's signature or initials.

(d) The pledgor shall sign the pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker.

(e) These records shall be a correct copy of the entries made of the pawn or purchase



transaction and shall be carefully preserved without alteration, and shall be available during regular business hours.

(f) Except as otherwise provided in this chapter any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket.

(Ord. No. 442, 12-5-1996)

**Sec. 91-6. Inspection.**

The Chief of Police or his designee may enter the premises and randomly inspect any merchandise during regular business hours.

(Ord. No. 442, 12-5-1996)

**Sec. 91-7. Fees and interest.**

(a) No pawnbroker shall demand or receive an effective rate of interest greater than two percent per month, and no other charge of any description or for any purpose shall be made by the pawnbroker, except that the pawnbroker may charge, contract for, and recover an additional monthly fee for the following services including, but not limited to:

- (1) Title investigation;
- (2) Handling, appraisal and storage;
- (3) Insuring a security;
- (4) Application fee;
- (5) Making daily reports to local law enforcement officers; and
- (6) For other expenses, including losses of every nature, and all other services.

(b) In no event may the total of the above listed monthly fees on a pawn transaction exceed 20 percent of the principal up to a maximum of the following:

First month . . . . .	\$100.00
Second month . . . . .	75.00
Third month . . . . .	75.00
Fourth month and thereafter . . . .	50.00

In addition, pawnbrokers may charge fees for returned checks as allowed by law.

(Ord. No. 442, 12-5-1996)

**Sec. 91-8. Limitations of transactions.**

(a) In every pawn transaction:

- (1) The original pawn contract shall have a maturity date of not less than 30 days, provided that nothing herein shall prevent the pledgor from redeeming the property before the maturity date;
- (2) Any personal property pledged to a pawnbroker is subject to sale or disposal when there has been no payment made on the account for a period of 60 days past

maturity date of the original contract; provided that the contract between the pledgor and the pawnbroker is renewable if renewal is agreed upon by both parties;

(3) Every pawn ticket or receipt for such pawn shall have printed thereon the provisions of subsection (1) of this subsection which shall constitute: (i) notice of such sale or disposal, (ii) notice of intention to sell or dispose of the property without further notice, and (iii) consent to such sale or disposal. The pledgor thereby forfeits all right, title and interest of, in and to such pawned property to the pawnbroker who thereby acquires absolute title to the same whereupon the debt is satisfied, and the pawnbroker may sell or dispose of the unredeemed pledges as his own property. Any sale or disposal of property under this section terminates all liability of the pawnbroker and vests in the purchaser the right to title, and interest of the borrower and the pawnbroker;

(4) If the borrower loses his pawn ticket he shall not thereby forfeit his right to redeem, but may, before the lapse of the redemption period, make an affidavit with indemnification for such loss. The affidavit shall describe the property pawned and shall take the place of the lost pawn ticket unless the pawned property has already been redeemed with the original pawn ticket; and

(5) A pledgor is not obligated to redeem pledged goods or make any payment on a pawn transaction.

(b) A pawnbroker shall not:

(1) Accept a pledge from a person under the age of 18 years;

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this chapter;

(4) Fail to exercise reasonable care to protect pledged goods from loss or damage;

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to the replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to section 91-5(b)(9);

(6) Take an article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is written agreement with local police;

(7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased earlier than 48 hours after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers;

(8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of business; or

(9) Take as pledged goods any manufactured mobile homes, recreational vehicle, or motor vehicle other than a motorcycle.

(Ord. No. 442, 12-5-1996)

**Sec. 91-9. Prohibited conduct and penalty.**

(a) It is unlawful for any person, firm or corporation to establish or conduct a business of pawnbroker unless such person, firm or corporation has procured a license to conduct business in compliance with the requirements of this chapter.

(b) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this chapter shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be fined a sum not to exceed \$500.00 for each offense, and at the discretion of the court, may be imprisoned for a period of time not to exceed one year. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(c) The provisions of subsection (b) shall not apply to violations of which shall be prosecuted under other applicable criminal law.

(Ord. No. 442, 12-5-1996)

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## Chapter 92: Tribal Business Preference Law

**Sec. 92-1. Declaration of policy.**

(a) As a guide to the interpretation and application of this chapter, the public policy of the Eastern Band of Cherokee Indians (hereinafter "the Tribe") of the Qualla Indian Boundary (hereinafter the "Reservation") is declared to be as follows:

Like land, water, and minerals, subcontracts and contracts of the Eastern Band of Cherokee Indians which are on or near the reservation are important resources for Indian people, and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special subcontract and contract rights, and the Eastern Band of Cherokee Indians Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of members of the Tribe. The Tribe believes it is important to establish a contract and subcontract preference program and office in order to use the aforementioned laws and powers to increase employment of Indian people, increase the number of Indian businesses, and to eradicate discrimination against Indians.

(b) The intent of this chapter is to require that preference be given to economic enterprises owned by EBCI members, the EBCI, and administration of all contracts, subcontracts, grants, general procurement contracts and personal services contracts by the EBCI, its administrative divisions, enterprises, agencies and offices thereof and any corporate entity in which the EBCI has a majority interest or ownership. This chapter shall not apply to private business arrangements which do not involve the EBCI or any of its subdivisions or economic enterprises.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

## **Sec. 92-2. Definitions.**

(a) *Commission* means the Eastern Band of Cherokee Indian's Tribal Employment Rights Commission established by this chapter.

(b) *Complaint* shall mean the formal notification of the Director in matters relative to the certification of preference firms, the compliance efforts of EBCI employees and contractors and subcontractors with the EBCI, actions of the Director or Commission, and the interpretation of this chapter.

(c) *Contract* shall mean a promise or set of promises constituting an agreement between the parties, including contractors and subcontractors, that gives each a legal duty to the other and the right to seek a remedy for the breach of those duties.

(d) *Contractor* shall mean one who has a contract directly with a procuring agency, and who is not an employee of that procuring agency.

(e) *Director* means the Director of the Eastern Band of Cherokee Indians' Tribal Employment Rights Office (TERO).

(f) *EBCI* means the Eastern Band of Cherokee Indians.

(g) *EBCI employee* shall mean a person performing financially compensated duties for the EBCI, its agencies, or its enterprises on a non-contractual basis as defined by the Internal Revenue Code.

(h) *EBCI member* shall mean an enrolled member of the Eastern Band of Cherokee Indians.

(i) *Economic entity* shall mean any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "economic entity" is intended to be as broad and encompassing as possible to ensure this chapter's coverage over all contract activities within the EBCI's jurisdiction, and the term shall be so interpreted by the Commission and the Courts.

(j) *Field compliance officer* shall mean the person(s) who is responsible for the review, oversight, monitoring, notification, and enforcement of the provisions of this chapter.

(k) *Formal notice of noncompliance* shall mean a written communication from the Director to any EBCI employee, contractor or subcontractor, specifying areas of noncompliance with this chapter and actions needed to come into compliance and/or to provide notice of hearing.

(l) *Priority 1 firm* shall mean an economic entity that is owned and operated by a member of the EBCI, or an enterprise of the EBCI.

(m) *Priority 2 firm* shall mean an economic entity that is owned and operated by a member of any federally recognized Indian tribe other than the EBCI.

(n) *Procuring agency* shall mean the Eastern Band of Cherokee Indians and its administrative divisions, agencies, enterprises, and authorities and any corporate entity in which the EBCI has a majority interest or ownership.

(o) *Reservation* means the Qualla Boundary, all other lands held by the United States for the benefit of the EBCI or any member of the EBCI, and all additional lands acquired by the EBCI, notwithstanding the issuance of any right-of-way.

(p) *Source list* shall mean the official list of certified Indian economic entities which shall be compiled by the TERO under the guidelines established by the Commission.

(q) *Subcontract* shall mean a contract subordinate to another contract made or intended to be made between the prime contractor and another party.

(r) *Subcontractor* shall mean one who contracts with a contractor to perform all or a part of the work or services that the contractor has agreed to perform for the procuring agency.

(s) *TERO* means the Cherokee Tribal Employment Rights Office.

(t) *Tribal Court* shall mean the Cherokee Court of Indian Offenses, or any successor Tribal court established by the EBCI.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

### **Sec. 92-3. Indian preference in contracting.**

(a) All procuring agencies awarding contracts or subcontracts for supplies, services, labor and materials shall give preference in contracting and subcontracting to qualified economic entities that are certified by the Commission as 51 percent or more Indian owned and controlled. These requirements shall not apply to the award of contracts awarded directly by private businesses, federal or state governments, or their subdivisions. All economic entities and procuring agencies shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. The Commission shall establish a system for certifying firms as Indian preference eligible.

(b) When a procuring agency, subject to the provisions of this chapter, has in effect a comprehensive Indian business preference policy and procedure, whether imposed by a funding agency or adopted pursuant to its own administrative authority, such policy and procedure shall continue in force and effect in lieu of the requirements of this chapter provided the compliance officer determines that such policy and procedure:

- (1) Establish preference priorities identical to those stated below;
- (2) In all other respects, meet or exceed the requirements of this chapter;
- (3) Provide for an effective complaint procedure; and
- (4) Are fully and effectively enforced.

(c) The preference priorities are:

- (1) Any economic entity, at least 51 percent of which is owned by a member of the EBCI, or by the EBCI itself, provided that if federal law prohibits preference based on tribal affiliation, the first priority shall be to an economic entity that is at least 51 percent owned by a member of a federally recognized Indian Tribe who lives on or near the Reservation.

(2) Any other economic entity at least 51 percent of which is owned by a member of any other federally recognized Tribe.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-3.1. Bidding on contracts.**

The following methods of providing preference shall be followed in all bids for contracts and subcontracts subject to the provisions of this chapter, for which there are available one or more qualified economic entities.

(a) All procuring agencies shall notify the TERO office of all upcoming construction, supply and service contracts in a timely manner so as to allow sufficient time for certified firms to bid.

(b) Whenever a procuring agency determines that there should be competitive bidding for a contract, then a sufficient number of bids shall be obtained from qualified firms, including Priority 1, 2, and non-priority firms, provided, however, that all certified priority firms shall be notified and given an opportunity to bid, and:

(1) The award shall be made to the Priority 1 firm submitting the lowest responsive bid within the required percentage of the lowest responsive bid as outlined in this section. If no Priority 1 firm is within the required percentage, then the Priority 1 firm(s) shall be given an opportunity to negotiate their price downward to bring it within the required percentage.

(2) If no Priority 1 firm bids or negotiates a price within the required percentage, the award shall be made to the Priority 2 firm submitting the lowest responsive bid within the required percentage of the lowest responsive bid. If no Priority 2 firm is within the required percentage, then the Priority 2 firm(s) shall be given an opportunity to negotiate their price downward to bring it within the required percentage.

(3) If no Priority 2 firm bids or negotiates a price within the required percentage of the lowest responsive bid, the award shall be made to the lowest responsive bidder.

(c) The price preference percentages are as follows:

Contracts within Range of Allowed Percentage Margin

\$0.00--\$100,000.00	5
\$100,001.00--\$250,000.00	4
\$250,001.00--\$500,000.00	3
\$500,001.00--\$750,000.00	2
Over \$750,000.00	1

(d) The procuring entity shall have the final decision as to the qualifications and ability of the Indian firm to perform on the contract.

(e) All contractors and all subcontractors shall be required to adhere to these bidding requirements, as well as all provisions of this chapter.

(f) All small purchases of goods and supplies may be done in any customary manner if a formal contract is not feasible. Price preference percentages apply in all cases.

(g) If the procuring agency is a tribal department that can obtain goods or services at a cost of \$5,000.00 or less, without profit, from another tribal department, then the procuring agency may, at its discretion, negotiate such an arrangement without following the bidding process in this section. The procuring agency shall notify the TERO of its intent to do so.

(h) A procuring agency may, at its discretion, use a sole source negotiation to meet procurement needs if there is only one certified Indian firm available to provide the goods or services, and if such negotiation is allowed by law and Tribal policy.

(i) All economic entities must have all applicable licenses.

(j) No blanket certifications, which would allow an economic entity preference in any business endeavor at its discretion, will be given.

(k) A person or economic entity that is determined by the procuring agency to be a front for an economic entity that is not at least 51 percent Indian owned shall not be awarded a contract. If the procuring agency denies the award of a contract on this basis, there shall be a presumption that the denied economic entity is a front entity. The economic entity may appeal that determination to the Director, and shall have the burden to prove that it is not a front by clear and convincing evidence. If the Director denies that appeal, then the economic entity may appeal to the Commission, but must meet the same burden of proof. The decision of the Commission is final. The Tribal Court shall have no subject matter jurisdiction to hear an appeal on this issue from the Commission.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

#### **Sec. 92-4. Tribal Employment Rights Commission.**

(a) The Tribal Employment Rights Commission shall have jurisdiction to enforce this law.

(b) The Commission shall be composed of seven members of the Eastern Band of Cherokee Indians appointed by the Tribal Council, two of whom shall be Council Members, three of whom shall be EBCI Tribal members nominated by the Tribal Planning Board, and two of whom shall be nominated by the Principal Chief. The Commissioners shall serve until replaced.

(c) Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for Commissioners of the Tribe and such other compensation as the Tribal Council may appropriate.

(d) A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(e) Recusal of Commission Members:

(1) For purposes of this section, "immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, daughter, mother or father by adoption, and any other person who resides in the same household.

(2) No member of the Commission shall participate in any action or decision by the

Commission directly involving himself, or a member of his immediate family, or any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.

(3) Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which generally affects a class of persons, regardless of whether of the Commissioner or a member of his immediate family is a member of the affected class.

(4) A Commissioner may voluntarily recuse himself and decline to participate in any action or decision by the Commission when the Commissioner, in his discretion, believes:

(A) That he cannot act fairly or without bias; or

(B) That there would be an appearance that he could not act fairly or without bias.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

#### **Sec. 92-5. Powers of the Commission.**

The Commission has the full power, jurisdiction and authority to:

(a) Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this chapter. Except when an emergency exists, the Commission shall provide the public with a reasonable time for comment before promulgating any final regulations.

(b) Require each economic entity to submit to the Commission an acceptable compliance plan indicating how it will comply with this chapter, before a covered entity may commence work within the exterior boundaries of the Reservation.

(c) Impose contract and subcontract preference requirements, as set forth in sections 92-3 and 92-3.1, above, and establish and operate a system for certifying firms as eligible for Indian preference. No blanket certifications will be given to any firm.

(d) Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Commission, and to order any relief or sanctions provided by this chapter, and to petition the Tribal Court for orders as are necessary and appropriate to enforce the decisions of the Commission or Director and any sanctions imposed by them.

(e) Oversee the operations of the Tribal Employment Rights Office.

(f) Establish procedures for the revocation of certification of Indian firms for cause, such as poor performance, fronting for non-Indian businesses, and failure to obtain appropriate licenses and insurance, and for such other reasons as the Commission may determine.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)



#### **Sec. 92-6. TERO director and staff duties.**

(a) The Commission shall have exclusive authority to recommend, direct, suspend or remove the Director in compliance with the provisions of the Tribal Personnel Policy.

(b) The Director shall have such administrative ability, education and training as the Commission determines. He may be removed by the Commission for cause.

(c) The Director shall have authority to hire staff in compliance with the Tribal Personnel Policy, to expend funds appropriated by the Tribal Council and to obtain and expend funding from federal, state or other sources to carry out the purposes of the Commission.

(d) The Director shall administer the policies, authorities, and duties prescribed for him in this chapter and delegated to him by the Commission pursuant to section 92-7.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

#### **Sec. 92-7. Delegation of authority.**

The Commission shall delegate to the Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary for the efficient administration of this chapter, except that the Commission may not delegate its power or duty to:

(a) Adopt, amend and rescind rules, regulations or guidelines.

(b) To conduct hearings or to impose sanctions pursuant to section 92-11.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

#### **Sec. 92-8. Complaints.**

Any individual, group of individuals, or organization that believes any covered entity, the Director, or the Commission has violated any requirements imposed by this chapter or regulations issued pursuant to it, may file a Complaint with the Director. The Complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out the investigation. At a minimum the Complaint shall include the date, time, location, procuring agency and economic entity involved, and a description of the basis for the Complaint. If upon investigation the Director has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of section 92-11.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

#### **Sec. 92-9. Investigations.**

On his own initiative or pursuant to a complaint, the Director or any field compliance officer designated by the Director shall make such public or private investigations within the Reservation as he or the Commission deems necessary to determine whether any covered entity has violated any provision of this chapter or any rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder. The Director or his delegate may enter, during business hours, the place of business or employment of any economic entity for the purpose of such investigations, and may require the covered economic entity to submit such reports as he deems necessary to monitor compliance with the requirements of this chapter or any rule or order hereunder. The Commission shall establish the procedures

for these investigations which will identify handling confidential materials, time frames, and other procedures necessary to provide a fair and comprehensive investigation.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-10. Power to require testimony.**

(a) For the purpose of investigations or hearings which, in the opinion of the Director or the Commission, are necessary and proper for the enforcement of this chapter, the Commission or the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

(b) Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed pursuant to this Code or used in a compliance hearing or subsequent appeal to the Tribal Court, shall be confidential records of the Commission or the Tribal Court, shall not be opened to public inspection, and shall be used only by the Director, the Commission, parties to a compliance hearing or subsequent appeal to Tribal Court, and the Tribal Court.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-11. Enforcement.**

(a) When, after conducting an investigation initiated by a Complaint pursuant to section 92-8, or a self-initiated investigation pursuant to section 92-9, the Director has reason to believe a violation of this chapter or regulations issued pursuant to it has occurred, the Director shall notify the covered entity in writing, specifying the alleged violations. However, he or she may withhold the name(s) of the complaining party if he or she has reason to believe such party would be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he or she is unable to do so, he or she shall issue a formal notice of non-compliance, which shall also advise the covered entity of its right to request a hearing.

(b) The Commission shall develop procedures which will protect the Eastern Band of Cherokee Indians, and will protect the rights of all involved parties. At a minimum, the procedures will specify:

(1) The time frame within which the entity must respond to the formal notice.

(2) The time frame within which the entity may require a hearing with the Commission.

(3) The circumstances under which the entity may be required to post bond to prevent it from removing itself or property from the jurisdiction of the Tribe.

(4) The circumstances under which the Tribal Court may be petitioned for injunctive relief.

(c) Any hearing held pursuant to subparagraph (a) shall be conducted by the Commission. The Commission may consider any evidence which it deems relevant to the hearing, and conduct of the hearing shall be governed by the rules of practice and procedures which may be adopted by the Commission. The Commission shall not be bound by technical rules of

evidence in the conduct of hearings under this chapter, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission. No stenographic record of the proceeding and testimony shall be required except upon arrangement by, and at the cost of the party charged.

(d) If, after the hearing, the Commission determines that the violation alleged in subparagraph (a) occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

- (1) Deny such party the right to commence business within the Reservation.
- (2) Suspend such party's operation within the Reservation.
- (3) Terminate such party's operation within the Reservation.
- (4) Deny the right of such party to conduct any further business within the Reservation.
- (5) Impose a civil fine on such party in an amount not to exceed \$500.00 per day for each violation.
- (6) Order such party to pay damages to any aggrieved Indian business.
- (7) Order the party to take such other action as is necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of 25 U.S.C. 1301 et seq. (the Indian Civil Rights Act).
- (8) Make a recommendation to the appropriate supervisor that Eastern Band of Cherokee Indian employees found to be deliberately in violation or noncompliance with this chapter be subject to disciplinary action in accordance with the Eastern Band of Cherokee Indians Personnel Policy.

(e) The Commission's decision shall be in writing, and shall be served on the charged party by registered mail or in person no later than 30 days after the close of the hearing provided in subparagraph (c).

(f) Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may petition the Tribal Court for such injunctive relief as necessary to preserve the rights of the beneficiaries of this chapter, pending the party's appeal or expiration of the time for appeal.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

### **Sec. 92-12. Appeals.**

(a) An appeal to the Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby. Said appeal must be filed with the Court no later than 20 days after the party receives a copy of the Commission's decision.

(b) The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

(c) The appeal shall be executed by serving a written notice of appeal with the Tribal Court, with a copy to the Director within 20 days after the date of the entry of the order. The notice of appeal shall:

- (1) Set forth the order from which appeal is taken;
- (2) Specify the grounds upon which reversal or modification of the order is sought;
- (3) Be signed by the appellant.

(d) Except as provided below or in subparagraph (b), the order of the Commission shall abate pending the determination of the Tribal Court. However, the Director may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond:

- (1) Sufficient to cover monetary damages that the Commission assessed against the party;
- (2) To assure the party's compliance with other sanctions; or
- (3) Remedial actions imposed by the Commission's order if that order is upheld by the Court.

(e) If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

(f) If the Commission's order is upheld on appeal, or if no appeal is sought within 20 days from the date of the party's receipt of the Commission's order, the Commission shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

### **Sec. 92-13. Attachment of property.**

(a) If at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages that are (1) owed by that party pursuant to any outstanding order of the Commission or Court, or (2) which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

(b) The Commission shall develop procedures for the sale or disposition of property which has been held in compliance with a Court order pursuant to section 92-13(a) of this chapter.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

### **Sec. 92-14. Orders of Police.**

(a) The Tribal Police are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission and the Director.

(b) Such orders do not require a judicial decree or order to render them enforceable. The Police shall not be civilly liable for enforcing such orders so long as the order is signed by the Director and the Commission. The Tribal Police shall not enforce a removal order of the Director unless it is accompanied by a judicial decree by the Tribal Court.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-15. Reserved.**

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-16. Severability.**

If for any circumstance, provisions or sections of this chapter are held invalid by the appropriate court of jurisdiction, the remainder of this chapter and other provisions or sections will not be affected in the application of the chapter to any person, employer and others covered by the chapter.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-17. Coverage.**

This chapter shall be binding on all covered entities operating within the exterior boundaries of the Reservation, whether or not they are doing so at that time of implementation of this chapter. However, sections 92-11(f), 92-12, 92-13, and 92-14 shall not apply to complaints against the EBCI or entities owned by the EBCI; in such a case, the Principal Chief shall be responsible for appeals from, and enforcement of, decisions by the Commission.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

**Sec. 92-18. Prior inconsistent law rescinded.**

Ordinance No. 587 (1997) and all prior resolutions and ordinances that are inconsistent with this chapter are hereby rescinded.

(Ord. No. 587, 6-1-1997; Ord. No. 592, 7-1-1999)

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## Chapter 94: Arbitration\*

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\***Cross references:** Civil procedure, ch. 1.

**Sec. 94-1. Scope of chapter.**

This chapter applies to any written contract, agreement or other instrument entered into by

the Eastern Band of Cherokee Indians (the "Tribe") by any instrumentality of the Tribe or by any other person in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument, or any other claim, dispute or controversy existing between them at the time of the agreement.

(Ord. No. 356, 11-7-1996)

**Sec. 94-2. Agreements to arbitrate are enforceable.**

An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement shall be valid, irrevocable and enforceable.

(Ord. No. 356, 11-7-1996)

**Sec. 94-3. Law to be applied and jurisdiction.**

(a) In any contract, agreement or instrument described in section 94-1 of this chapter, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have come into contact with the jurisdiction so selected.

(b) In any proceeding under this chapter, whenever the contract, agreement or other instrument sets forth a choice of law provisions, the Cherokee Court shall apply the procedural rules of the Cherokee Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Cherokee Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

(c) In any proceeding under this chapter, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Cherokee Court shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of North Carolina, including any applicable choice of law principles, provided that such law does not conflict with this chapter or other applicable Tribal law.

(d) The Cherokee Court (Court of Indian Offenses of the Tribe as any successor court of the Tribe having civil jurisdiction) shall have jurisdiction to decide any action for legal or equitable relief or other proceedings brought by any party to any contract, agreement or instrument described in section 94-1 of this chapter.

(e) Any application to the Cherokee Court hereunder shall be made and heard in the

manner provided by law for the making and hearing of motions except as otherwise herein expressly provided.

(Ord. No. 356, 11-7-1996)

**Sec. 94-4. Stay of proceeding and order to proceed with arbitration.**

(a) If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in section 94-1 of this chapter, the Cherokee Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been completed in compliance with the agreement.

(b) A party to any contract, agreement or instrument described in section 94-1 of this chapter claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Cherokee Court for an order directing the parties to proceed with the arbitration in compliance with the agreement. In such event, the Cherokee Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrators.

(Ord. No. 356, 11-7-1996)

**Sec. 94-5. Advice of the court.**

At any time during an arbitration, upon request of all parties to the arbitration, the arbitrators may make application to the Cherokee Court for advice on any questions of Tribal or state law arising in the course of the arbitration, provided that such parties shall agree in writing that the advice of the court shall be final, as to the question presented, and that it shall bind the arbitrators in rendering any award.

(Ord. No. 356, 11-7-1996)

**Sec. 94-6. Time within which award shall be rendered.**

(a) If the time within which an award is to be rendered has not been fixed in the arbitration agreement, the arbitrators shall render the award within 30 days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

(b) An arbitration award shall be in writing and signed by the arbitrators. The arbitrators shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

(Ord. No. 356, 11-7-1996)

**Sec. 94-7. Application for order confirming award; record to be filed with Clerk of Court; effect and enforcement of judgement.**

(a) At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Cherokee Court for an order confirming the award.

(b) Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of Cherokee Court for entry of judgment thereon, file the following papers with the Clerk:

- (1) The agreement to arbitrate;
- (2) The selection or appointment, if any, of the arbitrators;
- (3) Any written agreement requiring the reference of any questions as provided in section 94-5;
- (4) Each written extension of the time, if any, within which to make the award;
- (5) The award;
- (6) Each notice and other paper used upon an application to confirm the award; and
- (7) A copy of each order of the Cherokee Court upon such an application.

(c) An arbitration award shall not be subject to review or modification by the Cherokee Court, but shall be confirmed strictly as rendered by the arbitrators. Judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all provisions of law relating to, a judgment in a civil action, and it may be enforced as if it was rendered in a civil action in the Cherokee Court. When the award require the performance of any act other than the payment of money, the Cherokee Court may direct the enforcement thereof in the manner provided by law.

(d) An arbitration award may be vacated by the Cherokee Court upon application of a party to the arbitration who serves notice of the motion upon the adverse party or the attorney for the adverse party within three months after written notice of the award has been received by the adverse party but only if:

- (1) The award was procured by corruption, fraud or undue means;
- (2) Where there was evident partiality or corruption in the arbitrators, or any of them;
- (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy; or any other misbehavior by which the rights of any party have been prejudiced;
- (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made; or
- (5) Where an award is vacated and the time within which the agreement required an award to be made has not expired the Cherokee Court may, in its discretion direct a rehearing by the arbitrators.

(Ord. No. 356, 11-7-1996)

**Sec. 94-8. Arbitration award not appealable.**



No further appeal may be taken from an order issued by the Cherokee Court pursuant to this chapter enforcing an agreement to arbitrate or confirming an award issued by the arbitrators.

(Ord. No. 356, 11-7-1996)

**Sec. 94-9. Jurisdiction in actions to which the Tribe or an instrumentality of the Tribe is a party.**

The jurisdiction of the Cherokee Court under this chapter shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Tribe or an instrumentality of the Tribe shall have explicitly consented in such contract, agreement or other instruments.

(Ord. No. 356, 11-7-1996)

**Sec. 94-10. Chapter not a waiver or sovereign immunity.**

This chapter does not waive, and shall not be deemed to be a waiver of, the sovereign immunity of the Tribe or of any officer, agent or instrumentality of the Tribe. Any waiver of the sovereign immunity of the Tribe, or any officer, agent or instrumentality of the Tribe, with respect to the enforcement of any contract, agreement or other instrument including actions to compel arbitration or to enforce an arbitration award under this chapter must be explicitly expressed in such contract, agreement or other instrument.

(Ord. No. 356, 11-7-1996)

**Sec. 94-11. Effective date.**

The chapter shall be effective on the date enacted by the Tribal Council and ratified by the Principal Chief.

(Ord. No. 356, 11-7-1996)

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## Chapter 95: Wages / Employment Rights

### ARTICLE I. MINIMUM WAGE

**Sec. 95-1. Minimum wage scale.**

(a) *Purpose:* The purpose of this section is to protect and stabilize wages of persons employed by private persons or businesses on the Cherokee Indian Reservation.

(b) *Scope:* Every private employer who engages in business within the exterior boundaries of the Eastern Band of Cherokee Indians Reservation shall comply with all federal employment and wage laws, regulations and standards. The term "private employer" shall not include the Eastern Band of Cherokee Indians or any separately chartered Tribal organizations, entities or instrumentalities.

(Res. No. 37, 10-15-1953; Res. No. 192, 3-22-1982; Ord. No 226, 5-16-2000)

**Secs. 95-2--95-10. Reserved.**

(Res. No. 14, 10-16-1979; Ord. No. 593, 7-1-1999)

**ARTICLE II. EMPLOYMENT PREFERENCE LAW**

**Sec. 95-11. Declaration of policy.**

As a guide to the interpretation and application of this law, the public policy of the Eastern Band of Cherokee Indians is declared to be as follows:

Like land, water, and minerals, jobs in the private sector on or near the Reservation are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment rights and the Tribe has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indians are also entitled to the protection of the laws that the federal government has adopted to combat employment discrimination, and Tribal governments can and should play a role in the enforcement of those laws. The Tribe believes it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and to eradicate discrimination against Indians.

(Ord. No. 593, 7-1-1999)

**Sec. 95-12. Definitions.**

(a) *Employee* means any person employed for remuneration.

(b) *Employer* means any person, partnership, corporation or other entity that employs individuals for wages.

(c) *Covered employer* means the Tribe, all Tribal programs and entities, and all other employers who receive grant or contract funding from the Tribe, or who lease a parcel of tribally-owned land that is not assigned as a possessory interest to an individual Tribal member. All other employers are encouraged to use the TERO skills bank. Pursuant to Resolution 150 (1994), all employers holding a Trader's License and conducting business on Cherokee trust lands who desire to advertise for employment opportunities with newspapers and the media outside of Cherokee, shall also advertise such employment opportunities in the Cherokee One Feather, and such advertising shall be deemed a condition of conducting business on Cherokee trust lands.

(d) *Entity* means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad as possible to ensure this law's coverage over all employment activities within the Tribe's jurisdiction, and the term shall be so interpreted by the Commission and the Court.

(e) *Commission or TERC* means the Tribal Employment Rights Commission established by this law.

(f) *Commercial enterprise* means any activity by the Tribe or the federal or state governments other than a traditional government function as defined by the Internal Revenue Service.

(g) *Indian* means any member of a federally-recognized Indian Tribe.

(h) *Local Indian* means any member of the Eastern Band of Cherokee Indians, or any member of another federally-recognized tribe who resides within the exterior boundaries of the Reservation.

(i) *Cherokee Indian Reservation or Reservation* means the Qualla Boundary and all other lands held in trust for or owned by the Eastern Band of the Cherokee Indians.

(j) *Tribe* means the Eastern Band of Cherokee Indians.

(k) *Cherokee Court or Court* means the Court of Indian Offenses for the Eastern Band of Cherokee Indians, or any successor tribal court established by the Tribe.

(Ord. No. 593, 7-1-1999; Ord. No. 667, 9-7-1999)

### **Sec. 95-13. Indian preference in employment.**

(a) All covered employers for all employment occurring within the Reservation shall give preference to qualified Indians with the first preference to local Indians in all initial hiring, training, and other aspects of employment. Local Indians shall also receive preferential protection from layoffs.

(b) Preference shall be given to local Indians who meet the minimum qualifications for a particular job, regardless of any higher qualifications that non-Indians may have. Spouses of local Indians who meet the minimum qualifications for a particular job shall be entitled to a second preference. (Covered employers may adopt promotion policies which reward employees who perform at higher levels of performance and such employers will not be bound to promote qualified Indians who meet only the minimum requirements of the job if these employees do not also meet the higher performance requirements set out in the promotion criteria of the covered employers' personnel policy. However, once the higher promotion criteria is met, preference will be given to the Indian meeting that promotion criteria.) This chapter shall not be construed to prevent a covered employer from selecting the most qualified Indian applicant, or from selecting a non-Indian if no qualified Indian applies for the job.

(c) No covered employer shall discriminate against any employee on the basis of gender, age, disability, or religion.

(d) For purposes of hiring, a covered employer who:

(1) Utilizes the hiring hall or skills bank established by the Commission,

(2) Notifies at least three Indians of the opportunity to apply for the job (unless fewer are listed for the available job), and

(3) Complies with subsections (b) and (c) of this section, shall be considered in compliance with this preference law.

(e) All covered employers shall comply with the rules, regulations, guidelines, and orders of the Tribal Employment Rights Commission which set forth the specific obligations of employers in regard to Indian preference.

(f) The requirements of this law shall not apply to any direct employment by the federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

(g) This law shall apply to the Tribe, except that section 95-23, 95-24, and 95-25 shall not. Any complaint against the Tribe for violation of this law shall be filed with the Director prior to a hearing and appeal under any applicable personnel policies and procedures of the Tribe and shall not be heard by the Commission. Nothing in this law shall be construed as a waiver of the Tribe's sovereign immunity.

(h) For purposes of initial hiring by the Tribe or a program funded by the Tribe, if a local Indian meeting the minimum qualifications applies for a job, no other person shall be hired without a prior resolution approved by the Tribal Council.

(Ord. No. 593, 7-1-1999; Ord. No. 674, 4-6-2001)

#### **Sec. 95-14. Unions.**

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations and guidelines of the Tribe. Such agreement shall be subject to the approval of the Director.

(Ord. No. 593, 7-1-1999)

#### **Sec. 95-15. Commission; members; compensation; quorum.**

(a) The Tribal Employment Rights Commission is hereby established.

(b) The Commission shall be composed of seven members of the Eastern Band of Cherokee Indians appointed by the Tribal Council, two of whom shall be Council Members, three of whom shall be EBCI Tribal members nominated by the Tribal Planning Board, and two of whom shall be nominated by the Principal Chief. The members shall be the same individuals as are appointed to the Tribal Business Preference Commission. The Commissioners shall serve until replaced.

(c) Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for Commissioners of the Tribe or for committees or officers of the Tribal Council and such other compensation as the Tribal Council may appropriate.

(d) A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(Ord. No. 593, 7-1-1999; Ord. No. 667, 9-7-1999)

#### **Sec. 95-16. Powers of the Commission.**

The Commission has the full power, jurisdiction and authority to:

(a) Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this law. Except when an emergency exists, the Commission shall provide the public with a reasonable time for comment before promulgating any final regulations.

(b) Establish in consultation with tribal employment and training programs, a Tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall or skills bank has been contacted and the employer has complied with section 95-13(d) of this law.

(c) Prohibit covered employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the Commission shall adopt the Equal Employment Opportunity Commission (EEOC) guidelines on these matters to the extent that they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.

(d) Enter into agreements with unions to insure union compliance with this law. Such agreements shall in no way constitute recognition or endorsement of any union.

(e) Authorize the Director to assist members of the Tribe in enforcing employment rights under other federal, state, and Tribal laws, to the extent resources are available to do so.

(Ord. No. 593, 7-1-1999)

**Sec. 95-17. Director; qualifications; staff; duties.**

(a) The Commission shall have exclusive authority to appoint, direct, suspend or remove the Director of the Commission.

(b) The Director shall have such administrative ability, education and training as the Commission determines. He may be removed by the Commission for cause.

(c) The Director shall have authority to hire staff, to expend funds appropriated by the Tribal Council, and to obtain and expend funding from federal, state or other sources to carry out the purposes of the Commission, subject to approval by the Tribal Council.

(d) The Director shall administer the policies, authorities and duties prescribed for him in this law and delegated to him by the Commission pursuant to section 95-18.

(Ord. No. 593, 7-1-1999)

**Sec. 95-18. Delegation of authority.**

The Commission shall delegate to the Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this law except that the Commission may not delegate its power or duty to:

(a) Adopt, amend and rescind rules, regulations or guidelines.

(b) Conduct hearings or to impose sanctions pursuant to section 95-23.

(Ord. No. 593, 7-1-1999)

**Sec. 95-19. Intergovernmental relationships.**

The Commission, acting through the Director, is authorized to enter into cooperative relationships with federal employment rights agencies, such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), in order to eliminate discrimination against Indians on and off the Reservation.

(Ord. No. 593, 7-1-1999)

**Sec. 95-20. Complaints.**

Any individual, group of individuals, or organization that believes any covered employer has violated any requirements imposed by this law or regulations issued pursuant to it, may file a complaint with the Director. The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation. The Director shall investigate every complaint filed, provided it is filed within 180 days of the action that is the subject of the complaint. No investigation or further enforcement shall be allowed under this law if the complaint is not filed within that time period. If upon investigation he has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of section 95-23. Within 20 days after receipt of the complaint and on a regular basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.

(Ord. No. 593, 7-1-1999)

**Sec. 95-21. Investigations.**

On his own initiative or pursuant to a complaint, the Director or any field compliance officer designated by the Director shall make such public or private investigations as he or the Commission deems necessary to determine whether any covered employer has violated any provision of this law or any rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder. The Director or his delegate may enter during business hours the place of business or employment of any employer for the purpose of such investigations and may require the covered employer to submit such reports as he deems necessary to monitor compliance with the requirements of this law or any rule or order hereunder.

(Ord. No. 593, 7-1-1999)

**Sec. 95-22. Power to require testimony and production of records.**

For the purpose of investigations or hearings which, in the opinion of the Director or the Commission, are necessary and proper for the enforcement of this law, a Commissioner, the Director, or any field compliance officer designated by the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

(Ord. No. 593, 7-1-1999)

**Sec. 95-23. Enforcement.**

(a) When after conducting an investigation initiated by a complaint pursuant to section 95-20, or a self-initiated investigation pursuant to section 95-21, the Director has reason to believe a violation of this law or regulations issued pursuant to it has occurred, the Director shall notify the covered employer in writing, specifying the alleged violations. However, he may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of noncompliance which shall also advise the covered employer of his right to request a hearing.

(b) The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer with a reasonable time, which in no event shall be less than five days from the date of receipt of such notice, to comply unless the Director has reason to believe irreparable harm will occur during that period in which case he may require that compliance occur within fewer than five days. If the party fails or refuses to comply, he may request a hearing before the Commission which shall be held no sooner than five days and no later than 30 days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to subsection (e).

(c) If the party requests a hearing pursuant to subsection (b), and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Tribe prior to the hearing, he may, in his discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post the bond, the Commission may proceed pursuant to subsection (e). The Director may also petition the Cherokee Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

(d) Any hearing held pursuant to subsection (b) shall be conducted by the Commission. Conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this law, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the Commission. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

(e) If after the hearing the Commission determines that the violation alleged in subsection (a) occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

- (1) Refer the case to the Tribal Business Committee with a recommendation to deny such party the right to commence or conduct any further business on the

Reservation, or to suspend or terminate such party's operations within the Reservation.

(2) Impose a civil fine on such party in an amount not to exceed \$500.00 for each violation.

(3) Order such party to make payment of back pay to any aggrieved Indian.

(4) Order the party to take such other action as is necessary to ensure compliance with this law or to remedy any harm caused by a violation of this law consistent with the requirements of 25 U.S.C. 1301 et seq.

The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than 30 days after the close of the hearing. Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may move the Cherokee Court, and the Cherokee Court shall grant such injunctive relief as necessary to preserve the rights of the beneficiaries of this law pending the party's appeal or expiration of the time for appeal. (Ord. No. 593, 7-1-1999)

#### **Sec. 95-24. Appeals.**

(a) An appeal to the Cherokee Court may be taken from any final order of the Commission by any party adversely affected thereby. Said appeal must be filed no later than 20 days after the party receives a copy of the Commission's decision. The Cherokee Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission. The appeal shall be taken by serving a written notice of appeal with the Cherokee Court, with a copy to the Director within 20 days after the date of the entry of the order. The notice of appeal shall:

(1) Set forth the order from which appeal is taken.

(2) Specify the grounds upon which reversal or modification of order is sought.

(3) Be signed by appellant.

Except as provided in subsection (e) of section 95-23, the order of the Commission shall abate pending the determination of the Cherokee Court. However, the Director may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court. If the order of the Commission is reversed or modified, the Court shall, by its mandate, specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations or conditions to be contained therein. If the Commission's order is upheld on appeal, or if no appeal is sought within 20 days from the date of party's receipt of the Commission's order, the Commission may petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

(b) If at any stage in the enforcement process the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Cherokee Court, such that the Commission or the Court will not be able to collect monetary damages that are (1) owed by that party pursuant to any outstanding order of the



Commission or Court, or (2) which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Cherokee Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

(Ord. No. 593, 7-1-1999)

**Sec. 95-25. Confiscation and sale.**

(a) If no appeal has been filed 21 days after a decision by the Commission pursuant to subsection (e) of section 95-23, or if a party has failed to comply with an order of the Court within 30 days after a decision by the Court on an appeal pursuant to subsection (a) of section 95-24, the Commission may petition the Court to order the Cherokee Police Department to confiscate and hold for sale such property of the party as is necessary to achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Cherokee Court, the value of which approximates the amount of monetary damages at issue.

(b) If the Court finds the petition to be valid, it shall order the Police Department to confiscate and hold said property or as much as is available. The Police shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it.

(c) If 30 days after confiscation the party has not come into compliance, the Court shall order the Police to sell the property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all costs incurred by the Court and Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

(Ord. No. 593, 7-1-1999)

**Sec. 95-26. Repeal of inconsistent law.**

Cherokee Code sections 95-2, 96-4, and 96-5, and all other laws or resolutions that are inconsistent with this law are hereby rescinded.

(Ord. No. 593, 7-1-1999)

**Secs. 95-27--95-29. Reserved.**

**ARTICLE III. LABOR ORGANIZATIONS**

**Sec. 95-30. Declaration of policy.**

The Tribe is wholly supportive of the individual freedom of choice in the pursuit of private employment within the territorial jurisdiction of the Eastern Band of Cherokee Indians. To that end, such free choice should be encouraged as a matter of public policy. Further, the right to work should not be subject to undue restraint or coercion, and should not be based upon membership in, affiliation with, or financial support of a labor organization. Nor should this right to work be jeopardized in any way by an individual's refusal to join, affiliate with, or financially or otherwise support a labor organization.

Further, the Eastern Band of Cherokee Indians possesses the inherent authority to exclude non-Indians from the territory of the Eastern Band of Cherokee Indians, as well as the authority to place conditions on entry, on continued presence, and on conduct within its jurisdiction.

Based on the above policy, the Eastern Band of Cherokee Indians has enacted the following regulations.

(Ord. No. 916, 9-13-2001)

**Sec. 95-31. Definitions.**

*Business agent* means any person who acts or attempts to act for or on behalf of any labor organization in:

(1) The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization;

(2) Soliciting or receiving from any employer any right or privilege for employees;

*Employer* means any person, firm, association, corporation and other business entity lawfully operating within the territorial jurisdiction of the Eastern Band of Cherokee Indians.

*Labor organization* means any organization of employees organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and desiring to operate within the territorial jurisdiction of the Eastern Band of Cherokee Indians. The Tribal Employment Rights Commission is not considered to be a labor organization for purposes of this Article.

*Territorial Jurisdiction of the Eastern Band of Cherokee Indians* means all lands held in trust for the Eastern Band of Cherokee or its members and all other lands owned by the Eastern Band of Cherokee Indians.

(Ord. No. 916, 9-13-2001)

**Sec. 95-32. Freedom of choice guaranteed.**

(a) The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any employer or by any labor organization on account of membership or nonmembership in any labor union, labor organization, or association.

(b) No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

(c) No person, as a condition of employment or continuation of employment, shall be required to pay any dues, fees, or other charges of any kind to any labor union or labor organization or to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization.

(d) No person shall be required, as a condition of employment or continuation of

employment to be recommended, approved, referred, or cleared by or through a labor organization. This subsection shall not apply to regulations promulgated pursuant to Chapter 95, Article II of the Cherokee Code, Employment Preference Law.

(e) It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.

(f) No person shall be required by any employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

(g) It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this Article. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.

(h) Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and an employer which violates the rights of employees as guaranteed by the provisions of this Article is hereby declared to be against public policy, an illegal combination or conspiracy in restraint of trade, null and void and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into any agreement prohibited by this Article is hereby declared to be for an illegal purpose and is a violation of this Article.

(Ord. No. 916, 9-13-2001)

### **Sec. 95-33. Registration of labor organizations.**

(a) Every labor organization operating within the territorial jurisdiction of the Eastern Band of Cherokee Indians shall file a report with the Office of Attorney General for the Eastern Band of Cherokee Indians, on or before 60 days after enactment of this Article and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization, shall contain the following information:

- (1) The name and address of the labor organization;
- (2) The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;
- (3) The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;

(4) A copy of the collective bargaining agreement(s) between the labor organization and any employer within the territorial jurisdiction of the Eastern Band of Cherokee Indians;

(5) A copy of the current Constitution and By-laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization;

(6) Detailed information regarding qualifications for or restrictions on membership; levying of assessments; participation in insurance or other benefit plans; authorization for disbursement of labor organization funds; audit of labor organization financial transactions; the calling of regular and special meetings; the selection of officers and stewards and any representatives to other bodies composed of labor organizations' representatives; a specific statement of the manner in which each current officer was elected, appointed, or otherwise selected; discipline or removal of officers or agents for breaches of their trust and a specific statement regarding any past disciplinary action of removal of officers or agents for breach of their trust; impositions of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members in the past calendar year; and

(7) A copy of the Labor Organization's Annual Report, as reported on the U.S. Department of Labor's Form LM-2.

(b) At the time the report is filed, the labor organization shall pay an annual fee of \$25.00 to the Eastern Band of Cherokee Indians.

(c) The president of the labor organization shall file with the Office of Attorney General for the Eastern Band of Cherokee Indians a notice of any changes to the information required above within ten days after the changes are made and provide any additional information requested by the Office of Attorney General.

(d) It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this Article.

(Ord. No. 916, 9-13-2001)

#### **Sec. 95-34. Registration of business agents.**

(a) No person shall act as a business agent of a labor organization within the territorial jurisdiction of the Eastern Band of Cherokee Indians unless that person has received a license from the Tribe's Business Committee.

(1) Any person who seeks such a license shall pay a license fee of \$25.00, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.

(2) No person shall be issued a license to act as a business agent within the territorial jurisdiction of the Eastern Band of Cherokee Indians if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral

turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the Business Committee to be of questionable moral character.

(3) At any time after issuance of the license the Business Committee receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the Business Committee may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

(4) All licenses shall expire at midnight on December 31 of each year but may be renewed by the Business Committee on a form prescribed by the Committee for that purpose and upon the payment of an annual renewal fee of \$25.00. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.

(b) It shall be a violation of this Article for any person to:

(1) Act as a business agent for a labor organization without having obtained a valid license;

(2) To act as a business agent of any labor organization without the authority of the labor organization to do so;

(3) To make any false statement on any reports required to be filed pursuant to this Article;

(4) To make any false statement in an application for a business agent's license.

(Ord. No. 916, 9-13-2001)

#### **Sec. 95-35. Additional violations of this Article.**

In addition to any violations already specified in this Article, it shall be a violation of this Article for any person to:

(1) Unlawfully seize or occupy any property during the existence of a labor dispute;

(2) Coerce or intimidate any employee in the enjoyment of his or her legal rights; coerce or intimidate any elected or appointed tribal official; or intimidate the family, picket the domicile, or injure the person or property of any employee or tribal official;

(3) Engage in picketing in any manner which constitutes a tribal offense, including picketing in a manner to prevent ingress to and egress from any premises, and picketing other than in a reasonable and peaceful manner.

(Ord. No. 916, 9-13-2001)

#### **Sec. 95-36. Penalties.**

(a) Any person who, directly or indirectly, violates any provision of this Article shall be subject to a fine not exceeding \$1,000.00 or exclusion from the territorial jurisdiction of the Eastern Band of Cherokee Indians, or both.

(b) Criminal penalties. In addition to any civil penalties listed above, violation of this Article

shall be punishable by a fine not to exceed \$500.00, by a term of imprisonment not to exceed six months, or both.

(Ord. No. 916, 9-13-2001)

**Sec. 95-37. Civil remedies.**

Any person injured as a result of any violation or threatened violation of the provisions of this Article shall be entitled to injunctive relief from the Tribal Court and may, in addition, recover from the discriminating private employer, other person, firm, corporation, labor organization, labor union, or association, acting separately or in concert, such damages as he may have sustained and the costs of the suit, including reasonable attorney fees, resulting from the violation or threatened violation. If such employer, other person, firm, corporation, labor union, labor organization or association acted willfully or with reckless indifference to the rights of others, punitive damages may be assessed.

This remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable law.

(Ord. No. 916, 9-13-2001)

**Sec. 95-38. Severability.**

The provisions of this Article are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not effect the remaining provisions of this Article.

(Ord. No. 916, 9-13-2001)

**Sec. 95-39. Sovereign immunity.**

Nothing in this Article shall be construed as waiving the sovereign powers or immunities of the Eastern Band of Cherokee Indians or its agents, entities, instrumentalities, employees, or officials, nor shall anything in this Article be construed as imposing any requirements of the National Labor Relations Act on the Tribe, its agents, entities, instrumentalities, employees, or officials.

(Ord. No. 916, 9-13-2001)

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**APPENDIX: EASTERN BAND OF CHEROKEE INDIANS PERSONNEL MANUAL**

Welcome

As you begin your employment with the Eastern Band of Cherokee Indians, I would like to welcome you to our organization and invite you to read and become familiar with the contents of this Personnel Policy Manual. I hope that you find it full of helpful and valuable information about the policies, procedures, and opportunities available to guide and assist you in performing to the best of your abilities and developing and realizing your potential as one of our valued employees. With your help, we are looking forward to continuing growth and prosperity as we find new and better ways to serve our citizens' needs.

The policies, procedures, and programs outlined in this handbook are designed to serve as guidelines to keep you informed of relevant facts about your employment. They do not, in

any way, waive the sovereign immunity of the tribe. They are not intended to create any kind of contractual relationship. While the policies and procedures outlined in this manual should give you answers to most of the general questions you might have about your job or the Tribe's programs and procedures, it cannot cover every situation that might arise. If you have questions about these guidelines or need further information about any subject, please consult with your supervisor or the Human Resource Department. We also welcome your suggestions for improvements either to policies or procedures covered in this handbook or in other job-related areas or subjects. Your ideas on ways to improve our operations and procedures are important to us, and, along with your effort and performance, are an ideal way to contribute to EBCI's future growth and your own development.

Please read this handbook carefully and retain it for future use. Try to familiarize yourself with its contents as soon as possible, because it should answer many of your initial and ongoing questions about your employment with EBCI. We want you to be fully informed and to understand our policies and procedures completely.

Once again, I welcome you and wish you success as we turn to face the numerous challenges, opportunities, and potential rewards ahead.

Sincerely,

Leon D. Jones  
Principal Chief

### **PREFACE**

The development of this personnel manual utilized much information from the previous committee's policy drafts and federal law. It is intended to state clearly the benefits and responsibilities of Tribal employment. It is the resource manual to inform employees of policies and procedures and to promote standard practices among all personnel. The policies or procedures outlined in this manual are not intended to create a contract of employment or to waive sovereign immunity in any way.

Each employee is responsible for becoming familiar with and complying with these policies and regulations.

### **The Tribal Program Management's Responsibility to Employees**

As an employee, you may expect from the EBCI:

- \* Fair and equitable treatment.
- \* Adequate, fair pay and benefits.
- \* Healthy and safe working conditions.
- \* Competent supervision.
- \* Opportunity for advancement based on work performance and vacancies.
- \* To be kept informed through two-way communication.

### **Employee's Responsibility to the EBCI:**

As your employer, the Tribe expects you:

- \* To work toward the goals of the Tribe in providing service to members and residents of Cherokee.
- \* To be loyal.
- \* To be fair, courteous, and cooperative in your relationship with the public and your fellow employees.
- \* To give the Tribe a fair return for the pay you receive.
- \* To practice good grooming habits and be prompt in reporting for work and scheduled assignments.
- \* To be economical and responsible in the use of supplies and equipment.
- \* To comply with all policies and procedures of the EBCI.

## **ARTICLE I. TITLE AND PURPOSE**

### **Sec. 1.00. Title.**

This Personnel Manual for the Eastern Band of Cherokee Indians, Cherokee, North Carolina, is established by Ordinance No. 639 (1999).

(Ord. No. 639, 8-11-1999)

### **Sec. 1.01. Purpose.**

The purpose of this manual is to provide accurate information to all employees regarding Tribal personnel policies and procedures (standards, benefits, procedures, and authority) that will be used by the Eastern Band of Cherokee Indians.

(Ord. No. 639, 8-11-1999)

## **ARTICLE II. AUTHORITY AND APPLICABILITY**

### **Sec. 2.00. Authority.**

The personnel manual as adopted by the Eastern Band of Cherokee Indians Tribal Council under Ordinance 639 (1999) grants the Executive Branch offices the power to implement and enforce these policies and procedures.

(Ord. No. 639, 8-11-1999)

### **Sec. 2.01. Applicability.**

This manual shall apply to all employees existing and future except political appointees.

(Ord. No. 639, 8-11-1999)

### **Sec. 2.02. Elected officials.**

Elected officials shall not be subject to this manual. Elected officials shall not serve in the



function of executive director of any tribal program nor be on committees that serve in the function of an executive director.

(Ord. No. 639, 8-11-1999)

### **Sec. 2.03. Political appointees.**

Political appointees serve in positions appointed by the Principal Chief and Tribal Council. They serve at the discretion of the appointing official(s) and may be terminated at the discretion of such official(s).

Political appointees are not subject to Sections 5.00, 5.01, 5.04, 5.05, 5.06, and 5.07 of Article V, Article XIII and Article XIV.

(Ord. No. 639, 8-11-1999)

### **Sec. 2.04. Other Tribal organizations.**

Nothing herein contained shall be applicable to separately chartered organizations which have legal authority to develop and adopt separate personnel policies. These separately chartered organizations include, but are not limited to, the Cherokee Boys Club, Inc., Tribal Health Enterprise, Qualla Housing Authority, Carolina Mirror Company, and the Tribal Casino Gaming Enterprise.

(Ord. No. 639, 8-11-1999)

### **Sec. 2.05. Supplemental personnel policies.**

Supplemental policies may be adopted by Tribal Council resolution in concurrence with the Principal Chief when specific programs (e.g. Head Start, Police Department, Transit Department, etc.) have federal guidelines which require policies not covered in this manual.

(Ord. No. 639, 8-11-1999)

### **Sec. 2.06. Policy review and revision.**

This policy will be reviewed and/or revised every two years by the Human Resource Manager and Staff. Human Resources will canvas employees and managers for review and comment. These will be submitted to the Executive Committee and to the Tribal Council.

**Note--**Changes in federal law that are given specific applicability to Indian tribes may cause EBCI to make changes in this policy without adhering to the above policy and review provision.

(Ord. No. 639, 8-11-1999)

## **ARTICLE III. DEFINITIONS**

### **Sec. 3.00. Appeals committee.**

The pool of representatives from which the final decision making body is selected for the Problem Solving procedures (Article XIV). The committee is made up of two representatives, one management representative and one nonmanagement representative, from each

division. From this pool five representatives (two from management and three non-management employees) will be chosen to hear final appeals.

(Ord. No. 639, 8-11-1999)

**Sec. 3.01. Appropriate supervisor.**

An employee who has been assigned the role of supervisor for the purpose of supervising, authorizing, and managing the day-to-day operations of a Tribal program.

(Ord. No. 639, 8-11-1999)

**Sec. 3.02. Appropriate executive director.**

The person in charge of a division as outlined in the EBCI's organizational chart.

(Ord. No. 639, 8-11-1999)

**Sec. 3.03. AWOL.**

Absent without leave.

(Ord. No. 639, 8-11-1999)

**Sec. 3.04. Calendar days/work days.**

Calendar days refer to all days including weekends and holidays; work days refer to the scheduled weekly tour of duty.

(Ord. No. 639, 8-11-1999)

**Sec. 3.05. Levels of organizational authority.**

Levels of authorizations, approvals and normal communication flow related to each Tribal program's structural organization as established by the Principal Chief.

(Ord. No. 639, 8-11-1999)

**Sec. 3.06. Demotion.**

A change in status resulting from assignment to a position of lower salary level.

(Ord. No. 639, 8-11-1999)

**Sec. 3.07. Difference pay.**

The difference between fees/wages received for civil duty and the regular rate of pay for the time period.

(Ord. No. 639, 8-11-1999)

**Sec. 3.08. Discharge/termination.**

Involuntary separation of employment.

(Ord. No. 639, 8-11-1999)

**Sec. 3.09. Duty station.**

Primary location or area of employee's work.

(Ord. No. 639, 8-11-1999)

**Sec. 3.10. EBCI.**

Eastern Band of Cherokee Indians.

(Ord. No. 639, 8-11-1999)

**Sec. 3.11. Employee.**

A person performing financially compensated duties for the EBCI on a non-contractual basis as defined by the Internal Revenue Code.

(Ord. No. 639, 8-11-1999)

**Sec. 3.12. Essential positions.**

Positions in which work content is critical to the well being of the community (i.e., Police, Fire Protection, Cherokee DOT, hospital housekeeping, EMS, Tribal Utilities, Emergency Management).

(Ord. No. 639, 8-11-1999)

**Sec. 3.13. Executive Committee.**

The Executive Committee of the EBCI is composed of the Principal Chief and Vice-Chief.

(Ord. No. 639, 8-11-1999)

**Sec. 3.14. Exempt Tribal employee.**

An employee whose employment position is exempt from overtime pay as defined by the Fair Labor Standards Act. This generally includes executive, administrative and professional employees who are paid a salary.

(Ord. No. 639, 8-11-1999)

**Sec. 3.15. FICA.**

Federal Insurance Contributions Act.

(Ord. No. 639, 8-11-1999)

**Sec. 3.16. FMLA.**

The Family and Medical Leave Act.

(Ord. No. 639, 8-11-1999)

**Sec. 3.17. Immediate family.**

Immediate family relationships are those such as between wife/husband, parent/child, siblings, in-laws, grandparents/grandchild, step-parent/step-child/foster parent/foster child, and aunt/uncle/niece/nephew. For specific applications refer to 4.02 "Employment of relatives" and 4.03 "Conflicting employee relationships."

(Ord. No. 639, 8-11-1999)

**Sec. 3.18. Individual with disabilities.**

Person with a disability is anyone who has a physical or mental impairment that substantially limits one or more of the person's major life activities, or has a record of such impairment, or is regarded as having such an impairment.

(Ord. No. 639, 8-11-1999)

**Sec. 3.19. Involuntary separation.**

Separation from Tribal employment because of curtailment of work, budget limitations, or corrective action resulting in suspension or discharge.

(Ord. No. 639, 8-11-1999)

**Sec. 3.20. Lateral transfer.**

Reassignment from one position to another position at an equal pay classification and similar job duties.

(Ord. No. 639, 8-11-1999)

**Sec. 3.21. Legally mandated benefits.**

Benefits mandated by applicable law such as FICA and Worker's Compensation.

(Ord. No. 639, 8-11-1999)

**Sec. 3.22. LWOP.**

Leave without pay (granted in 15-minute increments).

(Ord. No. 639, 8-11-1999)

**Sec. 3.23. Non-covered employees.**

Employees who are generally not covered by the Fair Labor Standards Act. These employees include such employees as elected officials, their personal staffs (political

appointees), policy-making appointees, and legal advisors.

(Ord. No. 639, 8-11-1999)

**Sec. 3.24. Non-essential Tribal position.**

A job which involves work is not critical to the well-being of the community.

(Ord. No. 639, 8-11-1999)

**Sec. 3.25. Non-exempt Tribal employee.**

An employee who is subject to the minimum wage and overtime provisions as defined by the Federal Fair Labor Standards Act as well as all essential employees who are required to work overtime during times of emergency.

(Ord. No. 639, 8-11-1999)

**Sec. 3.26. Non-public information.**

Information of a confidential nature (i.e., personnel files, drug/alcohol test results, client files, specified financial data, customer accounts and any other specified confidential information).

(Ord. No. 639, 8-11-1999)

**Sec. 3.27. Pay status/non-pay status.**

In pay status the employee earns pay and/or benefits; in non-pay status the employee does not earn pay; benefits may be earned in some circumstances such as LWOP.

(Ord. No. 639, 8-11-1999)

**Sec. 3.28. Position.**

The group of duties and responsibilities performed for financial compensation by an employee per the employee's job description.

(Ord. No. 639, 8-11-1999)

**Sec. 3.29. Program.**

A formally prescribed activity or service established to perform a specific function.

(Ord. No. 639, 8-11-1999)

**Sec. 3.30. Promotion.**

A change in status resulting from assignment to a position of higher salary level.

(Ord. No. 639, 8-11-1999)

**Sec. 3.31. Public information.**

Information designated or approved for dissemination by the Principal Chief.

(Ord. No. 639, 8-11-1999)

**Sec. 3.32. Tour of duty.**

The period of required work hours including all breaks.

(Ord. No. 639, 8-11-1999)

**Sec. 3.33. Tribal council.**

Elected legislative branch of the EBCI.

(Ord. No. 639, 8-11-1999)

**Sec. 3.34. Voluntary separation.**

Separation from Tribal employment for reasons of resignation, retirement, death, or disability.

(Ord. No. 639, 8-11-1999)

**Sec. 3.35. Word interpretation.**

For the purpose of this appendix, certain words shall be interpreted as follows:

\* *Tribe* shall mean the Eastern Band of Cherokee Indians;

\* *May* is permissive;

\* *Shall* and *will* are mandatory.

(Ord. No. 639, 8-11-1999)

**Sec. 3.36. Seniority.**

Seniority is to be used where possible to help protect the job security of employees with longer length of service within each department.

It is also a factor in transfers and promotion and is also a governing factor in the accrual of benefits such as vacation and sick leave.

*A. Types of seniority.*

Tribal seniority is the total full-time continuous service an employee has worked in any capacity for the Tribe since the last date of hire.

Department seniority is the total full-time service an employee has worked during a continuous period of employment in a specified department or division.

Classification seniority is the total of full-time service an employee has worked during a continuous period of employment on a specified job classification.

Tribal, Department and Classification seniority shall accrue during a continuous authorized leave provided the employee returns to work immediately following the expiration of such leave.

Tribal, Department and Classification seniority shall accrue during a period of continuous layoff up to one year or the length of the employee's continuous service at commencement of such absence, whichever is less. Examples of the foregoing are as follows:

\* If an employee has one or more years of continuous service at the time layoff began, seniority would accrue up to a maximum of one year commensurate with the period of absence.

\* If an employee has eight months of continuous service at the time of layoff, seniority would accrue up to a maximum of eight months commensurate with the period of absence.

Tribal, Department and Classification seniority for part-time employees shall be considered only as a deciding factor in rulings involving other part-time employees.

A temporary employee shall have no seniority during status as a temporary employee. Should a temporary employee become a regular employee, seniority shall be retroactive to date of employment.

*B. Termination of seniority.* An employee's seniority shall be terminated and rights, benefits, and privileges forfeited from the date of termination for the following reasons:

1. Discharge for cause;
2. Quit;
3. Resignation;
4. Retirement.

(Ord. No. 639, 8-11-1999)

#### **ARTICLE IV. GENERAL EMPLOYMENT POLICY**

##### **Sec. 4.00. Employment preference and equal employment opportunity.**

Employment decisions at EBCI will be based on merit, qualifications, ability and seniority as defined in certain policies. EBCI has fundamental interests in providing employment opportunities, professional development, and financial support for its enrolled members and their families, and in fostering self governance of the Tribe by enrolled members. It is the policy of the EBCI to give preference in all initial hiring decisions within the Tribe to enrolled members of the Eastern Band of Cherokee Indians who meet the minimum requirements. (See Section 5.07A for rules regarding promotions). If two enrolled members of the Eastern Band of Cherokee Indians meet the minimum requirements and are of equal qualification, preference will be given to the enrolled member who is also an honorably discharged veteran. Enrolled members' spouses who meet the minimum requirements will be given a

second level of preference. Enrolled members of other federally recognized Tribes will be given a third level preference, if they meet the minimum requirements. To the extent these preferences are different from other provisions of tribal law, these preferences shall prevail as to employment by the Tribe. After considering these preferences, it is the policy of the EBCI to foster, maintain, and promote equal employment opportunities.

(Ord. No. 639, 8-11-1999; Ord. No. 674, 4-6-2001)

#### **Sec. 4.01. Access to personnel files.**

Personnel files are the property of EBCI, and the information they contain is restricted and confidential. The following information may be included in the personnel file: signed receipt for the personnel manual, employee benefits information, school transcripts, diplomas, employee appraisals, and records of any corrective actions. Excluded from the personnel file shall be the following: medical records, records of investigations involving the employee, reference letters, records regarding other employees, confidential reports from former employers or investigative agencies, and documents prepared in conjunction with any grievance. Only authorized supervisors and management personnel as defined by the Human Resource office will be allowed to review information; they will be required to sign for the file.

Employees and former employees may examine their personnel file by making a request to an employee of the Human Resource staff. A time convenient to both employee and staff will be set during regular office hours for the employee or an authorized agent (i.e., attorney or other agent who has been given written authorization from the employee) or physician to examine the file. This review will take place in the Human Resource Department.

An employee who objects to material in his or her file on grounds that it is inaccurate or misleading may place in the file a statement relating to the material; or, the employee may seek to have the material removed from the file by following the Problem Solving Procedure.

Employees and former employees may obtain a copy of their personnel file by signing a release form or by presenting a court order.

In instances requiring large amounts of copying, a charge may be made to cover costs of labor, materials and related expenses.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.02. Employment of relatives.**

The term "immediate family" is defined in section 3.17 and shall be understood to refer to that degree of closeness of relationship which might create a problem within the working unit.

Two members of a single immediate family shall not be employed by the Tribe when such employment will result in one member providing direct supervision of the other. In cases where a conflict or the potential of conflict arises, even if there is no direct supervisory relationship, the parties may be separated by reassignment or other arrangements. If the immediate family relationship is established after employment, the employee is required to report changes of circumstances related to this policy. The appropriate Executive Director, with the approval of the Executive Committee will make a decision as to how to resolve the



conflict or potential conflict within 30 calendar days.

(Ord. No. 639, 8-11-1999)

**Sec. 4.03. Conflicting employee relationships.**

In cases where an employee is not covered as defined in section 3.17 but where circumstances create a close relationship (e.g. live-in companion, cousins raised as siblings) between the employees, section 4.02 shall apply.

(Ord. No. 639, 8-11-1999)

**Sec. 4.04. Elected officials and Tribal employment.**

The EBCI shall adhere to the Cherokee election ordinance as it relates to tribal employees holding offices.

(Ord. No. 639, 8-11-1999)

**Sec. 4.05. Age limitations.**

No individual shall be barred from EBCI employment because of age if an individual is otherwise qualified. The Tribe may set forth a maximum age for a specific position if these requirements are based on occupational qualifications essential to maintaining safe and efficient departmental operations.

The minimum age at which individuals may be employed is 18 years of age. Exceptions to this minimum age requirement include temporary, summer youth, or other specific project employment.

(Ord. No. 639, 8-11-1999)

**Sec. 4.06. Employment of persons with disabilities.**

The EBCI supports and encourages employment of persons with disabilities. The person must meet the necessary requirements to perform the essential functions of the position. The EBCI will make every effort to remove physical and attitudinal barriers which prevent the employment of persons with disabilities.

(Ord. No. 639, 8-11-1999)

**Sec. 4.07. Subversive activity.**

No employee shall advocate or become a member of any organization which advocates the unlawful disruption of the constitutional form of the EBCI., or of any organization which seeks by force or violence to deny other persons their rights under the Constitution of the United States.

(Ord. No. 639, 8-11-1999)

**Sec. 4.08. Political activity.**

No employee shall:

- \* Engage in political activity while on tour of duty;
- \* Use Tribal funds, supplies, or property in any political activity; or
- \* Use undue influence for political gain.

Employees who are working in federally funded programs are subject to the Hatch Act (5 U.S.C. 1501-1508--copy on file at Human Resource Library). The Federal laws on political activity limitation are different in some respects to the above limitations and all employees subject to the Hatch Act shall thoroughly familiarize themselves with the limitations set forth in the law.

(Ord. No. 639, 8-11-1999)

**Sec. 4.09. Maintenance of personnel files.**

An official personnel file on each employee shall be maintained in the Human Resource Office. The official personnel file shall include the employee's job application, resume', records of training, records of education, documentation of performance appraisals, corrective actions, salary changes, and benefit enrollment forms. Not included shall be records of investigations of employees, reference letters, records regarding other employees, and reports from former employers.

(Ord. No. 639, 8-11-1999)

**Sec. 4.10. Personal data changes.**

Each employee is responsible for keeping personal information accurate by promptly notifying the Human Resource Office of changes in personal data, such as:

- \* Personal mailing addresses (including forwarding addresses).
- \* Telephone numbers.
- \* Name changes (i.e, following a marriage/divorce, with corrected Social Security card).
- \* Number and names of dependents.
- \* Individuals to be contacted in the event of an emergency,
- \* Educational accomplishments.
- \* Status reports.

(Ord. No. 639, 8-11-1999)

**Sec. 4.11. Employment applications.**

Any misrepresentations, falsifications, or material omissions in employment applications, resumes, Employment Security Commission referrals, information, or data may result in EBCI's exclusion of the individual from further consideration for employment or in termination of employment.

The EBCI will accept applications only from citizens of the United States of America or from

those with appropriate immigration authorization.

(Ord. No. 639, 8-11-1999)

**Sec. 4.12. Pay advances.**

No pay advances on unearned wages shall be provided. Advanced sick leave may be granted with the recommendation of the supervisor and the concurrence of the Executive Committee for catastrophic illnesses. In no event will more than 13 days of advance sick leave be granted.

(Ord. No. 639, 8-11-1999)

**Sec. 4.13. Use of phone, mail, and office systems.**

The personal use of telephones for long distance and excessive use of local calls, computers, Email, mail services (e.g. postage meter, postage stamps) fax machines, and Tribal accounts is not permitted. Employees shall be required to reimburse EBCI for any charges resulting from personal use of any of these systems immediately and may be subject to disciplinary action.

Telephone, mechanical or electronic eavesdropping is prohibited. Should it be necessary to record a conversation, advance verbal notice must be given and permission granted, unless recording is done by court order.

(Ord. No. 639, 8-11-1999)

**Sec. 4.14. Use of equipment and vehicles.**

Each department manager shall have the responsibility of maintaining accurate and current inventory of all EBCI property assigned to that department.

When using EBCI property, employees will exercise care, perform required maintenance, and follow all operating instructions, applicable federal safety standards, and guidelines.

Employees are responsible for all property, materials or written information issued to them, in their possession, or under their control. Employees must return all EBCI property immediately upon request, upon completion of tasks, or upon termination of employment. Subject to applicable federal regulations, EBCI may withhold from the employee's pay the cost or replacement costs of any items that are not returned as required. EBCI may also take appropriate legal action to recover or protect Tribal property.

(Ord. No. 639, 8-11-1999)

**Sec. 4.15. Attendance and punctuality.**

EBCI employees will be reliable and punctual in reporting to their work stations.

The standard tour of duty is five days, 40 hours, Monday through Friday. The standard work day will begin at 7:45 a.m. and continue until 4:30 p.m. The lunch break will be 45 minutes and will be arranged to suit program needs. Morning and afternoon work breaks shall be scheduled by the appropriate supervisor according to work demands.

If the tour of duty requires other schedules/flex time arrangements etc., all time scheduled is considered the standard tour of duty. The appropriate supervisor and department manager will authorize deviations from the normal schedule.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.16. Personal appearance.**

Dress, grooming, and personal cleanliness standards contribute to the professional image presented to customers, visitors, and colleagues.

While conducting Tribal business, employees are expected to present a clean, neat and professional businesslike appearance. They should dress according to the requirements of their positions as determined by the appropriate supervisor or safety officer.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.17. Confidentiality of personnel, clients, customers, vendors, financial information, and other confidential information.**

##### *A. Requests for information.*

*Conditions for release.* The EBCI will comply with the criteria of 42 CFR (Code of Federal Regulations) in regard to confidentiality toward clients and patients (copy on file in the Human Resource Office). In the event an employee may be in a potentially dangerous situation, the supervisor shall disclose certain confidential information in order to protect the employee. All employee files are confidential. No information about an employee will be disclosed to anyone other than authorized Tribal employees except in the following cases:

*Verification of employee information.* In response to an outside party's written request (with authorized release) for verification of employee information, EBCI will only verify the following information:

- \* Dates of employment;
- \* Employee's position or job title; and
- \* Length of service.

*Information needed in civil or grievance proceedings.* EBCI reserves the right to disclose employee information in defense of any personnel-related complaints.

*Medical emergencies.* EBCI will disclose employee information if necessary to respond to an apparent medical emergency.

Disclosure authorized by an employee. Any disclosures beyond those described above will require the employee's written consent.

*B. Contractors.* Any contracting firm that performs personnel-related services, such as payroll processing or benefits administration, will have access to employee information needed to perform these services. All contractors will be required to maintain the confidentiality of this information.

C. *Information disclosure required by law.* The EBCI will furnish employee information whenever legally required to do so, including:

- \* To comply with a legally valid administrative summons or judicial order, such as a subpoena or search warrant;
- \* To respond to a government audit or investigation;
- \* To comply with federal, state or local laws or regulations; and
- \* To respond to a law enforcement agency's request for an employee's home address and dates of work attendance.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.18. Disclosure of nonpublic information.**

Nonpublic information is confidential. An employee may not disclose or utilize nonpublic information for any reason. If the employee believes it is in the public interest to use such nonpublic information, that employee shall request permission from the appropriate supervisor. Permission to disclose the nonpublic information must be given in writing.

Should an employee be contacted by the press or any outside agency requesting nonpublic information the request shall be given to that person's supervisor who will forward it through levels of authority with final approval to be made by the Principal Chief or the Vice Chief.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.19. Safeguard public funds.**

All employees whose duties concern the fiscal responsibility of public funds shall have knowledge of and observe all applicable legal requirements and restrictions. Any employee found to have misused, misrepresented, or failed in a fiduciary responsibility shall be subject to corrective action.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.20. Safety and health regulations.**

All employees will observe all rules, signs, and instructions relating to personal safety, security, and health regulations.

EBCI will comply with the Biohazardous Waste Law that limits occupational exposure to blood and other potentially infectious materials. Infectious materials include blood and all other body fluids (such as urine, feces, saliva, etc.). Copies of the Biohazardous Waste Law may be obtained from the Human Resource Library.

(Ord. No. 639, 8-11-1999)

#### **Sec. 4.21. No smoking.**

All Tribal buildings are considered public buildings and are smoke free at all times except in designated areas. Designated smoking areas shall be clearly marked and managers will

insure that these areas are well-ventilated and provide a safe environment for all tribal employees and visitors.

(Ord. No. 639, 8-11-1999)

**Sec. 4.22. Canvassing, gambling pools, soliciting, or selling.**

Employees are not permitted to engage in any activities for personal gain while on tour of duty. Specific exceptions must be authorized by the Executive Committee.

(Ord. No. 639, 8-11-1999)

**Sec. 4.23. Accepting notarial fees.**

An employee who is also a notary public may not charge or receive fees for performing notarial acts in connection with their official tour of duty. Acceptance of fees does not apply to notarial acts performed while not on duty.

(Ord. No. 639, 8-11-1999)

**Sec. 4.24. Visitors in the work place.**

In order to maintain the efficiency and safety in the workplace, visitors are not allowed except during designated breaks and lunch periods. Children may be allowed during emergency situations at the discretion of the appropriate supervisor.

(Ord. No. 639, 8-11-1999)

**Sec. 4.25. Procedures at separation of employment.**

Upon separation of employment from the Tribe, all Tribal property in the employee's possession is to be turned over to the appropriate supervisor. This includes but is not limited to, keys, tools/equipment, vehicles, and personal codes for voice mail, computers, etc.

**Note--**Employees must not discard information or files before leaving.

An exit interview is to be conducted by the Human Resource Department.

(Ord. No. 639, 8-11-1999)

**Sec. 4.26. Suspension with pay.**

In instances where serious problems are suspected and facts are obscure, an employee may be involuntarily placed on suspension with pay. This action can be used to determine facts, causes and seriousness of situations and determine appropriate solutions. The decision to suspend is made by the appropriate supervisor and the Executive Director or designee. Suspension with pay may not exceed 30 days. Suspension with pay is not a corrective action nor part of the corrective action procedure. Possible results can include such things as exoneration, simple revelations of facts and pertinent information. Finding of policy or standard practice violations or misconduct could subject employees to the corrective action procedure.

(Ord. No. 639, 8-11-1999)

**Sec. 4.27. Gifts and gratuities.**

Tribal employees shall not solicit or accept anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation, if it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties, or if the gift was intended to serve as a reward for any official action on their part. This shall not apply to such things as recognition of service awards, small promotional items of little monetary value etc. It is not intended to isolate employees from normal social practices such as gifts between friends, associates and relatives as appropriate for certain occasions.

(Ord. No. 639, 8-11-1999)

**ARTICLE V. SELECTION, APPOINTMENT, AND SEPARATION**

**Sec. 5.00. Selection.**

Persons will be selected for employment on the basis of education, qualification, certification, and work experience required for the position as defined in the position announcement (see section 4.00).

In-House employees may be given first consideration in the selection process based. Seniority, performance appraisals, etc. will be considered in this process (see sections 3.35 and 5.07).

(Ord. No. 639, 8-11-1999)

**Sec. 5.01. Submission of applications.**

All applicants for employment must submit an official EBCI application form to the Human Resource Office. The Human Resource staff shall investigate any statement contained in the application, determine completeness, and obtain evidence regarding the applicant's qualifications for employment through reference reviews and other mandated background reviews.

(Ord. No. 639, 8-11-1999)

**Sec. 5.02. Disqualification of applicants.**

Reasons for disqualification of an applicant from employment consideration by the Human Resource Office may include, but are not limited to, one or more of the following:

- \* Lacks the minimum qualifications established for the position;
- \* Is unable to perform the duties of the position as demonstrated through reference and other background reviews;
- \* Has been convicted of a crime which raises serious doubt as to the suitability of the applicant to assume the responsibilities of the position;
- \* Has made a false statement of material fact in the application;

- \* Has used or attempted to use bribery to secure an advantage in the appointment;
- \* Has failed to submit a completed application or has failed to meet the established time limits for submittal; or
- \* Has refused to take a pre-employment drug test or failed to pass said test.

(Ord. No. 639, 8-11-1999)

### **Sec. 5.03. Employment and appointment.**

It is the intent of this manual to clarify the definitions of employment classifications so employees understand their employment status and benefit eligibility. All legally mandated benefits apply upon the first day of employment. All other benefits, such as leave and insurance, have established guidelines for eligibility. These guidelines are available from the Human Resource Office.

*A. Regular full-time employees.* Regular full-time employees are those hired to fill a regular position which requires them to work the full-time schedule of 40 hours per week on a regular basis. These employees are eligible for EBCI's benefit package (such as insurance, eligibility to participate in the Tribe's 401(K) plan, annual leave, and sick leave), subject to completion and documentation of a performance evaluation period of 90 days (see section 5.04).

*B. Regular part-time employees.* Regular part-time employees are those hired to fill a regular position which requires them to work a regular schedule of at least 20 hours per week. These employees are eligible for leave on a pro-rated basis upon completion and documentation of a performance evaluation period of 90 days (see section 7.01); eligibility for other benefits such as health insurance or retirement programs are determined by the Human Resource Office and may require employees to work a minimum of 30 hours per week.

*C. Temporary or seasonal employees.* Temporary or seasonal employees, which shall include, but not be limited to JTPA, OJT, Welfare to Work, are those hired for a limited duration, not to exceed nine months, such as:

- \* Interim replacements;
- \* Temporary supplements to the work force; or
- \* Assistants in the completion of a short term, specific project.

All legally mandated benefits (i.e. FICA, Worker's Compensation) are provided to temporary employees.

*D. Political appointments.* Political appointments are positions filled by appointees of the Principal Chief of the EBCI. These appointees are considered regular full-time employees for the purpose of receiving benefits (upon completion of a 90-day probationary period) for the length of the incumbent's political term or until termination of employment. Positions appointed by Tribal Council are also political appointees who serve at the pleasure of the Council and do not hold regular part-time status. Political appointees shall not serve in a supervisory capacity over Tribal employees and in addition, have no rights under Articles XIII and XIV.



(Ord. No. 639, 8-11-1999)

**Sec. 5.04. Performance evaluation period.**

A. *Definition.* Individuals selected for regular positions shall serve a performance evaluation period for 90 calendar days. During this 90-day period these employees are not entitled to benefits and have no rights under Articles XIII and XIV. When the employee's performance appraisal meets the required standard of work, the employee will be given regular status. Evaluation periods may be extended with the approval of the Executive Committee.

B. *Termination.* The employee's service in the position may be terminated during or at the end of the employee's evaluation period when it is determined that the employee is unsuitable for the position, has not achieved a satisfactory level of performance, or for other causes as determined by the appropriate supervisor, the appropriate Executive Director, and the Executive Committee.

C. *Personnel changes subject to a performance probationary period.* A performance evaluation period shall be required for either of the following changes:

- \* Transfer of a regular employee; or
- \* Promotion or demotion of a regular employee.

A performance evaluation shall be conducted after the first 30, 60 and 90 days of the 90-day evaluation period.

All benefits earned, including those contained in Articles XIII and XIV, shall be retained in these cases.

D. *Personnel not subject to an evaluation period.* Political appointees are not subject to an evaluation period.

(Ord. No. 639, 8-11-1999; Ord. No. 8, 11-24-1999)

**Sec. 5.05. Involuntary separation as a result of reduction in force.**

As a result of work curtailment or budget limitations, the appropriate Executive Director may recommend a reduction in work force resulting from the elimination of nonessential positions.

A. *Procedure.* The Executive Director, after consultation with the Human Resource Department and appropriate department managers, shall determine the number of employees to be separated and the job classifications to be affected. A plan to accomplish the reduction will be prepared. The Executive Committee has final approval authority.

Prior to a reduction in force, efforts will be made to transfer employees to vacant positions at the budgeted pay for that vacant position.

The Executive Committee shall make every reasonable effort to retain affected employees through normal attrition. Reasonable notice shall be given based upon circumstances and assistance provided in obtaining unemployment compensation and other matters affecting employees.

In the event of a reduction in force:

1. Part-time employees within the affected job classifications will be separated first.
2. Evaluation performance period employees within the job classification will be next separated.
3. Regular full-time employees within the job classification will be the last considered for separation.

When separating regular employees, efforts are to be made to do so using departmental seniority by job category. (When seniority is equal, Indian Preference will apply.) Exceptions to this may be necessary in order to maintain necessary certification, experience levels and the integrity of the department so as not to compromise its effectiveness. Exceptions are to be documented, reviewed by the Executive Director and the Human Resource Manager. Then they are to be made part of the total reduction in force plan which has final approval by the Executive Committee.

(Ord. No. 639, 8-11-1999)

#### **Sec. 5.06. Reinstatement to duty.**

Any individual terminated by involuntary separation as a result of reduction in work force will receive preferential treatment if the same position becomes available and prior performance evaluations support reinstatement.

Reinstatement is granted at the discretion of the Executive Committee.

If an employee is reinstated within one year from the date of involuntary separation, the prior leave status and accumulated sick leave shall be reinstated.

(Ord. No. 639, 8-11-1999)

#### **Sec. 5.07. Personnel actions.**

A. (1) *Promotions*. A promotion is defined as a move from one position to one of a higher level of authority, responsibility and salary grade under the following circumstances:

(a) A higher graded position becomes available and an existing employee within the department who meets the promotion criteria is placed in that position at the recommendation of the Program Manager and with the approval of the Executive Director.

(b) A higher graded position becomes available and an existing employee within the same division who meets the promotion criteria is placed in that position by the Executive Director, in consultation with the Program Manager.

(c) The duties and responsibilities assigned to an employee's current position have increased and an upgrade of that position is necessitated. The employee who is in that position and performing the functions may be promoted by the Program Manager, with the approval of the Executive Director (and after first going through the proper evaluation committee and budgetary procedures).

(d) A part-time position of at least 20 hours per week is changed to a full-time

position. The employee who is currently in the part-time position may be promoted into the full-time position by the Program Manager, with the approval of the Executive Director.

Any determinations that an employee meets the promotion requirements must be verified by the Human Resources Department prior to implementing the promotion.

Note: The above promotion policy will not apply to openings at the Executive Director and Program Manager levels. These positions must first be advertised before being filled.

(2) *Procedure.* When any of the four situations listed above arise, the department manager, in consultation with the executive director, or, in some instances, the Executive Director, in consultation with the Program Manager, may, in his or her discretion, initiate the promotion of an employee. This action is purely discretionary on the part of management and an employee's ability to meet promotion criteria does not entitle such employee to a promotion. In deciding whether to promote an employee into a position, the following criteria shall be considered:

(a) *Job requirements:* Factors such as training and certifications required or desired of persons carrying out the responsibilities of the vacant position.

(b) *Job compatibility:* Whether or not a person is suited for the job and responsibilities or environment associated with the position being sought. Issues such as health, public relations and communication skills, the ability to work in harmony with others, etc., are some examples to be considered.

(c) *Organizational needs:* In all cases of requests for consideration for promotions, the needs of the organization must be met. Every effort will be made to promote fairness and employee growth while considering the needs of the organization and the tribe in that all are paramount to the goals and responsibilities of the tribe and its employees.

(d) *Employee needs:* The tribe recognizes the knowledge and expertise one can often acquire through years of experience and will take such factors into consideration in making decisions in matters of promotions. Although employees requesting promotions will be considered in order of seniority, seniority alone can not guarantee job placement. The complexity and requirements of many Tribal positions must also be considered as outlined above.

(e) *Minimum requirements:* In addition, in all cases, the employee will not be eligible for promotion unless he/she meets the minimum requirements of the available position and he/she has not had any corrective action taken within the relevant time period while employed in any tribal position. The following requirements will also apply, depending upon the status of the employee and the status of the available position:

(i) If the employee being promoted is moving between a pay grade on the Office/Technical pay system from a Grade One or Two to a pay grade no higher than Grade Three, then, in order to be eligible for promotion, the employee must: (a) have received an overall score of 46 on his/her last two performance evaluations; and (b) have not received any corrective action (i.e., a written reprimand or more serious) within the last year.

(ii) If the employee being promoted is moving between a pay grade on the

Office/Technical pay system up to Pay Grades 4 through 7, then, in order to be eligible for promotion, the employee must (a) have received an overall score of at least 46 (or fully successful on evaluations done prior to May 2000) on his/her evaluations at the current position level over the last two years and (b) have not received any corrective action (i.e., a written reprimand or more serious) within the last two years.

(iii) If the employee is moving from an Office/Technical position to a position on the Supervisory/Managerial Scale, then, in order to be eligible for promotion, the employee must currently be at a level of 4 or higher on the office/technical scale and (a) have received an overall score of at least 46 (or fully successful on evaluations conducted prior to May 2000) on his/her performance evaluations at the current position level over the last two years and (b) have not received any corrective action (i.e., a written reprimand or more serious) within the last two years.

(iv) If the employee is moving from a position within the Supervisory/Managerial Pay Scale to another position within this Pay Scale, then, in order to be eligible for promotion, the employee must (a) have received an overall rating of "Exceeds Fully Successful" on his/her performance evaluations at the current position level over the last two years and (b) have not received any corrective action (i.e., a written reprimand or more serious) within the last two years.

(Note: the performance evaluations noted above do not include any evaluations done during the employee's 90 day evaluation period. If the employee has not been in his or her existing position long enough to have received the required performance evaluations, then the employee will not be eligible for promotion. Once the promotion requirements as specified in this section are met, Indian Preference will apply.)

B. *Demotion*. A demotion is defined as a move from one position to another that is assigned a lower level of authority, responsibility and salary grade. While it is not a common practice, the tribe may find it appropriate to demote an employee as a result of unusual circumstances such as:

(1) When an employee becomes partially disabled, yet able to perform in a lower level position with less stringent physical demands that will not jeopardize employee or coworker safety.

(2) When a current position is reclassified due to a change in assigned duties and responsibilities.

(3) Upon the request or the agreement of an employee.

Demotions made pursuant to subsection (1) above (i.e., based on a physical or mental disability) may be made to available positions both within and outside the employee's current department or division. Demotions made pursuant to subsections (2) or (3) (i.e., when a position is reclassified or when the demotion is requested by or agreed to by the employee) may be made only within the employee's current division. Before a demotion may be implemented, the Human Resources Department must verify that an available position exists.

No employee (other than Program Managers and Executive Directors) may be demoted without prior authorization from the appropriate Executive Director(s) and Program

Manager(s). Employees who are Program Managers may be demoted only with the approval of both the Executive Director and the Executive Committee. Executive Directors may be demoted by the Executive Committee. Prior to implementing a demotion, the Executive Director who presides over the employee's current position will consult with the Human Resource Department and the Legal Department. Demotions are not appealable and the procedures outlined in Article XIV do not apply.

C. *Transfers.* A transfer is defined as a move from one position to another, within or outside an employee's current division, that is assigned the same or lower rate of compensation and has the same level of authority, responsibility and pay grade. Transfers may be voluntary or involuntary and may be made for any reason, as long as the employee meets the minimum requirements of the position into which the employee is being transferred. All transfers will be subject to the approval of the relevant Program Managers and Executive Directors. Prior to implementing a transfer, the Human Resources and Legal Departments shall be consulted by the relevant Executive Director(s).

(Ord. No. 639, 8-11-1999; Ord. No. 674, 4-6-2001)

## **ARTICLE VI. POSITION, CLASSIFICATION, PAY SCALE AND FAIR LABOR STANDARDS ACT**

### **Sec. 6.00. Authorization.**

All Tribal programs are required to use the Position Classification System and grade/step pay scale adopted by the Tribe. (See Exhibit I).

Appropriate supervisors, with the approval of the Executive Directors and Executive Committee, are authorized to make reasonable revisions in the placement of positions on the Position Classification System. Such revisions must follow a review of the particular positions, job descriptions, variety and complexity of work, and job market demands.

(Ord. No. 639, 8-11-1999)

### **Sec. 6.01. Levels of organizational authority.**

Levels of organizational authority. Organizational structure and levels of authority are established by order of the Principal Chief. Normal communications flow upward and downward through these organizational levels of authority, which unless unusual circumstances exist, employees are expected to follow.

(Ord. No. 639, 8-11-1999)

### **Sec. 6.02. Pay status.**

A regular employee is in pay status when:

- \* Working;
- \* On recognized holidays or when using authorized leave:

annual	military
sick	FMLA
civil	administrative
funeral	LWOP

education suspension with pay  
worker's  
compensation  
(Ord. No. 639, 8-11-1999)

**Sec. 6.03. Application of the Fair Labor Standards Act.**

EBCI policy follows some aspects of the Fair Labor Standards Act.

A. *Exempt Tribal employees.* Certain employees shall be exempt from minimum wage and overtime requirements. These employees generally include executive, administrative and professional employees. (See section 3.13).

B. *Non-covered Tribal employees.* Certain employees are considered "non-covered" Tribal employees. These include such employees as elected officials, their personal staffs (i.e. political appointees), policy-making appointees, and legal advisors.

C. *Non-exempt Tribal employees.* Except in the case of employees in fire protection and law enforcement, overtime pay shall be paid to non-exempt Tribal employees at the rate of 1.5 times the regular hourly rate of pay for time worked above 40 hours during a regular work week. Annual or sick leave may be used in calculating overtime.

Under general circumstances, overtime must have prior approval of the appropriate supervisor.

D. *Equal pay.* EBCI shall not discriminate on the basis of sex in the payment of equal wages for equal work. An employee of either sex in the same department will be paid equally for jobs requiring equal skill, effort, and responsibility performed under similar working conditions. This does not prohibit salary differential due to any merit increment plan or longevity which may be established by EBCI. The Executive Committee, Executive Directors, and the appropriate supervisors are responsible for ensuring compliance with these pay provisions.

E. *Record keeping.* All supervisors and managers shall keep records of hours worked and wages paid for each employee subject to the minimum wage and overtime pay requirements. Records must be preserved for at least three years.

(Ord. No. 639, 8-11-1999)

**Sec. 6.04. Time records.**

Every employee is responsible for accurately recording time worked. Time worked is all the time actually spent on the job performing assigned duties. Exempt employees are expected to work until their responsibilities are complete. They are paid their salaries regardless of whether they have worked overtime in any period.

(Ord. No. 639, 8-11-1999)

**ARTICLE VII. HOLIDAY AND LEAVE POLICY**

**Sec. 7.00. Holidays.**

EBCI will grant holiday time off to all employees on the holidays as follows:

- \**New Year's Day* (January 1)
- \**Martin Luther King, Jr. Day* (third Monday in January)
- \**President's Day* (third Monday in February)
- \**Easter* (Good Friday or the Monday following, which will be at the discretion of the Principal Chief)
- \**Memorial Day* (last Monday in May)
- \**Independence Day* (July 4)
- \**Labor Day* (first Monday in September)
- \**Cherokee Heritage Day* (Wednesday of Fall Festival Week)
- \**Veteran's Day* (November 11)
- \**Thanksgiving* (fourth Thursday in November)
- \**Tsali Day* (Friday after Thanksgiving)
- \**Christmas* (December 25; and two more days, which will be at the discretion of the Principal Chief.

A. *Holiday determination on weekends.* A recognized holiday that falls on a Saturday will be observed on the preceding Friday. A recognized holiday that falls on Sunday will be observed on the following Monday. Any departure from this schedule shall be at the discretion of the Principal Chief.

B. *Holiday pay.* EBCI will grant paid holiday time off to all regular full-time employees and to regular part-time employees on a prorated basis.

Holiday pay will be used if a recognized holiday falls during an eligible employee's paid absence (e.g. vacation, sick leave).

C. *Holiday work schedule.* If an employee's scheduled work hours do not fall on a holiday, the appropriate supervisor will designate eight hours of time off for the employee so the employee receives holiday pay. If an employee is required to work on a holiday, the employee shall earn double time for all hours worked on that day.

(Ord. No. 639, 8-11-1999)

### **Sec. 7.01. Annual leave.**

Annual leave is time off in pay status for personal use such as vacations and personal business.

(Note: any leave or any combination of leave--i.e., use of accrued annual leave, or use of accrued annual leave plus accrued sick leave, etc.-- taken in excess of 12 weeks in any calendar year will affect eligibility for insurance benefits. Also note that when applicable,

family/medical leave, as provided in section 7.08, will run concurrently with any accrued annual or sick leave taken.)

A. *Authorization and documentation.* Appropriate supervisors shall authorize annual leave; annual leave may be denied if employee's absence interferes with departmental operations. Employees should request annual leave at least three days in advance. In the case of emergencies or special circumstances, less notice may be required at the discretion of the supervisor. (Note: Special rules exist for family/medical leave as provided in Section 7.08.)

Annual leave shall be earned, calculated, and documented on a biweekly basis by the finance office as part of each employee's payroll record.

B. *Regular full-time employees.* Annual leave is accrued at the following rates:

<i>Length of Continued Employment</i>	<i>Annual Leave Earned</i>
0 yr. to completion of 3 yrs.	4 hrs.*
4 yrs. to completion of 14 yrs.	6.75 hrs.*
15 yrs. Or more	8 hrs.*

Honorably discharged veterans shall accrue annual leave at an increased rate as follows:

0 yr. to completion of 3 yrs.	6 hrs.*
4 yrs. To completion of 14 yrs.	8 hrs.*
15 yrs. Or more	10 hrs.*

\*per pay period

C. *Regular part-time employees.* A regular part-time employee shall earn annual leave on a prorated basis.

Examples:

30 hrs. worked for employees with 0-3 yrs, employment.	=	3 hrs./pay period earned
30 hrs. Worked for employees with more than 15 yrs. employment	=	6 hrs./Pay period earned

D. *Minimum annual leave.* Annual leave must be taken in 15 minute increments.

E. *Transfer of annual leave.* An employee being transferred from one program to another may choose to:

\* Transfer accrued annual leave; or

\* Receive a lump sum distribution of accrued annual leave upon approval of the appropriate supervisor and appropriate Executive Director.

F. *Carryover of annual leave.* Annual leave may be carried over from year to year.

G. *Other uses of annual leave:*



\* Annual leave may be used in lieu of sick leave after all sick leave is exhausted. (Note: In no event shall amounts paid to an employee through this leave policy in conjunction with the Tribe's disability insurance--i.e., where 100 percent of the premiums for such insurance is paid by the Tribe--exceed the amount that would be paid out normally during regular work weeks to the affected employee.)

\* When an employee receives compensation from an outside source for services rendered during tour of duty, (e.g. jury duty; service on boards, task forces providing Tribal technical consulting assistance, or committees) the employee may choose:

1. To take annual leave or leave without pay and keep the compensation; or
2. Receive their regular pay and remit the compensation to the Finance Office to be credited to the appropriate program.

H. *Annual leave at separation.* An employee shall be paid in a lump sum for accumulated annual leave when the employee terminates or is discharged from employment. Payment of this amount will not be paid until all administrative appeals have been exhausted.

(Ord. No. 639, 8-11-1999; Ord. No. 370, 12-20-2000)

### **Sec. 7.02. Sick leave.**

Sick leave is a paid absence of an employee from work for reason of personal illness, injury, or disability. It is a benefit provided by the tribe to protect an employee's income. Sick leave shall not be used indiscriminately and in no event shall amounts paid to the employee through this sick leave policy in conjunction with the Tribe's disability insurance (i.e., where 100 percent of the premiums for such insurance is paid by the Tribe) exceed the amount that would be paid out normally during regular work weeks to the affected employee.

Frequent claiming of benefits under this rule will constitute grounds for the assumption by the tribe that the physical condition of the employee is below the standard necessary for the proper performance of duties. Likewise, evidence of abuse of this benefit will constitute grounds for corrective action

(Note: any leave or any combination of leave--i.e., Use of accrued sick leave or accrued annual leave plus sick leave, etc.-- taken in excess of 12 weeks in any calendar year will affect eligibility for insurance benefits. Also note that when applicable, family/medical leave, as provided in section 7.08, will run concurrently with any accrued annual or sick leave taken).

#### *A. Authorization, verification, and documentation.*

\* *Authorization:* Requests for sick leave shall be made by the employee to the appropriate supervisor on a daily basis except when an extended illness has received prior approval.

Sick leave may be granted for:

\* Illness or injury which prevents an employee from performing their usual duties;

\* Visiting a physician, dentist, or other health professional for an employee's treatment, diagnosis, and/or screening; or

\* Legal quarantine due to a contagious disease in the employee's immediate family.

\* To provide care for certain members of the employee's family. This is to include spouse/partner, parent, grandparent, child or guardian relationship.

\* *Verification.* Three or more days of consecutive absence due to illness or suspected abuse of sick leave in any amount must be verified by a statement from a medical provider before sick leave shall be granted. (See special rules which apply to family/medical leave provided in section 7.08).

The appropriate supervisor may also require a statement from a medical provider or other acceptable proof of illness in other instances.

\* *Documentation:* Sick leave shall be earned, calculated, and documented on a biweekly basis by the finance office as part of each employee's payroll record.

B. *Regular full-time employees.* A regular full-time employee shall earn sick leave at the rate of 4 hours per pay period for a total of 13 days per year.

C. *Regular part-time employees.* A regular part-time employee shall earn sick leave on a prorated basis.

Example:

30 hours worked = 3 hours/pay period earned;  
20 hours worked = 2 hours/pay period earned.

D. *Transfer of sick leave.* An employee transferred from one program to another or one position to another transfers accrued sick leave. Sick leave is not transferable to another type of leave or to another person.

E. *Minimum sick leave.* Sick leave will be charged in 15-minute increments.

F. *Advanced sick leave.* Advanced sick leave may be granted with the recommendation of the supervisor and the concurrence of the Executive Committee for catastrophic illnesses. In no event will more than 13 days of advance sick leave be granted.

G. *Payment of unused sick leave.* Upon retirement (i.e., employee must be at least 59 1/2 years old) with at least 15 years continuous service with the Tribe, a percentage of the employee's accumulated sick leave may be used to provide payment for a like amount of time for early retirement. The following guide will be used to calculate early retirement:

<i>Years of service</i>	<i>Accumulated Sick Leave</i>
15	25% may be used

20	50% may be used
25	75% may be used
Over 30	100% may be used

This policy shall remain in effect until such time as EBCI adopts an employee pension plan.

(Ord. No. 639, 8-11-1999; Ord. No. 7, 11-24-1999; Ord. No. 370, 12-20-2000)

**Sec. 7.03. Funeral leave.**

At the discretion of the appropriate supervisor an employee may be granted up to three days time off in pay status in case of death in the employee's immediate family as defined in Section 3.17. In extenuating circumstances the employee's supervisor may request on behalf of the employee that the Executive Committee approve additional time off in pay status. Funeral leave is not earned or automatic and shall be taken only when approved.

(Ord. No. 639, 8-11-1999)

**Sec. 7.04. Education leave.**

Education leave is time off in pay status for employees to upgrade their knowledge and skills in relation to their jobs.

*A. Authorization and limitations.*

\* *Eligibility.* Regular full-time and regular part-time employees may be granted education leave with pay to participate in approved educational programs scheduled during the employee's tour of duty. Instruction must be related to the employee's job, e.g. refresher courses, technological training, business and professional enhancement.

\* Procedure:

\* The employee shall submit a letter of request to the appropriate supervisor stating the content and schedule of the course.

\* The appropriate supervisor shall submit the request to the Executive Director with a recommendation for awarding or denying leave. This recommendation shall describe the course's relationship to the employee's job and the impact of the employee's absence on the department's services.

\* Final review/approval shall be made by the Executive Director. The Human Resource Department is to be used for consultation.

*B. Maximum leave.* Education leave may not exceed actual time for classroom instruction and a reasonable amount of time for travel between the institution and the employee's duty station. No more than one class per semester or quarter may be taken in pay status. However, more than one class may be taken with approval but employees must take annual leave or LWOP for the additional classes.

*C. Release of information.* Employees granted education leave must sign releases authorizing the appropriate supervisor to:

- \* Randomly review course attendance with the course instructor; and
- \* Request grades, transcripts, or other verification of course completion.

(Ord. No. 639, 8-11-1999)

### **Sec. 7.05. Civil leave.**

Civil leave is time off in pay status for employees to fulfill certain civic responsibilities. When compensation is awarded for civil duty, an employee may use annual leave or LWOP instead of civil leave (see Section 6.02).

A. *Jury duty.* An employee is entitled to civil leave with pay when required to perform jury duty. Leave is limited to the exact length of jury duty plus adequate travel time.

B. *Court attendance.*

- \* *Official duties.* No leave is required when an employee attends court as part of official EBCI duties.

- \* *General duties.* When an employee is subpoenaed or directed by proper authority to appear as a witness, the employee shall be granted civil leave. Any fees received shall be remitted to the finance office.

- \* *Non-related duties.* When an employee is scheduled for court on any personal matter, the employee must take annual leave or LWOP.

(Ord. No. 639, 8-11-1999)

### **Sec. 7.06. Worker's compensation.**

All EBCI employees are covered by worker's compensation following an accident on-the-job or contraction of an occupational disease. worker's compensation is time off in pay status and will be run concurrently with family/medical leave provided under Section 7.08.

- \* *Procedure.* To file a claim with the North Carolina Industrial Commission, an employee should notify the appropriate supervisor within 24 hours of the accident or diagnosis. It is the responsibility of the department manager to forward the completed designated mandatory reports to the human resources department. This should be done the same day the accident is reported to management. Employees who qualify for worker's compensation will not be allowed to draw annual or sick leave. In the event an employee takes annual or sick leave and is later compensated through a worker's compensation claim, the employee shall reimburse the Tribe in an amount equal to the amount received through worker's compensation and the employee's leave record shall be adjusted accordingly. This is to insure that the employee does not receive an amount that exceeds 100 percent of his/her normal pay. Also, employees who qualify for worker's compensation must maintain contact with their supervisor/manager at least once per week and after every doctor's appointment to provide the supervisor/manager with status reports.

(Ord. No. 639, 8-11-1999; Ord. No. 370, 12-20-2000)

### **Sec. 7.07. Military leave.**

Military leave is time off in pay status granted for members of military reserve components for certain short periods of active duty training.

A. *Difference pay.* Military leave is with difference pay. If the employee's military pay is equal to or greater than his regular salary rate, the employee will be granted leave without pay.

B. *Procedures.*

\* *Eligibility.* Regular full- and part-time employees, including probationary employees, who are members of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve shall be entitled to military leave for mandatory annual active duty training (summer encampment), maneuvers, or training school.

\* Military leave shall not be granted when participation is voluntary or not a fulfillment of a reserve obligation. Weekly drill instruction or target practice, special drill instruction, duties resulting from corrective action, or other special non-recurring activities shall not be acceptable.

Exception: Difference pay may be granted, in some circumstances, at the discretion of the Executive Committee, when the employee is performing voluntary emergency or special duty assignments.

If the employee is not eligible for military leave, annual leave or leave without pay will be charged.

\* *Maximum military leave.* A maximum of 15 calendar days in one calendar year may be charged to military leave.

\* *Emergency or special duty assignments.* Members of the Army or Air National Guard ordered to active duty under the authority of the Commander-in-Chief, the Governor, or members receiving special assignments in connection with summer encampment, when ordered by the Adjutant General, or members of the Civil Air Patrol performing emergency assignments for the state, shall be entitled to military leave with difference pay. In such cases, the maximum amount of time military leave may be given shall be ten working days per year. Military leave shall be granted only for those days the employee is ordered to be on duty.

C. *Administrative responsibility.* It shall be the responsibility of the appropriate supervisor to determine that the employee has met all the requirements set forth above and to require the employee to submit a copy of orders to report for duty.

(Ord. No. 639, 8-11-1999)

**Sec. 7.08. Family and Medical Leave Act.**

Although EBCI is not bound by the requirements of the Family and Medical Leave Act (FMLA), it follows certain provisions of the Act by offering up to 12 weeks of leave in any calendar year for the following reasons:

- \* Birth, adoption, or foster care of a child;
- \* Care for a child, spouse or parent with a serious health condition; or

- \* Care for the employee's own serious health condition.

FMLA is time off in pay status with or without pay, depending upon whether the employee has exhausted all other accrued leave.

A. *Eligibility.* Regular full-time and part-time employees who have been employed by EBCI for 12 months and who have worked at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave are eligible for FMLA leave.

B. *Procedure and documentation.* Employees must provide 30 calendar days notice for predictable situations.

The appropriate supervisor must authorize and document in writing the leave agreement between the EBCI and the employee. Both parties must sign this agreement. Copies of the agreement will be provided to both parties.

The agreement shall include documentation of, at minimum, the following information:

- \* Doctor's certification of the "serious health condition";
- \* Appropriate medical facts;
- \* Date of onset;
- \* Probable duration of leave and/or schedule for reduced or intermittent leave;
- \* Planned treatment;
- \* Need for the employee to provide care if leave is to care for another;
- \* Monitoring requirements;
- \* Reason for leave;
- \* Types of leave and benefits used to date, e.g., sick, annual, worker's compensation;
- \* Exact dates of projected FMLA leave;
- \* Employee address and phone number during leave by date;
- \* Health care provider name, address, phone number; and
- \* Consequences for not returning to work by the specified date.

If applicable, the following information shall also be documented:

- \* Procedures for collection of contributions to benefit plans; and
- \* Calendar for intermittent or reduced schedule leave.

*Additional opinions.* EBCI may require additional medical opinions at EBCI expense.

*C. Restrictions.*

\* *Use requirements.* Accrued annual and sick leave must run concurrently with any FLMA leave granted.

\* *Spousal leave.* Spouses are each entitled to 12 weeks of leave if the leave is required by the illness of one spouse or child. Leave may be restricted to a combined total of 12 weeks, if the leave is due to birth, adoption of a child, or care of a sick parent.

\* *Employee limitations.* The employee is prohibited from collecting unemployment insurance while on leave.

(Ord. No. 639, 8-11-1999; Ord. No. 115, 2-28-2000; Ord. No. 370, 12-20-2000)

**Sec. 7.09. Leave without pay (LWOP).**

LWOP is time off in pay status without pay and must be approved in advance by the appropriate supervisor. All other types of leave, including leave granted under the FMLA, must be exhausted prior to approval of LWOP.

Exception: When the employee receives compensation from an outside source for services rendered during tour of duty. (see Section 7.01, G.).

The minimum LWOP charge is one hour.

**(Note:** any leave or any combination of leave--i.e., LWOP and sick leave--taken in excess of 12 weeks in any calendar year will affect eligibility for insurance benefits).

(Ord. No. 639, 8-11-1999; Ord. No. 370, 12-20-2000)

**Sec. 7.10. Administrative leave.**

Administrative leave is time off in pay status granted to employees on duty at the discretion of the Principal Chief. (Employees on annual or sick leave are not allowed to claim administrative leave.) Examples of administrative leave may include but are not limited to:

- \* Power outages;
- \* Environmental emergencies; and
- \* Administrative holidays.

(Ord. No. 639, 8-11-1999)

**Sec. 7.11. Authorized leave of absence.**

Authorized leave of absence is time off in non-pay status for a specified length of time; leave is granted with permission of the appropriate supervisor with approval of the appropriate Executive Director.

(Ord. No. 639, 8-11-1999)

**ARTICLE VIII. CODE OF ETHICAL CONDUCT**

### **Sec. 8.00. Purpose.**

Employment with the Eastern Band of Cherokee Indians carries with it a special obligation of trust that imposes responsibility to conserve and protect public resources, funds and materials. All employees of the Tribal government are expected to conduct themselves with integrity, impartiality, and professional conduct which will reflect favorably upon themselves and the EBCI.

(Ord. No. 639, 8-11-1999)

### **Sec. 8.01. Confidentiality.**

Employees shall not disclose confidential information obtained by reason of their employment with EBCI, nor use such information for their economic benefit or the economic benefit of any other person.

(Ord. No. 639, 8-11-1999)

### **Sec. 8.02. Subordination to authority.**

Employees shall adhere to established policy. Suggestions and ideas for policy change may be made by employees at any time. This is normally done with their supervisor but can be to any member of Tribal management. Periodic policy reviews will also be held during which employee input will be invited and considered.

(Ord. No. 639, 8-11-1999)

### **Sec. 8.03. Conflicts of interest.**

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in personal gain for the employee or for an immediate family member.

Personal gain is defined as occurring when an employee or a member of the employee's immediate family receives any kickback, bribe, gift, or special consideration as a result of, or in order to influence, any Tribal transaction.

When an employee is approached by others to use influence, or believes that personal relationships, interests, or business will bias the employee's influence or decisions on Tribal purchases, transactions, leasing arrangements, or other transactions, the employee is required to disclose this information to the appropriate supervisor immediately.

(Ord. No. 639, 8-11-1999)

### **Sec. 8.04. Outside work or interests.**

A. *Boards, task forces or committees.* Employees must obtain approval from the appropriate supervisor and the appropriate Executive Director prior to serving on any board, task force, or committee. (See section 7.01, G. regarding leave/compensation).



Prior to giving approval the appropriate supervisor and the employee will assess the following questions:

- \* Is it during work hours, how often and how long?
- \* Is it related in such a way as to cause conflict of interest?
- \* Is the employee acting or could be assumed to be acting in an official capacity or as a representative of the Tribe?

The EBCI encourages employees to become involved in worthwhile volunteer activities, however, such involvement should be cleared through the appropriate supervisor if the activities occur during the work day or have the potential for interfering with the employee's work duties.

B. *Outside employment.* Employees may hold outside jobs as long as they meet the performance standards of their EBCI position, place priority on EBCI responsibilities, and are able to meet EBCI's scheduling demands. Such employment must avoid the appearance that the employee is acting on behalf of the EBCI.

The employee's outside employment shall not reflect discredit on the EBCI or constitute a conflict of interest.

(Ord. No. 639, 8-11-1999)

## **ARTICLE IX. DRUG AND ALCOHOL POLICY**

### **Sec. 9.00. Purpose.**

The purpose of this policy is to protect Tribal employees and the public from the risks posed by the abuse of alcohol and drugs. It also serves as a statement of Tribal intolerance for substance abuse for the EBCI communities and work force. Eradication of the problems associated with substance abuse will begin with EBCI Tribal employees.

This policy shall comply with the Drug Free Workplace Act of 1988, 41 U.S.C. 701, et seq. In situations where any contract or grant requires stricter policies, EBCI will comply with such policies. Further, policies pertaining to certain safety sensitive positions shall comply with the regulations governing the Federal Transit Authority. These regulations mandate drug testing and breath alcohol testing for certain positions and prohibit performance of duties when a positive test result is obtained. EBCI accepts set standards for the collecting and testing of specimens and the reporting of certain drug-related offenses.

The following summary is designed to describe how the Tribe intends to approach situations involving drug or alcohol use or abuse. However, drug or alcohol problems may differ from case to case, and every situation will be assessed based on the specific circumstances presented. This summary does not restrict the Tribe's right to address any situation as it deems appropriate, nor does it limit or affect the Tribe's work rules and job requirements.

(Ord. No. 639, 8-11-1999)

### **Sec. 9.01. Goals.**

The specific goals of the Tribal Drug and Alcohol Policy are to:

- \* Educate employees about the dangers and problems associated with substance abuse;
- \* Facilitate the prevention of substance abuse;
- \* Identify any employee who may be engaging in substance abuse and identify the substance(s);
- \* Provide opportunities for counseling and treatment or any employee abusing drugs and/or alcohol;
- \* Protect the public and coworkers from those employees abusing drugs and/or alcohol;
- \* Develop a drug free workplace and community;
- \* Make provision for employees undergoing treatment to continue to work or to return to work as soon as possible consistent with their prescribed treatment program.

(Ord. No. 639, 8-11-1999)

**Sec. 9.02. Applicability.**

The policy applies to all current and future Tribal employees. This policy applies to off-site lunch breaks, break periods, or other times after which an employee is scheduled to return to work. Visitors, vendors, and contract employees are governed by this policy while on Tribal premises and will not be allowed to conduct Tribal business if found to be in violation of this policy.

(Ord. No. 639, 8-11-1999)

**Sec. 9.03. Prohibited conduct.**

*A. Manufacture, trafficking, possession, and use of prohibited substances.* Employees are prohibited from engaging in the manufacture, distribution, dispensing, possession, or use of prohibited substances on Tribal property, in Tribal vehicles, or while on Tribal business. Additionally, law enforcement shall be notified, as appropriate, when criminal activity is suspected.

*B. Intoxication.* All employees who are reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be disciplined pending an investigation and verification of condition. Employees found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test shall be removed from duty and subject to corrective action. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40 as amended.

*C. Alcohol use.* No Tribal employee shall report for duty or remain on duty when their ability to perform assigned duties is adversely affected by alcohol, or when their breath alcohol concentration is measurable. No employee shall use alcohol while on Tribal premises, or during the hours that they are on call.

(Ord. No. 639, 8-11-1999)

**Sec. 9.04. Prohibited substances.**

Prohibited substances include:

- \* Any alcoholic beverage.
- \* Any prescription drug not being used for legal purposes
- \* All drugs classified as controlled substances by the North Carolina Controlled Substances Act, G.S. 90-86 et seq. and controlled substances in Schedule I through V of the Controlled Substances Act, 21 U.S.C. 812.

(Ord. No. 639, 8-11-1999)

**Sec. 9.05. Drug testing.**

A. *Applicants.* All applicants will be provided a summary of the drug testing policy. Applicants who have received conditional offers of employment with the Tribe must submit to testing for evidence of improper drug use and/or, where indicated, to test for the presence of alcohol. If the tests are positive, the applicant will be refused employment and may not reapply for at least 60 days.

B. *Employees.* All employees shall be subject to random, unannounced testing using a valid method that ensures that each employee will have an equal chance of being selected each time testings are made. This random testing will be conducted throughout the year. All employees will be tested at least one time per year.

All current employees whose positions require them to perform safety sensitive duties, and/or require a commercial driver's license may be subject to random drug testing at a higher incidence than other employees per the regulations of the Federal Transit Authority (FTA) (49 CFR Parts 653 and 654), and per the regulations of the U.S. Department of Transportation (DOT) 49 CFR Part 40. In addition, penalties for positive drug tests may be more severe per EBCI's Transit Services Drug and Alcohol Policy, effective January 1, 1999.

Reasonable suspicion referrals for testing will be made on the basis of documented objective facts and circumstances consistent with the short-term effects of substance abuse. Written reasonable suspicion referral will be made by the appropriate supervisor. All supervisors will be trained to detect the signs and symptoms of drug and alcohol use. The referral must include the supervisor's observations and/or evidence leading to the conclusion of possible substance abuse. A written record of the observations must be prepared and signed by the supervisor within 24 hours of the observed behavior and must be received by the appropriate Executive Director before results of the drug test are known.

C. *Reasonable suspicion searches.* EBCI reserves the right to search an employee's locker, desk, or other Tribal property when there is reasonable suspicion. EBCI reserves the right to request law enforcement to conduct searches in the presence of witnesses and to document their findings.

D. *Failure to submit to drug/alcohol testing.* All employees will be subject to drug testing and alcohol testing as a condition of employment. Persons seeking Tribal employment who refuse to submit to drug testing shall not be eligible for employment by the Tribe. Tribal

employees who refuse to submit to random, reasonable suspicion or post on-the-job accident drug tests, shall be subject to corrective action. Refusal can include an inability to provide a sufficient specimen or sample without a valid medical explanation, as well as verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

Any employee who is suspected of providing false information in connection with a test, or who is suspected of falsifying test results through tampering, contamination, alteration, or substitution will be required to undergo an observed collection. Verification that the employee has provided false information or has falsified test results will result in the employee's removal from duty and possible termination.

Employees on authorized leave who are included in the random sampling will be rescheduled to be included in the next random sample.

E. *Confidentiality*. EBCI and its contracting agents shall use reasonable precaution to ensure and maintain accuracy and confidentiality of the test results. A record of the chain of custody of the specimen will be documented in order to protect the identity of the employee and the integrity of the sample throughout the collection and testing process. Only persons authorized by the Executive Committee shall view the results of testing. The Principal Chief shall ensure appropriate and applicable storage of these records.

(Ord. No. 639, 8-11-1999; Ord. No. 56, 11-24-1999)

#### **Sec. 9.06. Legal drugs.**

Legal drugs are over-the-counter medications and those drugs for which the individual has a medical prescription to treat specific medical conditions(s). The appropriate use of legal drugs is not prohibited. However, the use of any substance which carries a warning label indicating that mental functioning, motor skills, or judgment may be adversely affected must be reported to the appropriate supervisor. Information obtained from such reports should be treated as a confidential medical report and should not be placed in the employee's personnel file. Steps will be taken to guarantee the security of this information. Supervisors may request that medical advice be sought by the employee before performing work-related duties.

(Ord. No. 639, 8-11-1999)

#### **Sec. 9.07. Criminal drug/alcohol violation and/or conviction.**

All employees are required to notify the appropriate supervisor of any criminal drug statute conviction or a violation immediately or as soon as reasonably possible after such conviction or violation, but no later than 5 days after such conviction.

(Ord. No. 639, 8-11-1999)

#### **Sec. 9.08. Education and training.**

The Human Resources Department will ensure that all Tribal employees will be required to receive at least 60 minutes annually of training on the consequences of prohibited drug/alcohol use. Managers and supervisors will receive an additional 60 minutes of training on the signs and symptoms of alcohol/drug misuse. Training shall be documented and updated on an annual basis. The Human Resource department will be responsible for

monitoring this policy.

(Ord. No. 639, 8-11-1999)

**Sec. 9.09. Voluntary admission of drug/alcohol use.**

Any employee, prior to the day of random testing, who voluntarily, and without reasonable suspicion of a supervisor, identifies themselves as having a problem with alcohol or drug abuse, shall be referred to the Employee Assistance Program. If the employee is unable to perform work duties, the employee may use accrued sick or annual leave or be placed on leave without pay status until the employee can return to work. The employee shall not be subjected to corrective action unless the employee's alcohol or drug abuse constitutes a direct threat to either property or the safety of others. Employees seeking such assistance should see their supervisor or other management in their department or the Human Resource Department.

(Ord. No. 639, 8-11-1999)

**Sec. 9.10. Consequences of a positive drug or alcohol test.**

\* *Pre-employment*--See 9.05A.

\* *Random, reasonable suspicion, or post accident tests.* Employees will be subject to immediate corrective action after a positive random test, a positive test after being tested based on reasonable suspicion, or positive test after an accident, a citation by law enforcement or loss of license or credentials necessary to complete the employee's job duties.

A. *Initial positive test.* The first time an employee is confirmed to have tested positive, they will be referred to an agency designated by Tribal officials for an evaluation and will be suspended without pay for a minimum of thirty days. Employees must schedule an appointment with the designated agency within five working days or they will be terminated. The evaluating agency will submit a recommendation concerning the time and length of counseling needed and may recommend more than thirty days. This recommendation will be approved by the Executive Committee and employees will not be allowed to appeal the recommendation through Article XIV's "Problem Solving Procedure." Employees who refuse to cooperate in such evaluations or who refuse to execute a form authorizing the agency to disclose its impressions, findings, diagnoses and recommendations to the Principal Chief or designee will be subject to discipline as outlined in the "Corrective Action Procedure," Article XIII. Employees who challenge test results within 24 hours of being notified may be retested at a second lab at the employee's expense. If the test results are found to be negative, the employee shall be compensated for any time spent in non-pay status due to the suspension.

B. *Employees requiring counseling and treatment.* If the evaluating agency concludes that an employee should receive further counseling or treatment for substance abuse, the employee must meet with the Principal Chief or designee to discuss available counseling and treatment options and available coverage, if any, under the Tribal health care plans. Such an employee will be required to elect a counselor or treatment program and comply with all conditions set forth by the Tribe and the chosen program. This can include returning to work immediately upon completion of the 30-day suspension or a leave of absence of predetermined length. In addition,

such an employee must enter into a "re-entry agreement" acceptable to the EBCI, and comply with job performance standards, work rules and personnel policies while in treatment. Employees who refuse to meet with the Principal Chief or designee or comply with these conditions will be subject to termination.

*C. Employees not requiring counseling or treatment.* If the evaluating agency concludes that an employee who is confirmed to have tested positive does not require counseling or treatment at this time, (or who is able to work during treatment) such employee will be returned to work upon completion of the 30-day suspension. Such employees must enter into a "reentry agreement" and will then be subject to unannounced tests for a period of up to 24 months. If any of these unannounced tests for evidence of drug or alcohol use are positive, the employee will be subject to termination.

(Ord. No. 639, 8-11-1999)

### **Sec. 9.11. Reentry agreements.**

Employees who re-enter the work force following suspension must agree to the reentry agreement. This shall include:

1. A release to work statement from the employee assistance program counselor;
2. A negative test for drugs or alcohol;
3. An agreement to frequent follow-up testing for a period of at least two years with at least six tests performed during the first year of reentry,
4. A statement of expected work-related behavior,
5. An agreement to follow specified after-care requirements with the understanding that violation of the reentry agreement is grounds for corrective action and possible termination.

(Ord. No. 639, 8-11-1999)

### **Sec. 9.12. Second failure or refusal to undergo counseling.**

If the employee tests positive at the end of the suspension/counseling period, or if the employee refuses to undergo counseling, the employee will be subject to possible termination unless medical evidence is presented which would substantiate an extension of the counseling period. If the employee refuses to undergo such extended counseling, the employee will be subject to termination.

(Ord. No. 639, 8-11-1999)

### **Sec. 9.13. Cost.**

The Tribe will pay for the cost of all testing it orders. Counseling or treatment services provided by an approved agency under this policy may be covered in part or in whole by the Tribe in accordance with the terms of one of its health care plans. Employees should check with their Human Resource Department to determine the coverage under their specific health plan or refer to their health care benefits booklet.

(Ord. No. 639, 8-11-1999)

#### **Sec. 9.14. No guarantee or contract of employment.**

This policy does not constitute a guarantee or contract of employment, nor does this policy constitute any guarantee or contract of any kind which might affect or limit the Tribe's imposition of corrective action up to and including discharge or the process or manner by which any corrective action up to and including discharge may be imposed. Nothing in this policy means that employees may not be subject to corrective action or terminated at any time with or without cause or for any other reason, including but not limited to, lack of work, a restructuring, rule violations or other misconduct, poor performance, or excessive absenteeism. However, without waiving or limiting this disclaimer, it is the Tribe's sincere hope to afford employees with substance use or abuse problems at least one real opportunity at rehabilitation.

(Ord. No. 639, 8-11-1999)

### **ARTICLE X. SEXUAL HARASSMENT POLICY**

#### **Sec. 10.00. Purpose.**

All Tribal employees may expect to perform their work duties in a positive environment, and this includes freedom from sexual harassment. The EBCI strongly disapproves of sexual harassment of its employees in any form and prohibits employees at all levels from engaging in offensive or inappropriate sexual and/or sexually harassing behavior at work. Specifically, the EBCI prohibits the following:

- \* Unwelcome sexual advances;
- \* Requests for sexual favors, whether or not accompanied by promises or threats with regard to the employment relationship;
- \* Other verbal or physical conduct of a sexual nature made to any employee that may threaten or insinuate either explicitly or implicitly that any employee's submission to or rejection of sexual advances will in any way influence any personnel decision regarding that person's employment, evaluation, wages, advancement, assigned duties, shifts or any other condition of employment or career development;
- \* Any verbal or physical conduct that has the purpose or effect of substantially interfering with the employee's ability to do his or her job; and
- \* Any verbal or physical conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment.

Such conduct may result in corrective action up to and including dismissal.

Other sexually harassing conduct in the workplace, whether physical or verbal, committed by supervisors or non-supervisory personnel is also prohibited. This behavior can include but is not limited to:

- \* Commentary about an individual's body;
- \* The use of sexually degrading words to describe an individual;
- \* Offensive comments;

- \* Off-color language or jokes;
- \* Innuendos; and
- \* Sexually suggestive objects, books, magazines, photographs, cartoons or pictures.

The EBCI will attempt to investigate all complaints as expeditiously and as professionally as possible. Where investigations confirm the allegations, appropriate corrective action will be taken.

The EBCI will make every attempt to keep the information provided to it in the complaint and investigation process confidential to the fullest extent permitted by the circumstances.

Retaliation against employees for reporting sexual harassment or assisting the EBCI in the investigation of a complaint is not permitted. Retaliation can include but is not limited to such acts as:

- \* Refusing to recommend an employee for a benefit or tribal position for which he or she qualifies;
- \* Spreading rumors about the employee;
- \* Encouraging hostility from coworkers; and
- \* Escalating the harassment.

If, after investigating the complaint of harassment the EBCI learns that the complaint is not bona fide or that an employee has provided false information regarding the complaint, corrective action may be taken against the employee who provided the false information.

*A. Procedures.* Employees who have complaints of sexual harassment by anyone at work, including supervisors, co-employees, elected officials, or visitors, are urged to report such conduct to their supervisors so that Tribal Management may investigate and resolve the problem. If the complaint involves the employee's supervisor or someone in the direct line of supervision, or if the employee for any reason is uncomfortable in dealing with his or her immediate supervisor, the employee may go to another supervisor or directly to the EEO officer named by the Appeals Committee.

(Ord. No. 639, 8-11-1999)

## **ARTICLE XI. TRAVEL POLICY**

### **Sec. 11.00. Purpose.**

The purpose of the travel policy is to provide funds to support the professional growth of employees and the participation of the Tribe in matters of regional, state, and national import.

(Ord. No. 639, 8-11-1999)

### **Sec. 11.01. Procedure.**

*A. Approval.* A travel advance form with documentation shall be submitted to the appropriate supervisor. It shall include when applicable:



- \* Registration fees;
- \* Airfare;
- \* Hotel costs;
- \* Cab fares;
- \* Per diem;
- \* Airport parking;
- \* Car rental costs;
- \* Mileage to and from the airport and/or to and from the conference/meeting site;
- \* Five dollars per day for miscellaneous costs.

Attendance at conferences, meetings, workshops, and other events within a 50-mile radius of the employee's duty station shall be by approval of the appropriate supervisor. Under normal circumstances, a two-week advance notice is required.

All travel of more than one day shall be approved by the appropriate supervisor, Executive Director, and/or the Vice Chief and the Principal Chief prior to any arrangements being made.

No travel shall be approved if an expense report from any prior travel has not been submitted and reviewed. Any outstanding advances over 30 calendar days must be reimbursed to the Tribe.

Car rental must be approved by the appropriate Executive Director.

B. *Travel advance.* All out-of-town travelers will receive a travel advance based on date/time of departure from and arrival home. Saturday/Sunday/holiday travel will be considered a regular travel day; no extra compensation is received other than approved travel expenses.

Per diem shall be \$65.00 per day for multiple-day travel.

**Note**--Any amount paid in per diem which exceeds the government rate (as printed annually in the Federal Register) is considered income to the recipient employee and is subject to federal and/or state income tax.)

Per diem includes meals (breakfast, lunch, and dinner) as well as incidentals, including laundry and dry cleaning expenses, fees and tips for food servers and luggage handlers.

Meals included in registration fees should be deducted from per diem.

Cab fare and other travel costs are also reimbursable but are subject to certain restrictions. Travel expenses to meetings, training sessions or motel is allowed. Employees should consider taking the least expensive mode of transportation. For instance, if a shuttle is offered from the airport and is cheaper than taking a cab, the shuttle should first be considered.

In the event an employee chooses to drive his or her own vehicle instead of flying, mileage reimbursement shall not exceed the normal cost of the airplane ticket.

One-day travel outside a 50-mile radius or less than 100 miles one-way from the employee assigned duty station shall receive 50 percent of the per diem rate and/or mileage reimbursement unless travel is completed within the employee's normal tour of duty. Travel of more than the above 100 miles shall receive 100 percent of the per diem rate and/or mileage reimbursement.

C. *Travel expense report.* A travel expense report must be submitted to the employee's supervisor within five working days of return to duty. If the traveler's expenses have exceeded the advance, a reimbursement will be paid to the traveler. If the expenses are less than the advance, the traveler will return the excess amount with the expense report.

Supporting documents such as conference brochures and registration forms as well as original receipts are required for all expenses except for meals and miscellaneous costs. Only long distance calls to place of business or related Tribal business calls will be reimbursed.

D. *Mileage.* Mileage by privately owned vehicles will be paid at the prevailing government rate per mile.

When a traveler must be driven to the airport and dropped off and then picked up upon return, the employee will be reimbursed for mileage for two round trips.

When several employees car pool, only the driver will be paid mileage.

E. *Credit cards.* The Tribal credit card policy is available from the Finance Department.

(Ord. No. 639, 8-11-1999)

## **ARTICLE XII. COBRA (INSURANCE BENEFITS CONTINUANCE)**

### **Sec. 12.00. Purpose.**

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers of 20 or more employees to offer employees and their dependents certain health insurance continuation rights if the employee is terminated, laid off, or the employee's hours reduced so the employee no longer meets the eligibility requirements for health insurance coverage. If any of these events occur, the employee or dependents can choose to continue health care coverage for 18 months at the employer's group premium rate plus 2 percent administration costs.

Certain other events, such as an employee's disability, death, divorce, or legal separation, triggers health insurance continuation rights on the part of the employee's dependents for a period up to 36 months.

Continuation coverage may be terminated by employer if:

- \* Employer no longer provides group health coverage to any employees;

- \* The premium for employee/family member is not paid;
- \* Employee/family member becomes entitled to Medicare; or
- \* It is determined under the Social Security Act that employee is no longer disabled.

(Ord. No. 639, 8-11-1999)

**Sec. 12.01. Procedure.**

Under COBRA, an employee or a family member has the responsibility to inform Human Resources of any "qualifying event" within 60 days of the occurrence.

When notified of a "qualifying event," Human Resources will contact the employee or family member of the right to choose continuation coverage and provide information related to time frame of such coverage.

(Ord. No. 639, 8-11-1999)

**ARTICLE XIII. CORRECTIVE ACTION PROCEDURE**

**Sec. 13.00. Policy.**

In the EBCI employment, employees are engaged in a group effort of service to the public; therefore, the job always comes first. There must be close cooperation between employees and management. If an employee has a complaint regarding a work assignment, it should be discussed with the supervisor. Unless a clear safety hazard exists, employees are however expected to follow instructions and do the work assigned.

Employees are expected to maintain a high standard of conduct and to avoid any action which could reflect adversely on the EBCI or which would jeopardize the employee's effectiveness in dealing with peers, supervisors, and/or the public. Because there may be instances of employee violation of standard rules of conduct or not meeting necessary performance standards, it is therefore necessary to have a procedure designed to correct problems. This policy is to be administered in a fair, impartial and consistent manner.

**Note--**Suspension with pay. This is not part of the Corrective Action Procedure. See section 4.26 for reference.

(Ord. No. 639, 8-11-1999)

**Sec. 13.01. Guide to seriousness of violations.**

It is impossible to list all violations of rules and policies and the recommended corrective action. Some cases of gross or serious misconduct could result in immediate termination depending upon circumstances. Listed below are some of the most common of such violations.

- \* Physical or verbal mistreatment or coercion of an employee or the public.
- \* Theft, dishonesty, fraud, embezzlement or misuse of tribal funds.
- \* Fighting with or verbal abuse of anyone in the workplace.

- \* Insubordination.
- \* Falsifying records.
- \* Intoxication or possession of alcohol or drugs on Tribal property or time.
- \* Absence from work for two consecutive days without notice to or permission from supervisor.
- \* Divulging confidential Tribal information.
- \* Willful destruction of Tribal property.
- \* Entering unauthorized area.
- \* Leaving work without permission.
- \* Sexual or racial harassment.

Other, less serious violations or misconduct will subject the employee to the corrective action procedure as follows. Steps 1, 2 and 3 may be eliminated depending upon the seriousness of the violation. The Human Resource Manager is available for consultation and to help ensure consistent application throughout.

(Ord. No. 639, 8-11-1999)

### **Sec. 13.02. Corrective action procedure.**

The Corrective Action Procedure is intended to be progressive in nature and is the responsibility of the supervisor to administer in a fair and consistent manner. However, depending upon the seriousness of the violation, some of the steps outlined below may be eliminated.

When an employee's behavior is not in conformance with established rules and policies or work performance does not meet standard requirements, the supervisor is expected to take immediate but appropriate action as outlined.

Before implementing disciplinary actions, supervisors will fully justify in writing the action to be taken (including documentation of specific reasons for the action and evidence which supports the charge) and will give the employee an opportunity to respond to the charge, either in person or in writing.

The seriousness and frequency of the violation will be considered in deciding upon the form of action. Discipline may begin with any of the following steps:

*Step 1: Written Counseling.* For minor or initial violation of rules or performance problems. This is not a warning but is to instruct, inform or clarify. Documentation of this will be kept by the Human Resources Department in the employee's personnel file.

*Step 2: Written reprimand #1.* Employee is to be informed in writing that the receipt of a second reprimand within the current 12-month period for any violation or

performance problem may result in an involuntary termination or a suspension without pay, depending upon the seriousness of the problem. A copy of this will be kept by the Human Resources Department in the employee's personnel file.

*Step 3: Written reprimand #2.* As a last and final effort to correct behavior, a one-week suspension (i.e., beginning on Monday and ending on Friday, or, if the employee's normal work week is different, then the suspension shall be for whatever that work week is) without pay may be administered. Employee is to be informed on the reprimand form that the receipt of a third reprimand within the current 12-month period for any violation will likely result in termination of employment. A copy of this will be kept by the Human Resources Department in the employee's personnel file.

**Note--**When the employee returns to work following the five-day suspension, a reentry conference is to be held by the supervisor. The purpose is to clear the air, review the facts leading up to the decision to suspend as well as future expectations and consequences of further violations. The Human Resource Manager is to be involved with questions of benefit administration or counseling as needed.

*Step 4: Written reprimand #3.* Involuntary termination. Retention of an employee with 3 written reprimands (for the same or any combination of reasons) is an exception to policy and must be reviewed with and approved by the Executive Committee. All counseling and reprimands will be done in private and in a positive and constructive manner with the purpose of correcting the problem, allowing the employee to respond to any charges, and helping the employee be a productive, effective employee of the EBCI.

Employee reactions are to be noted on the Corrective Action Form and employees are asked to sign that they have been informed of the contents. This signature does not signify agreement nor disagreement with that action taken. Should the employee refuse to sign, this should be noted and another supervisor called in to witness that the information was covered with the employee.

Reprimands should be reviewed by the Human Resource Manager or designee and placed in the employee's personnel file.

(Ord. No. 639, 8-11-1999)

### **Sec. 13.03. Terminations.**

Instances where involuntary termination is eminent either by gross misconduct or upon receiving a third reprimand are to be handled as follows:

All terminations are to be recommended by the department manager and reviewed and approved by the Executive Director. Executive Directors and other managers are not to confer with the Executive Committee when making these decisions. The Human Resource Manager or designee may monitor the process prior to termination to ensure correct and consistent application of policy.

\* In cases where circumstances prevent prior review, the employee in question is to be suspended without pay, asked to leave the premises or to wait in a private area in the department while the above review takes place.

\* The purpose of this review is to ensure a "cooling down period" and that all facts surrounding the case are known and understood.

\* Problem solving procedure: Any employee who feels that unfair treatment has been administered under the corrective action procedure has the right to express this to Tribal Management by way of the problem solving procedure. The supervisor should make sure the employee is aware of this policy.

### **SCHEDULE OF OFFENSES AND RANGE OF CONSEQUENCES\***

**\*Note:** This schedule is to serve only as a guide in determining proper corrective action.

#### *Schedule I Offenses include:*

- \* Unexcused tardiness.
- \* Conducting personal business while on duty.
- \* Failure to request leave according to established procedures.
- \* Unauthorized canvassing, political activity, soliciting, or peddling on premises.

Consequences for Schedule I Offenses range from written counseling to termination.

#### *Schedule II Offenses include:*

- \* Unauthorized absence (AWOL)
- \* Failure to report traffic citations if required to operate a Tribal vehicle in the performance of duties.
- \* Disrespectful conduct: Use of abusive, insulting or obscene language, or gestures, or malicious gossip.
- \* Improper use of sick leave.
- \* Unauthorized possession of, use of, or damage to EBCI, or the property of others.
- \* Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions.

Consequences for Schedule II Offenses range from written reprimand to termination.

#### *Schedule III Offenses include:*

- \* Falsifying records and reports
- \* Conversion of EBCI funds for personal use.
- \* Use of any prohibited substance while on duty or reporting to duty while under the influence of a prohibited substance.
- \* Use of EBCI for improper purchase for personal gain.
- \* Breach of confidentiality.
- \* Sexual harassment.

- \* Official charges of abuse or neglect in any form.
- \* Unprofessional conduct that reflects poorly on EBCI, dishonest, disgraceful conduct including the making of derogatory remarks reflecting on the EBCI.
- \* Criminal conduct.
- \* Threatened or actual assault against another employee.
- \* Failure to report arrests and/or charges resulting from the commitment of a felony or misdemeanor.
- \* Deliberate misrepresentation, falsification, misstatement, or concealment of material or fact in connection with employment.
- \* Formally charged for possession, use of, or sale of illegal narcotics or drugs.
- \* Unauthorized or improper use of equipment, materials, or facilities.
- \* Official charges of failure to honor debts or legal obligations.
- \* Insubordination: Disobedience or refusal to carry out any lawful order regulation or policy, or refusal to obey supervisory authority.

Consequences for Schedule III Offenses range from written reprimand to termination.

*Schedule IV Offenses include:*

- \* Possession of unauthorized firearms or lethal weapons on the job.
- \* DWI citation while operating a Tribal vehicle.
- \* Falsification or tampering with a drug/alcohol test.

Consequences for Schedule IV Offenses: Termination.

(Ord. No. 639, 8-11-1999)

#### **Sec. 13.04. Exit interview.**

An exit interview is to be conducted immediately following any termination for any reason, both involuntary or voluntary (Retirement, Resignation, RIF, etc.) Or as soon thereof as practical. This is to be done by the Human Resource Department.

(Ord. No. 639, 8-11-1999)

### **ARTICLE XIV. PROBLEM SOLVING PROCEDURE**

#### **Sec. 14.00. Problem solving procedure.**

In any organization, problems and differences of opinion occur between employees. Tribal management recognizes this and is committed to providing an atmosphere where problems or questions about discipline can be heard in an objective manner without reprisal and solved in a fair and equitable way. Most problems can be resolved by simply discussing them informally with the supervisor, which is normally the best way. In more serious cases

however, an employee may wish to handle a problem or appeal a corrective action on a more formal basis. If so, they are encouraged to use the following procedures.

**Note--**Complaints regarding performance appraisals are not subject to the following procedure.

*Step 1:* An employee should bring the concern or complaint to his or her immediate supervisor within five working days of the discovery of the action complained about. This must be done in writing. After the supervisor has had a chance to review relevant facts an written answer will be given to the employee and copies will be provided to the Human Resources Department. This normally will be within five working days.

**Note--**If the employee is reluctant to talk with the supervisor, he or she may elect to go to the department manager or the Human Resource Office on the first step. The supervisor, however, will be notified that the first step appeal has been taken. This can include any situation where an employee may feel reluctant or uncomfortable in going to the supervisor.

*Step 2:* If the employee is not satisfied with the decision by the supervisor, the problem must be put in writing within three working days from receipt of the supervisor's decision for review by the appropriate department manager. Under normal circumstances the department manager will provide a written answer within five working days to the employee with a copy to the Human Resources Department.

*Step 3:* If the employee remains dissatisfied, the matter may be appealed within three working days from receipt of the department manager's decision to the Executive Director in writing. After considering the relevant facts and EBCI policies a written decision normally will be given within five working days to the employee, with copies to the Human Resources Department.

**Note--**See 14.01 Involvement of Human Resource Manager.

It is expected that after an employee problem has been handled in the three steps above and with the consultation of the Human Resource Manager or designee as well as others pertinent to the issue that a proper resolution consistent with fairness and EBCI policies will have been reached.

Recognizing that in rare instances a further examination may be proper, the Tribe makes provision for a final step in the problem resolution process. If, after receiving the Step 3 decision, the employee remains dissatisfied, the employee may make a written appeal to the Appeals Committee to have his or her appeal heard at a fourth and final step.

This appeal (referred hereinafter as a "notice of appeal") must be submitted in writing to the Human Resources Office within five days of receiving the Step 3 decision. The notice of appeal shall include the following information:

- (1) The basis for the appeal;
- (2) The efforts made to resolve the matter;
- (3) The issues to be heard by the Appeals Committee;
- (4) The name of the employee's attorney or person named as the employee's representative;



(5) All persons or entities that may be called as witnesses;

(6) Copies of any agreements, contracts, or other documents that may affect the grievance or appeal decision; and

(7) The results sought by the employee.

*Step 4: Appeals Committee:* Within 30 calendar days of the adoption of this personnel manual, an election will be held to enable the employees to choose an Appeals Committee to hear Step 4 appeals.

Each of the current divisions will vote to select one non-management representative and one member of management to serve on the Committee. In the event new divisions are created, an election shall be held within thirty calendar days to enable the new division to select representation for the Committee.

**Note--**Political appointees and employees of the Tribe's Human Resources Department and the Office of Attorney General will not be allowed to vote in this election or serve on the committee.

Each representative of the Committee shall serve a two year term. The representatives of the Committee shall select a chairperson and vice chairperson. In the event a representative resigns or is terminated from his/her position, transfers out of his/her division, is promoted into management or demoted from a management position to a non-management position, the division shall conduct another election within 30 days to replace that representative. In addition, if new divisions are created and added to the Tribe's organizational chart, elections shall be held within 30 days.

Upon receipt of an employee's Fourth Step appeal, the Human Resources Office will contact the chairperson and vice chairperson of the Committee. The chairperson and vice chairperson will then select two representatives from the pool of managers and three non-manager representatives from the pool of non-managers to hear the appeal. These five selected representatives must:

- \* Work outside the appealing employee's department;
- \* Not have been previously involved with the issue being appealed;
- \* Not be related to, or have a close personal or professional relationship with any of the essential parties to the appeal; and
- \* Not otherwise have any conflict of interest which would interfere with their ability to be fair and impartial.

Either the chairperson or the vice chairperson will chair the proceeding and will not vote unless there is a tie (due to the abstention or other failure to vote on the part of one of the five representatives.)

The five representatives of the Committee will hear and review all aspects of the issue. They will determine the correctness of policy interpretation along with fairness and logic of decisions previously reached. At the conclusion of Step 4, the five representatives may render their decision immediately or may take the matter under further advisement for consideration. They may refer the issue back to any of the preceding steps for further examination. They may consult with other proper authorities or experts for advice. Under

normal circumstances, a decision should be reached within ten working days and all parties will be sent a written reply.

The legal department will be included in consultations in arriving at this final decision. The Fourth Step decision is final and binding and employees will not be allowed to appeal this decision to the Executive Committee or Tribal Council.

**Note**--While the objective of the problem solving procedure is to work together to a satisfactory conclusion of problems, in rare instances either party may wish to be accompanied by legal counsel or other representation. In these instances, a copy of the Tribe's policies and procedures for Step 4 proceedings may be obtained from the Human Resources Department or the Legal Department.

(Ord. No. 639, 8-11-1999; Ord. No. 8, 11-24-1999)

#### **Sec. 14.01. Involvement of The Human Resource Department.**

The Human Resource Department is available for assistance beginning in Step 1 and may be called upon by both the employee as well as management. Upon the initiation of Step 2 through Step 4, the Human Resource Department is to be consulted for advice to ensure that policies (and policy intent) are followed and that potential legal liability is recognized and avoided. The Human Resource Department is also to assist employees in presenting their grievance along with relevant facts as well as to ensure that the procedure is followed as intended. Problem-solving forms are kept and are available in each department as well as the Human Resource Department.

(Ord. No. 639, 8-11-1999)

#### **Sec. 14.02. Involvement of The Legal Department.**

The Legal Department is available for consultation at any level of the problem solving procedure. It is, however, required that this department be involved at least beginning with Step 3. They are responsible for a thorough review of all policy and legal aspects of the expressed employee concern and proposed decisions recommended by Tribal Management at Steps 3 and 4.

(Ord. No. 639, 8-11-1999)

#### **Sec. 14.03. Retention of documentation.**

All documentation of corrective action and that used in the problem solving procedure will remain in the employee's personnel file. Only information that is three years or less will be used for current corrective action. In the case of rescinding corrective action all such references shall be removed from the employee file and destroyed by the Human Resources Office staff.

Documentation may:

- \* Be used in whole or part to document corrective action against another employee; and/or
- \* Be returned to the employee filing the grievance; or

\* Be disposed of in accordance with a written agreement between the supervisor, Executive Director and the filing employee.

(Ord. No. 639, 8-11-1999)

## **ARTICLE XV. PERFORMANCE EVALUATION**

### **Sec. 15.00. Policy.**

Evaluating employee performance is a continuous process and an integral part of the employee/supervisor relationship. The Tribe believes, therefore, that each employee should be regularly informed regarding their performance on the job. To ensure that this appraisal is done as fairly and consistently as possible, the Tribe will follow a system for periodically evaluating all employees. This process is to be monitored by the Human Resource Department for consistency and effectiveness.

The performance evaluating system provides a history of work progress of the individual employee with the Tribe. It shall also be utilized as a method to determine eligibility for promotion and as a basis for demoting or discharging an employee. The supervisor should use the performance evaluation system as a tool for counseling employees and as a communications tool for discussing work progress, problems, and opportunities. The Human Resource Department will monitor this system to ensure compliance.

(Ord. No. 639, 8-11-1999)

### **Sec. 15.01. Objectives.**

1. To keep employees informed concerning the areas of their job performance that need improvement, to agree upon methods for accomplishing this improvement, and to establish goals or objectives for future progress.
2. To recognize and commend the areas of the employee's job performance that show merit.
3. To encourage supervisory personnel to follow closely the progress of their employees.
4. To improve communications between supervisors and employees.
5. To aid in decisions regarding promotions, transfers and discharges.

(Ord. No. 639, 8-11-1999)

### **Sec. 15.02. Procedures.**

1. *Evaluation-period employees.* All new employees will be informed about the evaluation program during their orientation and will be given a copy of the evaluation form. These new employees will be appraised at least twice during the evaluation period (at the conclusion of the first half of the evaluation period and at its conclusion). The department head shall be responsible for the department's completion of a formal evaluation of the employee's performance.

During the review and feedback sessions, the supervisor will notify the employee of any

areas of responsibility that may be unacceptable or deficient. After being notified of deficiencies the employee must demonstrate that they can meet the minimum standard of performance. If the employee does not demonstrate improvements in the unacceptable areas, the employee shall be subject to dismissal.

*2. Regular employees.*

\* Evaluation period. The evaluation period is the term of the fiscal year. Annual evaluations for performance must be completed by April 15 and September 15 each year.

\* Supervisors are responsible for maintaining current job descriptions/performance objectives and keeping employees up to date on these as well as any changes.

\* Supervisors will prepare annual evaluations using reasonable, objective criteria. Employees are to be included to the extent possible in the formulation of goals and expectations upon which they will be evaluated.

\* The supervisor should complete the rating form, sign it, and hold a conference with the employee to discuss the evaluation in detail. Commendation is to be made for areas of good performance. Specific action plans are agreed to where improvement is warranted.

\* Employees being evaluated will be asked to sign the evaluation form. This signature indicates that the information has been communicated and does not necessarily indicate agreement. If the employee refuses to sign the document, another supervisor is to be asked to witness and sign indicating that the information was discussed with the employee.

\* Employees who disagree with their appraisal may attach to the appraisal a written rebuttal. Once this is done, the appraisal must be returned to the Executive Director for further review.

(Ord. No. 639, 8-11-1999)

**Sec. 15.04. Approvals.**

All evaluations require the review and approval of the department head and the Executive Director in addition to the supervisor prior to being communicated to the employee. The Human Resource Department may be used for counsel and to help ensure consistency when needed.

(Ord. No. 639, 8-11-1999)

**Sec. 15.05. Evaluation forms.**

Forms to be used for performance evaluations are to be standardized throughout the Tribe. They may be changed from time to time to reflect improvements in techniques etc. Forms must be, however, approved by the Human Resource Department, department heads, and the Executive Committee.

(Ord. No. 639, 8-11-1999)

### **Sec. 96-1. Personnel policies.**

The Eastern Band of Cherokee Indians hereby adopts the "Cherokee Indian Personnel Manual" to regulate the conduct and work of Tribal employees and establish personnel policies for the Tribe.

(Res. No. 24, 10-20-1975)

### **Sec. 96-2. Code of ethics.**

The following code of ethics shall apply to all employees of the Eastern Band of Cherokee Indians:

(a) *Policy on employee conduct.* The maintenance of unusually high standards of honesty, integrity, impartiality and conduct by Tribal employees is essential to ensure the proper performance of Tribal business and the maintenance of confidence by citizens in the Tribe. Legal requirements are essentially concerned with official conduct, i.e., the behavior of the employees in the course of or in relation to their official duties. Employees of the Tribe are expected to act with courtesy, consideration and promptness in dealing with or serving the public. Personal and private conduct of an employee (as opposed to official conduct) that reflects adversely upon the dignity and prestige of the Tribe is also a matter of concern. All employees are expected to cultivate those personal qualities which characterize a good Tribal servant: loyalty to the Eastern Band of Cherokee Indians, a deep sense of responsibility for the public trust, and a standard of personal deportment, which will be a credit to the individual.

(b) *Subordination to authority.* An employee is required to carry out the announced policies and programs of the Tribe. While policies related to their work are under consideration employees are expected to express their opinions and points of view, but once a decision has been rendered by those in authority, employees will be expected unreservedly to assure the success of programs, which it is their responsibility to effectuate. If employees fail to carry out any lawful regulation, order or policy or deliberately refuse to obey the proper requests of their superiors, they are subject to appropriate disciplinary action.

(c) *Employee responsibility.* It is the responsibility of employees to familiarize themselves and to comply with the regulations in this part. Employees are expected to consult with their supervisors concerning the applicability of the regulations. On specific matters and for guidance on questions of conflict of interest they will receive authoritative advice and guidance from the Executive Committee.

(d) *Outside work and interest policy.* Outside work is permitted to the extent that it does not prevent an employee from devoting their primary interests, talents and energies to the accomplishment of their work for the Tribe or tend to create a conflict between the private interests of an employee and their official responsibilities. The employee's outside employment shall not discredit the Tribe.

(e) *Definitions.*

(1) *Outside work* shall mean all gainful employment other than the performance of official duties. It includes but is not limited to self-employment, working for another employer, the management or operation of

a private business for profit, including personally owned businesses, partnerships, corporations and other business entities.

(2) A situation which may involve a *conflict of interest* is one which a Tribal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with their public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent.

(f) *Habitual use of intoxicants*. An employee who habitually uses intoxicants to excess is subject to removal.

(g) *Misconduct*. Any criminal, infamous, dishonest, immoral or notoriously disgraceful conduct on the part of a Tribal employee shall be cause for their removal from the service of the Eastern Band of Cherokee Indians.

(Res. No. 435, 5-21-1971)

### **Sec. 96-3. Employee holding elective office.**

Any Tribal employee shall be eligible to seek and hold elective office subject to the following conditions:

(a) An employee shall not serve on any committee with direct supervision or responsibilities over the program, division or enterprise in which they are employed.

(b) An employee shall not be compensated by both the Tribal Council or any committee for the same period of time they are compensated by the Tribe for their employment.

(c) An employee shall not perform in more than one Tribal job at the same time.

(d) The provisions of this section shall not apply to any person employed by the Cherokee Police Department.

(Res. No. 73, 12-20-1971)

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## Chapter 105: Taxation

### **ARTICLE I. SALES TAX**

#### **Sec. 105-1. Tribal Levy imposed.**

The Levy which may be imposed under this article is limited to a tax at the rate of seven percent of:

(a) All retail sales of goods or merchandise by persons or firms trading or conducting business on the Cherokee Indian Reservation; and

(b) All admission charges made by persons or firms presenting attractions on the Cherokee Indian Reservation, except for admission charges by attractions which are presented by a nonprofit organization.

(Ord. No. 449, 2-20-1997; Ord. No. 87, 1-13-2000)

### **Sec. 105-2. Definitions.**

The following words, terms and phrases as used in this article, shall be defined as follows:

(a) *Chief* or *Vice-Chief* shall mean the duly elected Principal Chief or Vice-Chief of the Eastern Band of Cherokee Indians.

(b) *Secretary* shall mean the Secretary of the Interior or his lawful representative.

(c) *Superintendent* shall mean the Superintendent of the Cherokee Agency of the Bureau of Indian Affairs.

(Ord. No. 449, 2-20-1997)

### **Sec. 105-3. Exemptions from Levy.**

The following sales shall not be subject to the Tribal Levy:

(a) Sales by members of the Eastern Band of their own arts and crafts, agricultural, forest or other products produced or processed by the Tribal member making such sale.

(b) Sales of gasoline or other motor fuel.

(c) Sales of any article which would not be subject to the North Carolina retail sales act if such articles were sold off the Cherokee Indian Reservation and within the State of North Carolina.

(d) Sales by members of the Eastern Band from food and other concessions on the Tribal Ceremonial Grounds during the Cherokee Fall Festival.

(e) Sales by the Steve Youngdeer American Legion Post on fundraising activities.

(f) Admission charges or sales to persons by the Cherokee Bingo Enterprise, except for bingo package sales, store sales and concession sales.

(g) Sales and tips by enrolled members of the Tribe received while Chiefing on the Reservation.

(h) String bands performing on the Cherokee Indian Reservation.

(i) Sales from not for profit corporations or other charitable organizations as determined by the Tribal Business Committee; including, but not limited to, thrift shops, church organizations, and other public assistance groups. Any group desiring an exemption shall submit an application to Tribal Business Committee for approval. Any organization approved by the Business Committee for exemption shall be published in the Cherokee One Feather.

(j) All retail sales of non-prepared food items shall be tax-free. No Tribal Levy shall be collected on retail sales of non-prepared grocery food items.

(Ord. No. 347, 10-17-1996; Ord. No. 449, 2-20-1997; Ord. No. 667, 10-3-1997; Ord. No. 87, 1-13-2000)

#### **Sec. 105-4. Collection and payment of Levy.**

(a) Every person or firm trading or doing business on the Cherokee Reservation, who is liable for collecting the Tribal Levy shall maintain accurate written records of all retail sales and admissions and shall make such records available for inspection by the Tribal finance officer or auditors retained by the Tribe.

(b) Each person or firm trading or doing retail business on the Cherokee Reservation shall pay the Tribal Levy on all receipts from sales and admissions no later than the 15th day of each month for all sales and admissions receipts in the previous month. A report of the receipts on a form prescribed by the Tribe shall be filed with the payment and the payment shall be identified by the respective Trader's License number and name of business as shown on the license.

(c) Filing shall be considered timely if the reports, together with Tribal Levy collected, are hand delivered to the Tribe or placed in the United States mail and postmarked no later than the 15th day of the month following the month being reported. If the 15th day of the month falls upon a weekend or legal holiday, reports shall be due in same manner upon the next business day.

(d) For each report not filed by such date and accompanied by the proper amount of Tribal Levy, there shall be assessed a penalty in the amount of 25 percent of the amount of the Tribal Levy properly due the Tribe, with the penalty to be not less than \$100.00.

(e) Upon a licensee's failure to pay the Tribal Levy and file the required gross receipts report by close of business on the 15th day of the month (4:30 p.m.), there shall be assessed interest at the rate of 12 percent per annum on the amount of the Tribal Levy properly due the Tribe. Interest shall run from the first day of the month in which the Tribal Levy payment is due through the date of payment. If a licensee's Tribal Levy payment is returned to the Tribe by the bank, that licensee shall be required to make all future Tribal Levy payments by cash, postal money order or certified cashier's check. Any returned checks shall be considered nonpayment and shall be subject to the same penalty and interest, as set out in this section. Anyone submitting a check that is returned shall be responsible for reimbursing community services for processing the check within ten days after notification.

(f) In addition to the above penalty and interest, the Superintendent is hereby directed to immediately cancel the Trader's License and close the business of any licensed person or firm failing to file a gross receipts report and pay the Tribal Levy together with any penalty and interest within 30 calendar days after the due date of the 15th day of month. No prior notice shall be required to cancel the Trader's License. If a defaulting licensee shall be canceled and all his businesses closed upon such cancellation of a Trader's License, the matter shall be referred to the United States Attorney or the Tribal Attorney to collect the amount due the Tribe, including Tribal Levy, penalty and interest.

(g) Compliance with this article is hereby made a condition of the use of any land or premises on the Cherokee Indian Reservation. The Secretary, Superintendent, Principal Chief and Tribal Council shall require compliance with this article as a condition for issuing and maintaining in effect any Trader's License for trading or conducting business on the Cherokee Reservation.

(Ord. No. 449, 2-20-1997)



**Sec. 105-5. Use of Tribal Levy funds.**

(a) All funds collected by the Eastern Band pursuant to this article shall be deposited promptly into a special bank account in the name of the Eastern Band in a bank designated by the Executive Committee, with the funds insured by the Federal Deposit Insurance Corporation.

(b) The percentage of the Tribal Levy revenues indicated in subsection (h) for the use of the Fire Department and Police Department shall be deposited in a fund or funds designated for the use of those departments. These funds shall be disbursed in accordance with an annual budget adopted by the Community Services Committee and approved by Tribal Council and shall be limited to the following uses:

(1) To pay necessary expenses of administering and enforcing this Ordinance, including compensation for the Chief, Vice-Chief, and other Tribal employees responsible for administering and enforcing the Tribal Levy Ordinance;

(2) To provide law enforcement and promote public safety on the Cherokee Reservation, including compensation for law enforcement officers;

(3) To provide and maintain fire protection services on the Cherokee Reservation;

(4) To provide street lighting for the Village of Cherokee and in other Reservation communities as may be designated by the Community Services Committee;

(c) The percentage of the Tribal Levy revenues indicated in subsection (h) to be deposited in the General Fund shall be disbursed in accordance with an annual budget adopted by the Tribal Council for the benefit of the Cherokee Reservation and its residents. The Finance Committee shall make recommendations to the Tribal Council for the use of these funds prior to the adoption of the annual budget by the Tribal Council.

(d) The percentage of the Tribal Levy revenues indicated in subsection (h) to be deposited in the Sanitation Fund shall be disbursed to provide and maintain garbage collection and disposal systems for Reservation communities as may be designated by the Community Services Committee; and to provide sanitation facilities and services to foster and protect the public health as may be designated by the Community Services Committee.

(e) The percentage of the Tribal Levy revenues indicated in subsection (h) to be deposited in the Tribal Travel and Promotion Fund shall be disbursed in accordance with a budget adopted by the Travel and Promotion Board and approved by the Tribal Council.

(f) The percentage of the Tribal Levy revenues indicated in subsection (h) to be deposited in the Tribal Education Fund shall be disbursed in accordance with a budget adopted by the Tribal Education Committee to assist needy and deserving Cherokee students.

(g) The percentage of the Tribal Levy revenues indicated in subsection (h) to be deposited in the Tribal Reserve Fund shall be deposited in an interest bearing account and shall be utilized only by specific Tribal Council authorization and only in the event of an emergency presented by shortage in Tribal operating funds.

(h) Tribal Levy revenues shall be allocated as follows:

*Percentage of  
Tribal Levy*

<i>Program</i>	<i>Revenues</i>
Fire Department	6.5%
Police Department	39.5%
General Fund	10.0%
Sanitation	11%
Travel and Promotion	22.0%
Tribal Education	6.5%
Reserve Fund	4.5%

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100%

(Ord. No. 449, 2-20-1997; Ord. No. 20, 11-16-1999; Ord. No. 165, 4-17-2000; Ord. No. 890, 8-9-2001)

**Sec. 105-6. Bonding and audit.**

All persons authorized to collect or disburse any funds under this article shall furnish a surety bond for the faithful performance of his duties with such corporate surety and in such amount as the Tribal Council may designate. The accounts of all receipts and disbursements made under this article shall be audited annually by a Certified Public Accountant to be selected by the Tribal Council, with the cost of such audit to be paid out of funds collected by this article. Copies of the annual budgets and of the audit provided for in this section shall be promptly furnished to the Superintendent, the Principal Chief and Tribal Council. The surety bond shall be set at a maximum of \$15,000.00.

**Sec. 105-7. Prior resolutions rescinded.**

Prior Tribal Council resolutions dealing with the Tribal Levy are superseded by this article. The following resolutions are hereby rescinded and declared to be null and void: Resolution No. 20 (dated October 1, 1941); Resolution No. 30 (dated October 17, 1946); Resolution No. 10 (dated October 11, 1949); Resolution No. 5 (dated April 25, 1952); Resolution No. 414 (dated July 7, 1961); Resolution No. 692 (dated December 17, 1963); Resolution No. 27 (dated January 6, 1967); Resolution No. 21 (dated March 21, 1968); Resolution No. 210 (dated December 16, 1969); Resolution No. 77 (dated January 8, 1976); Resolution No. 392 (dated May 7, 1981); Resolution No. 25 (dated October 27, 1981).

(Res. No. 20, 10-15-1941; Res. No. 30, 10-17-1946; Res. No. 10, 10-11-1949; Res. No. 5, 4-25-1952; Res. No. 44, 7-7-1961; Res. No. 692, 12-17-1963; Res. No. 27, 1-6-1967; Res. No. 21, 3-21-1968; Res. No. 210, 12-16-1969; Res. No. 28, 10-21-1971; Res. No. 77, 1-8-1976; Res. No. 25, 10-27-1981; Res. No. 162, 2-8-1982; Ord. No. 99, 2-8-1982; Res. No. 392, 5-7-1982; Res. No. 7, 10-18-1983; Ord. No. 212, 5-22-1986; Ord. No. 337, 10-18-1988; Ord. No. 256, 11-20-1990; Ord. No. 449, 2-20-1997)

**ARTICLE II. LEASE TAX**

**Sec. 105-8. Lease tax imposed.**

All persons obtaining a primary ground permit or lease of Cherokee trust lands for business purposes, from individual holders of possessory rights, shall pay a tax equal to five percent of the annual rental or lease fee. Nothing contained herein shall be construed to impose a tax on any sublease. This tax is intended solely for the primary lease and shall not be

passed on to the sub-lessees. This tax is solely for the Tribe's share of rental of the primary ground lease and does not extend to sub-lessees and likewise shall not apply to leases wherein the Tribe itself is the sole lessor.

(Res. No. 29, 10-17-1946; Res. No. 601, 7-8-1963; Res. No. 391, 7-12-1979; Res. No. 60, 2-11-1980; Ord. No. 87, 1-13-2000)

**Sec. 105-9. Payment; due date.**

All lease taxes shall be paid on the due dates established by the lease as approved by the Tribal Business Committee. Payments shall be made to the Tribal Finance Officer who shall acknowledge receipt of payment of the tax to the Realty Office of the Cherokee Indian Agency.

(Res. No. 29, 10-17-1946; Res. No. 601, 7-8-1963; Res. No. 391, 7-12-1979; Res. No. 60, 2-11-1980)

**Sec. 105-10. Failure to pay; assessment of interest.**

Upon a lessee's failure to pay the Lease Tax to the Tribe by the date due, there shall be assessed interest at the rate of 12 percent per annum on the amount of tax properly due the Tribe. Payment by dishonored check shall be considered nonpayment.

(Res. No. 29, 10-17-1946; Res. No. 601, 7-8-1963; Res. No. 391, 7-12-1979; Res. No. 60, 2-11-1980)

**Sec. 105-11. Penalty.**

Upon a lessee's failure to pay the Lease Tax to the Tribe by the due date, there shall be assessed a penalty in the amount of 25 percent of the amount of the tax properly due the Tribe, with the penalty not to be less than \$100.00 for annual installments and not less than \$25.00 for more frequent installments.

(Res. No. 29, 10-17-1946; Res. No. 601, 7-8-1963; Res. No. 391, 7-12-1979; Res. No. 60, 2-11-1980)

**Sec. 105-12. Show Cause Notice.**

In addition to the above penalty and interest, the Superintendent is hereby directed to issue a "Show Cause Notice" to any person or firm holding a Trader's License who has failed to pay the Lease Tax when due. If the tax is not paid, the Trader's License shall be canceled and the business shall be closed by the Superintendent.

(Res. No. 29, 10-17-1946; Res. No. 601, 7-8-1963; Res. No. 391, 7-12-1979; Res. No. 60, 2-11-1980)

**ARTICLE III. STATE TAXES**

**Sec. 105-13. Reported.**

All enterprises, agencies, departments, divisions and offices of the Tribe shall annually provide to the Tribal Finance Officer written records of all state sales tax paid during the previous fiscal year. The Tribal Finance Officer shall apply for refunds of state sales tax paid

by Tribal entities and shall report the results of such applications to the Tribal Council semiannually.

(Res. No. 130, 2-4-1982)

## **ARTICLE IV. LICENSES**

### **DIVISION 1. GENERALLY**

#### **Sec. 105-14. Roadside Vendors.**

(a) *Defined.* "Roadside Vendor" shall include any person, firm or business enterprise that undertakes to sell goods or merchandise on the roadside, from a fixed location or from a motorized or otherwise movable vehicle.

(b) *License.* A Roadside Vendor shall be required to obtain a Vendor's License from the Tribe before engaging in the sale of goods or merchandise on the Reservation. Such license shall be valid for one calendar year from the date of issuance, with the annual fee for such license being set at \$50.00. If the Vendor does not reside on the Cherokee Indian Reservation at the time of payment of the license fee, the Vendor shall also deposit a sum equal to 50 percent of the Tribal Levy which would be collected on the wholesale or retail value of the merchandise inventory of the Vendor.

(c) *Penalties.* The penalty for the first offense of engaging as a Roadside Vendor without a license shall be immediate removal from the Cherokee Indian Reservation boundary. Violators may avoid removal by immediately applying for such license and paying the license fee. The penalty for a second or subsequent offense of engaging as a Roadside Vendor without a license shall be immediate confiscation of goods and merchandise and removal from the Reservation. Confiscated goods and merchandise may be redeemed by the unlicensed Vendor upon payment of the license fee, together with reasonable expenses actually incurred in the confiscation and storage of the goods and merchandise, and payment of any Tribal Levy which may be due the Tribe. Confiscated goods and merchandise will be sold if not redeemed within 30 days. Perishable goods will be sold if not redeemed within a reasonable time, subject to the discretion of the Tribal Police Department and the nature and condition of the perishable goods. The proceeds of such sales shall be deposited in to the General Tribal Funds.

(d) *Tribal Levy.* All licensed Roadside Vendors shall promptly collect and deposit the Tribal Levy in accordance with the regular monthly schedule. Failure to deposit the required Tribal Levy by the 15th day of the month in which payment is due shall be grounds for immediate cancellation of the Vendor's License. A Vendor whose license has been canceled for nonpayment of the Tribal Levy shall be subject to the penalties set forth in this article.

(e) *Application.* This article shall apply to sale of goods or merchandise, regardless of whether sales are wholesale or retail. This article shall not apply to the sale of services by enrolled Tribal members, including Chiefing, dancing or engaging in musical performances. This article shall not apply to the sale of goods or merchandise by salesmen or agents of business enterprises located off the Reservation which deliver goods or merchandise to residents or businesses on the Reservation. A salesman who comes on the Reservation to take orders for goods or merchandise as a result of an order placed with a company off the Reservation, shall not be subject to this article. Enrolled Tribal members who sell food or other goods from door to door shall not be subject to this article. This article shall not apply to enrolled Tribal members, who sell goods from their residence, or on unassigned Tribally

held lands, including garage sales, yard sales or sales to benefit Reservation organizations.

(Ord. No. 124, 2-4-1982)

#### **Sec. 105-15. Wholesalers.**

(a) *License.* Individuals and firms who sell and distribute goods and merchandise on a wholesale basis to persons, firms and businesses on the Cherokee Reservation shall be required to obtain a Wholesaler's License from the Tribe before engaging in such sales or distribution. Such license shall be valid for one calendar year from the date of issuance with the annual fee for such license being set at \$100.00.

(b) *Penalties.* The penalty for engaging in wholesale sales without a license shall be by imposition of a civil fine of not more than \$250.00. Such civil fine shall be imposed by the Cherokee Court in an action initiated by the Tribe which establishes by the greater weight of the evidence that such unlicensed act occurred on the Reservation. All individuals and firms against whom such fine has been imposed shall be subject to removal from the Cherokee Indian Reservation by the Cherokee Police Department and denied the privilege of continuing business on the Reservation until a license is obtained.

(c) *Nondiscrimination.* Individuals and firms selling and distributing wholesale to licensed traders on the Reservation shall not discriminate against individual merchants. Wholesale distributors shall not refuse to sell or distribute to licensed retail traders except for good cause. Good cause shall include: prior history of bad credit rating or poor payment record; the existence of franchising or licensing agreements, which prohibit sales or distribution except to specific franchise or license holders.

(d) *Exemptions.* This article shall not apply to Tribal members who sell or distribute merchandise or crafts produced or made by themselves.

(Ord. No. 484, 7-1-1985; Ord. No. 643, 7-1-1987)

#### **Sec. 105-16. Cherokee Chiefs.**

(a) Only enrolled members of the Eastern Band of Cherokee Indians may be employed as "Chiefs" on the Cherokee Indian Reservation.

(b) The act of "Chiefting" shall include dressing in traditional Indian dress, greeting the public on business property, attracting the public to business property, posing for photographs with customers and tourists, performing traditional Indian dances and singing traditional Indian songs.

(c) Every person working as a "Chief" shall obtain a Trader's License. Violation of this article shall be punished by a civil fine of \$100.00. A third violation of this article by a nonmember shall result in their removal from the Cherokee Reservation.

(Res. No. 62, 10-22-1941; Res. No. 670, 10-25-1963; Res. No. 937, 10-27-1965; Res. No. 19-S, 3-21-1968; Ord. No. 312, 9-27-1982)

#### **Sec. 105-17. String bands.**

(a) All groups or organizations who desire to perform live music with a string band shall obtain a Tribal license before performing before the public on the Cherokee Indian

Reservation.

(b) A license known as a "Band Permit" shall be issued by the Community Services Committee to applicants completing an application form, paying the license fee, and such applicants shall have at least two enrolled members of the Eastern Band of Cherokee Indians as members of the band.

(c) The fee for the "Band Permit" shall be \$50.00.

(d) The application for a license shall state the name of the musical organization, the name and address of the manager, the name of all performing musicians, the beginning and ending date of performances. The application shall designate the location of all musical performances and must be cosigned by the possessory holder or lessee of the premises.

(e) The musical organization shall maintain records of gross receipts and revenues, whether from admission charges or collections, and shall pay the Tribal Levy on such proceeds in the same manner as other licensed Indian traders.

(f) Electronically amplified music shall be kept at a level so as not to unreasonably disturb neighboring business establishments or residents nor to disrupt the business activities or enjoyment of privacy by persons in their houses.

(g) Public musical performances may not continue after 10:00 p.m. on Monday through Friday, nor after 11:00 p.m. on Saturdays. No public musical performances on Sundays shall begin before 12:00 noon and shall stop at 6:00 p.m.

(h) This article shall not apply to religious or gospel music groups who shall perform in conjunction with religious services.

(i) Complaints concerning excessively loud music shall be placed with the Cherokee Police Department. If the complaint is not immediately resolved by the Police, a complaint may be filed with the Cherokee Court. Persons convicted of disturbing the peace or constituting a nuisance shall have their Trader's License canceled for a period of one year.

(j) Any person violating this article who is not subject to the criminal jurisdiction of the Cherokee Court shall be cited by the Superintendent of the Cherokee Indian Agency why their Trader's License should not be canceled. Any person whose Trader's License is canceled under this section shall not be eligible to reapply for a Trader's License for a period of one year.

(k) All music concessions operating without a valid Trader's License shall be directed by the Cherokee Police Department to immediately cease and desist performance. All lessees or possessory holders who allow unlicensed musical concessions to perform on their premises shall be subject to the penalties set forth in subsections (i) and (j).

(Res. No. 385, 12-19-1960; Res. No. 671, 6-12-1964; Res. No. 296, 7-16-1970; Res. No. 357, 6-18-1973; Res. No. 232, 8-5-1976; Ord. No. 52, 11-7-1983)

### **Sec. 105-18. Tourism promotion.**

The Tribal Travel and Promotion Program shall annually be allocated one-half of one percent of the Tribal Levy collected to budget for the development, advancement and promotion of the Cherokee area as a family resort destination and vacation area. Special emphasis of the

expenditure shall be for advertising Cherokee as a place for Native culture and natural beauty. These funds shall be deposited in a special account for expenditures to be made by the committee or board established for approving expenditures from the special account.

(Ord. No. 470, 7-1-1985; Ord. No. 604, 10-19-1987; Ord. No. 346, 12-3-1992; Ord. No. 667, 10-3-1997; Ord. No. 87, 1-13-2000)

**Sec. 105-19. Bingo levy.**

Rescinded.

(Ord. No. 183, 5-6-1983; Ord. No. 213, 5-21-1986)

**DIVISION 2. GASOLINE TAX\***

**\*Cross reference:** Motor vehicles, ch. 20.

**Sec. 105-20. Definitions.**

The following words, terms and phrases as used in this division, shall be defined as follows:

- (a) *Distributor* shall mean any person, firm, association of persons, corporation, Tribal political subdivision or agency, that has on hand or in possession or produces, refines, manufactures or compounds motor fuels for sale, distribution or use.
- (b) *Fuel* shall mean all combustible gases and liquids used, purchased or sold to generate power to propel a motor vehicle.
- (c) *Highway* shall mean any roadway open to the use of the public for vehicular travel across Cherokee trust lands that is constructed, repaired and maintained by the North Carolina Department of Transportation.
- (d) *Motor fuel* shall mean (1) all products commonly known as gasoline, and (2) any liquid prepared or sold for use as a fuel in internal combustion engines meeting distillation standards set forth in N.C.G.S. 105-430(1).
- (e) *Peddler* shall mean any person who neither owns nor operates stationary storage facilities and who transports fuel from place to place in a vehicle with a tank of more than 100 gallons capacity and sells to any user or user-seller.
- (f) *Person* shall mean natural persons, partnerships, firms, associations and corporations.
- (g) *Roadway* shall mean any roadway used for vehicular travel across Cherokee trust lands except those that may be defined as a highway under this division.
- (h) *Supplier* shall mean any person who sells or delivers fuel to a user-seller for use or resale.
- (i) *Use* shall mean the receipt of fuel by any person into the fuel supply tank of a motor vehicle or into a receptacle for which fuel is supplied by any person for a motor vehicle.

(j) *User* shall mean any person who owns or operates any diesel-propelled licensed motor vehicle who does not maintain storage facilities for fueling such vehicle.

(k) *User-seller* shall mean any person who is a bulk user or reseller, as defined in NCGS 105-449.2(8)a.b.c.

#### **Sec. 105-21. Purpose.**

The purpose of this division is to provide for the payment and collection of a tax on the first sale of motor fuels when sold to enrolled members of the Eastern Band of Cherokee Indians, their families and households, Indian owned partnerships, firms, associations, corporations or Tribal agencies, within the exterior boundaries of Cherokee Indian trust lands. Double taxation of such persons is not intended.

#### **Sec. 105-22. Gallon tax.**

(a) *Imposed; rate.* There is levied and imposed a tax of \$0.17 per gallon on all motor fuels sold, distributed or used by enrolled members of the Eastern Band of Cherokee Indians, their families and households, Indian owned partnerships, firms, associations, corporations or Tribal agencies within the exterior boundaries of Eastern Cherokee trust lands, plus an additional amount in a variable rate of either \$0.035 per gallon or seven percent of the average wholesale price of motor fuel, as determined semiannually by the North Carolina Department of Revenue from information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale. To facilitate collection of the motor fuel tax, all sales within Eastern Cherokee trust lands shall apply the same rate as shall be determined by the Department of Revenue. Such tax rates shall be effective as of July 1, 1989.

(b) *Payment.* The tax levied under this division shall be paid by distributors to the North Carolina Department of Revenue under existing Department of Revenue procedures, schedules and forms.

#### **Sec. 105-23. Tax on other fuels.**

(a) All enrolled members of the Eastern Band of Cherokee Indians, their families and households, Indian owned partnerships, firms, associations, corporations or Tribal agencies, who own or operate any motor vehicle within Eastern Cherokee trust lands which is propelled by any product not included within the definition of "motor fuels," shall pay a tax at the rate established by section 105-22(a) on such fuel that may be used.

(b) The tax levied with respect to special fuels shall be collected in the manner and from the persons set forth in section 105-22.

#### **Sec. 105-24. Record of transactions.**

Every distributor of motor fuel shall keep a record of all such fuels purchased, received, delivered or used by him in a like manner as is required by North Carolina law. Retail distributors within Eastern Cherokee trust lands shall maintain such records of sales to Indian purchasers as shall be required on forms to be provided by the Tribe.

#### **Sec. 105-25. Penalty for false or fraudulent report in respect to sales.**



Any person who shall willfully make any false or fraudulent report with respect to sales of gasoline or other motor fuels to Indian purchasers shall be guilty of a criminal offense and, upon conviction, shall be fined and imprisoned in the discretion of the court, with each offense not to exceed a fine of \$1,000.00 and imprisonment not to exceed six months. Any person who is not subject to the criminal jurisdiction of the Cherokee Court, who makes any false or fraudulent report of such sales to Indian purchasers shall be subject to a civil fine of up to \$1,000.00 per violation, together with revocation of their Trader's License, with such civil violations enforced by civil suit in the Cherokee Court.

**Sec. 105-26. Rebates.**

The Tribe shall refund taxes to such Indian purchasers for gasoline or special fuel tax as would be eligible for a rebate or refund under North Carolina law, but rebates shall only apply to a specific statutory exemption based on the governmental or charitable nature of the user of such fuel, and refunds of the Tribal tax shall not be authorized solely because of the Indian status of the person seeking a refund. Such refunds or rebates shall be processed on forms designed for such purposes by the North Carolina Department of Revenue, but shall be filed with the Tribal Finance Office. No such refund or rebate shall be paid except after filing of a proper form together with all supporting documentation in the Tribal Finance Office, after being reviewed for legal eligibility by the Tribal Attorney and submitted by him for approval to the Tribal Business Committee and Roads Committee.

**Sec. 105-27. Penalty for false or fraudulent report as basis for rebate or deduction.**

Any person who shall willfully make any false or fraudulent report as the basis for a claim for rebate or deduction under this division shall be guilty of a criminal offense and, upon conviction, shall be fined and imprisoned in the discretion of the Cherokee Court, with the fine for each offense not exceeding \$1,000.00 and imprisonment not to exceed six months, and shall be required to repay the Tribe the full amount of the rebate or deduction wrongfully allowed.

**Sec. 105-28. Application of proceeds of tax.**

The funds received from the gasoline and special fuels taxes shall be for the exclusive use of the construction and maintenance of highways and roadways on Eastern Cherokee trust lands.

**Sec. 105-29. Licenses.**

All distributors, wholesalers and retailers must possess all lawful permits and licenses required by the State of North Carolina prior to the sale or distribution of motor fuel on Eastern Cherokee trust lands and must comply with all North Carolina laws with respect to display, renewal and transfer of such permits and licenses. All distributors, wholesalers and retailers conducting business on Eastern Cherokee trust lands must obtain and hold a valid Trader's License and all other permits or licenses required by the Eastern Band of Cherokee Indians in order to conduct business on trust lands.

(Ord. No. 537, 8-3-1989)

**ARTICLE V. PRIVILEGE TAX**

**Sec. 105-30. Imposed.**

A Privilege Tax is imposed on the operators of hotels, motels, tourist homes, tourist camps, campgrounds, rental cabins, and similar type businesses and persons who rent private residences and cottages to transients. This tax shall not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging or accommodations supplied to the same person for a period of 90 or more continuous days. This tax shall be in addition to any sales tax or levy now or hereafter imposed.

(Ord. No. 317, 1-5-1995)

**Sec. 105-31. Rate.**

(a) The Privilege Tax rate for hotels, motels, tourist homes, residences and cottages shall be \$1.00 for each room for every day or night it is rented.

(b) The Privilege Tax rate for tourist camps and campgrounds shall be \$0.25 for each site for every day or night it is rented.

(Ord. No. 317, 1-5-1995)

**Sec. 105-32. Collection and payment.**

(a) Every person or firm conducting a business on the Cherokee Reservation, subject to the Privilege Tax, shall maintain accurate written records of all room or campsite rentals and shall make such records available for inspection by Tribal finance officers or auditors retained by the Tribe.

(b) Each person or firm conducting a business on the Cherokee Reservation, subject to the Privilege Tax, shall pay the appropriate Privilege Tax on all room or campsite rentals no later than the 15th day of each month for all such rentals in the previous month. A report of the receipts on a form prescribed by the Tribe shall be filed with the payment, and the payment shall be identified by the respective Trader's License number and the name of the business as shown on the license.

(c) Filing shall be considered timely if the reports, together with the Privilege Tax collected, are hand delivered to the Tribe or placed in the United States Postal Service and postmarked no later than the 15th day of the month following the month being reported. If the 15th day of the month falls upon a weekend or legal holiday, reports shall be due in the same manner upon the next business day.

(d) For each report not filed by such date and accompanied by the proper amount of Privilege Tax, there shall be assessed a penalty in the amount of 25 percent of the amount of the Privilege Tax properly due the Tribe, with the penalty to be not less than \$100.00.

(e) Upon a licensee's failure to pay the Privilege Tax and file the required Privilege Tax report by the close of business on the 15th day of the month, there shall be assessed interest at the rate of 12 percent per annum on the amount properly due the Tribe. Interest shall run from the first day of the month in which the Privilege Tax is due through the date of payment. If a licensee's Privilege Tax is returned to the Tribe by the bank, that licensee shall be required to make all future Privilege Tax payments by cash, postal money order or certified bank check. Any returned checks shall be considered nonpayment and shall be subject to the same penalty and interest as set out in this section. Anyone submitting a check that shall returned shall be responsible for reimbursing the Tribal Finance Office for

processing the check within ten days after notification.

(f) In addition to the above penalty and interest, the Superintendent is hereby directed to immediately cancel the Trader's License and close the business of any licensed person or firm failing to file a Privilege Tax Report and pay the Privilege Tax, together with any penalty and interest, within 30 calendar days after the date due on the 15th day of the month. No prior notice shall be required to cancel the Trader's License. If a defaulting licensee has more than one Trader's License, all of his licenses shall be canceled and all of his businesses closed upon such cancellation of a Trader's License, and the matter shall be referred to the United States Attorney or the Tribal Attorney to collect the amount due the Tribe, including the Privilege Tax, penalty and interest.

(Ord. No. 317, 1-5-1995)

**Sec. 105-33. Use of funds.**

(a) All funds collected by the Eastern Band pursuant to this article shall be deposited promptly into a special bank account in the name of the Eastern Band in a bank designated by the Executive Committee, with the funds insured by the Federal Deposit Insurance Corporation.

(b) Fifty percent of the Privilege Tax collected shall be deposited in the Cherokee Tribal Community Services Fund, specifically sanitation to eliminate the solid waste user fee for households. This fund shall be disbursed in accordance with the annual budget adopted by the Tribal Council.

(c) Twenty-five percent of the Privilege Tax collected shall be deposited in the Tribal General Fund. This fund shall be disbursed in accordance with the annual budget adopted by the Tribal Council.

(d) Twenty-five percent of the Privilege Tax collected shall be deposited in the Travel and Promotion Budget. This fund shall be disbursed in accordance with the annual budget adopted by the Tribal Council for the purposes of travel and promotion.

(Ord. No. 317, 1-5-1995)

**ARTICLE VI. ADMINISTRATION**

**Sec. 105-34. Bonding and audit.**

All persons authorized to collect or disburse any funds under this chapter shall furnish a surety bond for the faithful performance of his duties and in such amount as the Tribal Council may designate. The accounts of all receipts and disbursements made under this chapter shall be audited annually by a Certified Public Accountant to be selected by the Tribal Council, with the cost of such audit provided for in this section shall be promptly furnished to the Superintendent, the Principal Chief and Tribal Council.

(Ord. No. 317, 1-5-1995)

**Sec. 105-35. Condition of doing business.**

Compliance with this chapter is hereby made a condition of the use of any land or premises on the Cherokee Indian Reservation. The Secretary of the Interior, Cherokee Agency

Superintendent, Principal Chief and Tribal Council shall require compliance with this chapter as a condition for issuing and maintaining in effect any Trader's License for trading or conducting business on the Cherokee Reservation.

(Ord. No. 317, 1-5-1995)

**Sec. 105-36. Public notice.**

The Tribal Council shall provide notice to the public of the contents and requirements of this chapter by the publication of this chapter, in its entirety, for two consecutive weeks in the Cherokee One Feather, prior to the implementation date of the chapter.

(Ord. No. 317, 1-5-1995)

**Sec. 105-37. Implementation date.**

This chapter and the Cherokee Privilege Tax shall become effective immediately upon passage by the Tribal Council and ratification by the Principal Chief, but the tax shall be imposed and collected commencing on April 1, 1995.

(Ord. No. 317, 1-5-1995)

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## Chapter 108: Social Services

### ARTICLE I. PUBLIC ASSISTANCE PROGRAMS

#### DIVISION 1. GENERAL REQUIREMENTS

**Sec. 108-1. Purpose and scope.**

This article governs the various public assistance programs administered by the Tribe and its entities. It sets forth general eligibility guidelines and the specific requirements for each program. The purpose of this article is to consolidate these eligibility guidelines into one comprehensive law to ensure that they are administered fairly, efficiently, and understandably.

(Ord. No. 293, 7-17-2000)

**Sec. 108-2. Eligibility.**

To be eligible for any of the programs covered by this article, a person must complete an application under section 108-3 and provide background documentation demonstrating that he or she:

(1) Is an enrolled member of the Eastern Band of Cherokee Indians, or is the custodial parent of an enrolled member child and is applying on behalf of that child; and

(2) Meets the financial need requirements and other requirements for the specific program.

(Ord. No. 293, 7-17-2000)

**Sec. 108-3. Application for assistance.**

The Cherokee Center for Family Services shall develop an application for each of the programs covered by this chapter. Every person seeking assistance shall complete the application, with the assistance of Family Services if necessary. The applicant must be the primary source of information regarding his or her circumstances for the purpose of determining eligibility and need. Whenever income limits apply, the applicant must submit proof of income at time of application.

(Ord. No. 293, 7-17-2000)

**Sec. 108-4. Release of information.**

Whenever the Family Services center deems it necessary to justify the assistance requested, the applicant must authorize release of information from other sources. The applicant will be informed of the kinds of information needed and the source to be used. The information obtained will be used only in connection with the application for assistance or services under this chapter.

(Ord. No. 293, 7-17-2000)

**Sec. 108-5. Social services committee.**

Before assistance is provided, each application must be approved by the Family Services Center. Any applicant who believes his or her application was improperly denied, may appear in person before the Social Services Committee to request a review of that denial.

(Ord. No. 293, 7-17-2000)

**Sec. 108-6. Income limits.**

For any program to which income limits apply, the limits shall be the poverty guidelines applicable to the State of Alaska, as established from time to time by the U.S. Department of Health and Human Services and published in the Federal Register.

(Ord. No. 293, 7-17-2000)

**Secs. 108-7--108-9. Reserved.**

**DIVISION 2. SPECIFIC PROGRAMS.**

**Sec. 108-10. Burial assistance.**

(a) *Benefits provided:*

(1) The Eastern Band will pay \$500.00 toward the funeral expenses of an enrolled member; and

(2) In the case of enrolled members who die in another state or a county more than 50 miles from Cherokee, the Eastern Band will pay for transportation expenses of the deceased to be returned to Cherokee in addition to the \$500.00 benefit.

(b) *Income limits:* None.

(c) *Specific eligibility requirements:* The funeral home must send a copy of the death

certificate and burial expenses to the Family Services Center.

(Ord. No. 293, 7-17-2000)

**Sec. 108-11. Burn-out assistance.**

(a) *Benefits provided:*

(1) Financial assistance up to a maximum of \$1,500.00 to assist with expenses related to the burnout of the applicant's principal residence.

(2) Motel room and meals for up to one week, if the family has no other resources.

(b) *Income limits:* None.

(c) *Specific eligibility requirements:*

(1) The applicant must reside within the five county area: Swain, Jackson, Haywood, Graham and Cherokee.

(2) The applicant must apply for assistance within 30 days of a burnout.

(3) The applicant must submit a fire report from the fire department. If the burnout was caused by an intentional fire set by the applicant, then no assistance will be provided.

(Ord. No. 293, 7-17-2000)

**Sec. 108-12. Emergency assistance.**

(a) *Assistance provided:*

(1) Up to a maximum of \$500.00 to meet an emergency need for a person who meets the income guidelines and other requirements.

(2) Up to a maximum \$100.00 food order for a family in which a family member has just died, regardless of the income of that family.

(b) *Income limits:* Income limits do apply, except for assistance provided under subsection (a)(2). See Section 108-6.

(c) *Specific eligibility requirements:*

(1) The applicant must reside within the five-county area: Swain, Jackson, Haywood, Graham and Cherokee.

(2) The applicant must have been denied assistance from other federal, state, county or local programs; and

(3) Applicants requesting assistance for medical necessities must submit appropriate medical documentation to support their request.

(4) Emergency assistance funds will not be provided to cover phone bills, unless a telephone is a documented medical necessity.

(5) Emergency assistance can be provided for power meter deposits, but the power company shall return those deposits to the emergency assistance program after the

applicant has established an adequate payment history.

(6) Emergency assistance funds will not be provided to cover payments for homes, rent, trailer, car, cable TV, ongoing power bills, water bills, or court costs.

(7) Emergency assistance will not be provided if the applicant or a member of the applicant's household has received emergency assistance within the past 12 months. An exception to this requirement can be made, by the Social Services Committee in its discretion, for working applicants who experience an unavoidable personal and/or medical crisis during the course of the 12-month period.

(8) No emergency assistance shall be provided during the two months preceding or the two months following a distribution of per capita net gaming revenues.

(Ord. No. 293, 7-17-2000)

**Sec. 108-13. Fuel or wood assistance.**

(a) *Assistance provided:*

(1) Up to \$500.00 worth of fuel to be used for heating purposes each winter; or

(2) Wood for heating purposes, delivered from mid-September through April 1.

(b) *Income limits:* Income limits do apply. See Section 108-6.

(c) *Specific requirements:*

(1) The applicant must reside within the five-county area: Swain, Jackson, Haywood, Graham and Cherokee.

(2) The applicant must have been denied assistance from other federal, state, county or local programs.

(3) Applicants may receive either fuel or wood, but not both.

(Ord. No. 293, 7-17-2000)

**Sec. 108-14. Home repair program.**

(a) *Assistance provided:* Up to \$1,000.00 in financial assistance to cover home repairs at the principal residence of the applicant.

(b) *Income limits:* Income limits do apply. See Section 108-6.

(c) *Specific eligibility requirements:*

(1) The applicant must reside within the five-county service area: Swain, Jackson, Haywood, Graham and Cherokee.

(2) The applicant must own or be purchasing the home. Rental units, and Qualla Housing Authority homes that are not paid in full, are not eligible.

(3) The applicant must live in the home.

(4) Only repairs to the living quarters will be covered.

(Ord. No. 293, 7-17-2000)

**Sec. 108-15. Philip Raymond Owle, Jr. Foundation (Make-A-Wish Program).**

(a) *Assistance provided:* Funds to meet a special request by a terminally ill person that is not covered by any other program or assistance.

(b) *Income limits:* None.

(c) *Specific eligibility requirements:* The applicant must be terminally ill, and that must be documented in writing by a doctor. This program is generally limited to requests that would otherwise be considered frivolous, to enhance the quality of life for a terminally ill person.

(d) This money will continue to carry over each fiscal year.

(Ord. No. 293, 7-17-2000; Ord. No. 912, 9-13-2001)

**Sec. 108-16. Medical referral assistance (formerly Tribal referral program)**

(a) *Assistance provided:* Assistance for travel and incidental expenses related to travel for medical referrals using the following guidelines:

(1) Gasoline for travel from Qualla Boundary:

- \*8 gallons of gas to Sylva
- \*16 gallons of gas to Asheville
- \*Fill-up for travel past Asheville

(2) Gasoline for travel from Snowbird:

- \*16 gallons of gas to Sylva
- \*24 gallons of gas to Asheville
- \*Fill-up for travel past Asheville

(3) Partial food and lodging money will be provided for travel past Asheville, including the meals of one family member. Because the goal of the program is to offset the cost of medical travel, the program will only pay for a motel room for every other day. Amounts paid are limited to:

- \* \$55.00 a night for motel
- \* \$15.00--\$20.00 for meals per person, but not during hospitalization.

(b) *Income limits:* Income limits do apply. See Section 108-6.

(c) *Specific eligibility requirements:*

(1) The applicant must reside within the five-county area: Swain, Jackson, Haywood, Graham and Cherokee; and

(2) A copy of the IHS referral or a letter from the doctor, appointment slip, and telephone number for the doctor will be required.

(Ord. No. 293, 7-17-2000; Ord. No. 814, 7-12-2001)



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**\*Cross references:** Civil procedure, ch. 1; juvenile code, ch. 7A.

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## **ARTICLE I. IN GENERAL**

### **Sec. 110-1. Definitions.**

For purposes of this chapter, the following terms shall have the following meanings:

- (a) *Construction*. All singular terms shall be construed to include the plural and all pronouns shall be construed to include both genders.
- (b) *Clerk* shall mean the Clerk of the Cherokee Court of Indian Offenses or any successor Cherokee Indian Court.
- (c) *Court* shall mean the Cherokee Court of Indian Offenses or any successor Cherokee Indian Court.
- (d) *Judge* shall mean any judge of the Cherokee Court of Indian Offenses or any successor Cherokee Indian Court.
- (e) *State* shall mean and include the State of North Carolina, its agencies and offices charged with child support enforcement including, but not limited to, the Department of Human Resources and the Department of Social Services.
- (f) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(Ord. No. 515, 6-18-1985)

### **Sec. 110-2. Action for support of minor child.**

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child, and any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all of the above-mentioned parties to provide support, or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be more appropriate in the particular case, and, if appropriate, the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent, or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent the court from ordering the support of a child by an agency of the state or county which agency may be responsible under law for such child.

(c) Payments ordered for the support of a minor child shall be in such amounts as to meet

the reasonable needs of the child for health, education, maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time.

(2) If the child is still in primary or secondary school when he reaches the age of 18, the court in its discretion may order support payments to continue until he graduates, otherwise ceases to attend school on a regular basis, or reaches the age 20, whichever comes first.

(d) Payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper agency, organization or institution, or to the court for the benefit of such child.

(e) Payments for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which payment for the support of a minor child is ordered and alimony or alimony pendente lite is also ordered, the order shall separately state and identify each allowance.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the support of a minor child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) The remedies of attachment and garnishment shall be available in an action for child support payments and for such purposes the child or person bringing an action for child support shall be deemed a creditor of the defendant. Additionally, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.

(3) The remedy of injunction shall be available in actions for child support.

(4) Receivers may be appointed in actions for child support.

(5) A minor child or other person for whose benefits an order for the payment of child support has been entered shall be a creditor pertaining to fraudulent conveyances.

(6) A judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected, but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments.

(7) An order for the periodic payment of child support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal

contempt.

(8) An order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

(9) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(Ord. No. 515, 6-18-1985)

## **ARTICLE II. CHILD SUPPORT ENFORCEMENT BY PUBLIC AGENCIES**

### **Sec. 110-3. Action by designated representatives.**

A state or county agency interested in the paternity or support of a dependent child residing on the Cherokee Indian Reservation may, if the mother, custodian, or guardian of the child neglects to bring such action, institute civil proceedings in the Cherokee Indian Court against the responsible parent of the child or may pursue any action commenced by the mother, custodian or guardian for the maintenance of the child, including an ancillary action to establish paternity, if she fails to prosecute to final judgment. Any legal proceeding instituted under this section may be based upon information and belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish paternity of or to obtain support for the child. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between the husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer, in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue or for whom support is sought, except for perjury committed in this testimony.

(Ord. No. 515, 6-18-1985)

### **Sec. 110-4. Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.**

(a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the state or county agency in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before the court and compelled to disclose such information under oath or may be declared ineligible for public assistance by the state or county agency for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before the court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested, may be found in contempt of court and may be fined not more than \$100.00 or imprisoned not more than six months, or both.

(c) Any parent who is declared ineligible for public assistance by the state or county agency shall have his needs excluded from consideration in determining the amount of the grant.

(Ord. No. 515, 6-18-1985)

### **Sec. 110-5. Acknowledgment of paternity and agreement to support.**

(a) In lieu of or in consideration of any legal proceeding instituted to establish paternity, written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child and filed with and approved by the court shall have the same force and effect as a judgment of the court. A written agreement to support said child by periodic payments, which may include provisions for reimbursement for medical expenses incident to the pregnancy and birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged before the clerk and filed with, and approved by a judge at any time shall have the same force and effect, retroactively or prospectively, in accordance with the terms of said agreement, as an order of support entered by the court and shall be enforceable and subject to the modification in the same manner as provided by law. Payments under such agreement shall be made through the clerk. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmations on the grounds that it may tend to disgrace and incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing of an acknowledgment of paternity with the court, upon the application of any interested party, the court shall cause a summons signed by him or by the clerk to be issued, requiring a putative father to appear in court at a time and place named therein, to show cause why the court should not enter an order for the support of the child by periodic payments. The order may include provisions for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action on the acknowledgment of paternity previously filed with the court. Provided that, in the case of a child, who upon reaching the age of 18 years is mentally or physically incapable of self-support, the putative father shall not be relieved of the duty of support unless said child is a long term patient in a facility owned or operated by the North Carolina Division of Mental Health. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the clerk.

(Ord. No. 515, 6-18-1985)

### **Sec. 110-6. Agreements of support.**

In lieu of or in conclusion of any legal proceeding instituted to obtain support for a dependent child from the responsible parent, a written agreement to support said child by periodic payments executed by the responsible parent when acknowledged before the clerk, filed and approved by a judge shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order for support entered by the court, and shall be enforceable and subject to modification in the same manner and as provided by law. Payments under such agreements shall be made through the clerk.

(Ord. No. 515, 6-18-1985)

### **Sec. 110-7. Filing of affirmations, acknowledgments, agreements, orders, and fees.**

All affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of sections 110-4 and 110-5 shall be filed by the clerk. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be \$10.00.

(Ord. No. 515, 6-18-1985)

**Sec. 110-8. Debt to state created.**

(a) Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing to the State of North Carolina by the responsible parent or parents of the child; provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such order. This liability shall attach only with respect to the period of time during which public assistance is granted, and only if the responsible parents were financially able to furnish support during this period.

(b) The United States, the State of North Carolina and any court within the state which has provided public assistance to, or on behalf of a dependent child, shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

(c) No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance.

(Ord. No. 515, 6-18-1985)

**Sec. 110-9. Garnishment for enforcement of child support obligations.**

(a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to sections 110-4 and 110-5 to provide child support, a judge may enter an order of garnishment whereby no more than 40 percent of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, "disposable earnings" is defined as that part of the compensation paid or payable to the responsible parents for personal services whether denominated as wages, salary, commission, bonus or otherwise (including periodic payments pursuant to a pension or retirement program) which remains after the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to sections 110-4 and 110-5 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief) and the amount sought to be

garnished, not to exceed 40 percent of the responsible parent's monthly disposable earnings. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer. The period for answering or otherwise responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in the Rules of the Cherokee Court, except that the alleged employer third-party garnishee shall have ten days from the date of service of process to answer both the motion to join him as defendant garnishee and the motion for the wage garnishment order.

(c) In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may, in an independent proceeding, petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state the responsible parent is under court order or has entered into a written agreement pursuant to sections 110-4 and 110-5 to provide child support, that said parent is delinquent in such child support or has been erratic in making child support payments, the name and address of the alleged employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based on information and belief), and the amount sought to be garnished, not to exceed 40 percent of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in the Rules of the Cherokee Court. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in the Rules of the Cherokee Court.

(d) Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed 40 percent of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the clerk the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court.

(f) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt.

(Ord. No. 515, 6-18-1985)

#### **Sec. 110-10. Assignment of wages for child support.**

The court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court.

(Ord. No. 515, 6-18-1985)

**Sec. 110-11. Use of unemployment compensation benefits for child support.**

(a) A responsible parent may voluntarily assign unemployment compensation benefits to a child support enforcement agency to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b) Voluntary assignments of unemployment compensation benefits shall remain effective until the Employment Security Commission receives notification from the agency of an express written revocation by the responsible parent.

(c) When a responsible parent declines to execute a voluntary assignment of unemployment compensation benefits, a child support agency may initiate garnishment proceedings. For purposes of such proceedings, "disposable earnings" include unemployment compensation benefits. The third-party garnishee defendant in such proceedings, the Employment Security Commission, is deemed to waive notice and consent to jurisdiction for entry of an appropriate court order.

(Ord. No. 515, 6-18-1985)

**Sec. 110-12. Acceptance of public assistance constitutes assignment of support rights to the state or county.**

By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State of North Carolina or to the county from which such assistance was received, of the right to any child support owed for the child or children up to the amount of public assistance paid. The state or county shall be subrogated to the right of the child or children or the person having custody to initiate a support action and to recover any payments ordered by the court.

(Ord. No. 515, 6-18-1985)

**Sec. 110-13. Duty of county to obtain support.**

Whenever a county Department of Social Services receives an application for public assistance on behalf of a dependent child and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both of the responsible parents or that the responsible parent has failed to provide support for the child, the county department shall take appropriate action to provide the parent responsible supports the child.

(Ord. No. 515, 6-18-1985)

**Sec. 110-14. Duty of judicial officials to assist in obtaining support.**

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to the court for issuance of criminal process against the responsible parent for violation of 25 C.F.R. part 11.64 or other applicable Cherokee criminal provisions. It shall be the duty of the clerk to assist the applicant in the issuance of criminal process, and to supply such necessary child support records as are in his possession to the Tribal prosecutor and the court.

(Ord. No. 515, 6-18-1985)

**Sec. 110-15. Location of absent parent.**

(a) A state or county agency may attempt to locate absent parents for the purpose of establishing paternity of or securing support for dependent children. The agency is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

(b) In order to carry out the responsibilities imposed under this chapter, the department may request information and assistance from any Tribal office. All officers and employees shall cooperate with the agency in the location of parents who have abandoned or deserted children with all pertinent information relative to the location, income, and property of such parents, notwithstanding any provisions of law making such information confidential.

(Ord. No. 515, 6-18-1985)

**ARTICLE III. BLOOD TESTS**

**Sec. 110-16. Competency of blood tests; jury charge; taxing of expenses as costs.**

(a) In the trial of any criminal action or preceding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court, upon motion of the Tribe of the defendant, shall order that the alleged parent defendant, the known natural parent, and the child submit to blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged parent defendant, the known natural parent and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted as evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and entry of an order under the provisions of this section, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged parent is not the natural parent; where upon, the court shall enter the special verdict of not guilty; and

(2) By requiring the Tribe or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon entry of a special verdict by incorporating a finding of parentage or nonparentage, by taxing the expense for blood tests and



comparisons, in addition to any fees for expert witnesses whose testimonies supported the admissibility thereof, as costs.

(b) In the trial of any civil action in which the question of parentage arises, the court before whom the matter may be brought, upon motion of the plaintiff, alleged parent defendant, or other interested party, shall order that the alleged parent defendant, the known natural parent and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed or practicing physician, duly qualified immunologist, duly qualified geneticist, or other qualified person. Upon receipt of a motion and the entry of an order under the provisions of this section, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged parent defendant is not the natural parent.

(2) By requiring the plaintiff, the alleged parent defendant or other interested party requesting blood tests and comparisons pursuant to this section to initially be responsible for any of the expenses thereof and upon the entry of a verdict of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses whose testimonies supported the admissibility thereof, as costs.

(Ord. No. 515, 6-18-1985)

#### **ARTICLE IV. SUPPORT OF CHILDREN BORN OUT OF WEDLOCK**

##### **Sec. 110-17. Civil action to establish paternity.**

(a) The paternity of a child born out of wedlock may be established by civil action. A certified copy of a certificate of birth of the child shall be attached to the complaint. Such establishment of paternity shall not have the effect of legitimization.

(b) Proof of paternity pursuant to his section shall be beyond a reasonable doubt.

(c) No such action shall be commenced nor judgment entered after the death of the putative father.

(Ord. No. 515, 6-18-1985)

##### **Sec. 110-18. Custody and support of illegitimate children when paternity is established.**

Upon and after the establishment of paternity of an illegitimate child pursuant to this chapter, the rights, duties, and obligations of the mother and the father so established, with regard to support and custody of the child, shall be the same, and may be determined and enforced in the same manner, as if the child were the legitimate child of such father and

mother. When paternity has been established, the father becomes responsible for medical expenses incident to the pregnancy and birth of the child.

(Ord. No. 515, 6-18-1985)

**Sec. 110-19. Parties to proceeding.**

Proceedings under this chapter may be brought by:

(a) The mother, the father, the child or the personal representative of the mother or the child.

(b) When the child, or the mother in case of medical expenses, is likely to become a public charge, the Director of Social Services or his designee.

(Ord. No. 515, 6-18-1985)

**Sec. 110-20. Jurisdiction over nonresident or nonpresent persons.**

The act of sexual intercourse within the Cherokee Indian Reservation constitutes sufficient minimum contact with this forum for the purposes of subjecting the person or persons participating therein to the jurisdiction of the Cherokee Court for actions brought under this chapter for paternity and support of any child who may have been conceived as a result of such act.

(Ord. No. 515, 6-18-1985)

**Sec. 110-21. Mother not excused on grounds of self-incrimination: not subject to penalty.**

No mother of an illegitimate child shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a court subpoena, in any suit or proceeding based upon or growing out of the provisions of this chapter but no such mother shall be prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter, or thing as to which in obedience to a subpoena and under oath, she may so testify.

(Ord. No. 515, 6-18-1985)

**Sec. 110-22. Issues and orders.**

(a) The court shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue of whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the particular child who is the object of the proceedings. The court in fixing this sum shall take into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his willingness to cooperate for the welfare of the child. The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. Compliance by the defendant with any or all of the further provisions of this chapter or orders of the court requiring additional acts to be

performed by the defendant shall not be construed to relieve the defendant of his responsibility to pay the sum fixed or any modification or increase thereof.

(b) The court, on motion of the Tribe of the defendant, shall order that the alleged parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged parent defendant, the known natural parent and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when ordered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person.

(Ord. No. 515, 6-18-1985)

**Sec. 110-23. Power of court to furnish state registrar with facts as to paternity of illegitimate children judicially determined.**

Upon the determination of the issues set out in the foregoing section and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his willingness to cooperate, to make and order upon the defendant and to modify such order from time to time as the circumstances of the case may in the judgment of the court require. The order or orders made in this regard may include any or all of the following alternatives:

- (a) Commit the defendant to prison for a term not to exceed six months;
- (b) Suspend sentence and continue the case from term to term;
- (c) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;
- (d) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;
- (e) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this chapter.

(Ord. No. 515, 6-18-1985)

**Sec. 110-24. Clerk of court to furnish state registrar with facts as to paternity of illegitimate children judicially determined.**

Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of court shall notify the state registrar in writing of the name of the person against whom the judgment has been entered, together with the other facts disclosed by the record as it may assist in identifying the record on the birth of the child as it appears in the office of the state registrar. If the judgment is modified or vacated, that fact shall be reported by the clerk to the state registrar in the same manner. Upon receipt of the notification, the state registrar shall record the information upon the birth certificate of the illegitimate child.

(Ord. No. 515, 6-18-1985)

## **ARTICLE V. SOVEREIGN IMMUNITY; JURISDICTION; COSTS**

### **Sec. 110-25. Sovereign immunity.**

(a) Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians nor to be a consent to the exercise of jurisdiction by the courts of the State of North Carolina over Tribal members or other persons residing on the Cherokee Indian Reservation or over disputes, controversies, transactions or events that occur within the Cherokee Indian Reservation.

(b) This chapter confers the consent of the Eastern Band of Cherokee Indians to the State of North Carolina, its agencies or counties, to have standing and jurisdiction to institute actions in the Cherokee Court for purposes of enforcing and collecting child support under Tribal law as set forth within this chapter.

(Ord. No. 515, 6-18-1985)

### **Sec. 110-26. Costs allowed by either party or apportioned in discretion of court.**

(a) Costs in the following matters shall be taxed against either party or apportioned among the parties in the discretion of the court:

(1) In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payments of such costs as maybe incurred by either spouse from the sole and separate estate of either spouse, as may be just.

(2) In proceedings regarding illegitimate children.

(3) In custody proceedings.

(b) The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorney's fees in such amounts as the court shall in its discretion determine and allow.

(Ord. No. 515, 6-18-1985)

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## **Chapter 113: Hunting and Fishing\***

**\*Cross references:** Animals, ch. 19.

### **Sec. 113-1. Fish management program.**

(a) The Cherokee Fish and Game Management Enterprise shall be responsible for managing the Cherokee trout program. The Director of the Enterprise shall be responsible for drafting fishing regulations and establishing fishing license fees which shall become effective when approved by the Council.

(b) The enterprise shall operate the trout fishing program as an economically self-sustaining program with revenues generated from the sale of fishing permits.

(Res. of 11-13-1933; Res. No. 6, 11-6-1934; Res. No. 5, 11-5-1935; Res. Of 11-13-1935; Res. No. 7, 10-11-1938; Res. No. 89, 12-8-1938; Res. No. 135, 7-5-1939; Res. No. A-4, 10-27-1939; Res. No. 34, 10-18-1950; Res. No. 71, 10-25-1950; Res. No. 56, 10-19-1953; Res. No. 39, 12-7-1955; Res. No. 268, 10-23-1959; Res. No. 410, 5-25-1961; Res. No. 685, 12-16-1963; Res. No. 745, 4-7-1964; Res. No. 771, 9-4-1964; Res. No. 773, 9-4-1964; Res. No. 783, 10-7-1964; Res. No. 839, 2-1-1965; Res. No. 840, 2-1-1965; Res. No. 877, 7-1-1965; Res. No. 887, 9-7-1965; Res. No. 978, 10-3-1966; Res. No. 21, 1-5-1967; Res. No. 40, 4-28-1967; Res. No. 16-S, 3-21-1968; Res. No. 152, 10-15-1969; Res. No. 125, 2-17-1972; Res. No. 260, 2-7-1975; Res. No. 47, 11-6-1975; Res. No. 326, 2-3-1977; Res. No. 74, 10-18-1983)

### **Sec. 113-2. Game wardens.**

The game wardens employed by the Cherokee Fish and Game Management Enterprise shall be subject to complete supervision and control of the Enterprise. Such game wardens shall not be deemed a part of or under the supervision or control of the Cherokee Police Department.

(Res. No. 289, 10-10-1984)

### **Sec. 113-3. Trout hatchery.**

The Cherokee Trout Hatchery shall be managed and operated by the Cherokee Fish Management Program as a Tribal enterprise for the purpose of hatching and growing trout for use in stocking the Cherokee trout program and for sale to produce income.

### **Sec. 113-4. License.**

(a) All persons hunting or trapping game on Cherokee Indian trust lands must possess, and have on their person while engaged in hunting or trapping, a valid tribal hunting license. An enrolled member's enrollment card shall serve as his license.

(b) Enrolled members of the Eastern Band of Cherokee Indians shall hunt with an enrollment card from the Eastern band of Cherokee Indians. Those first descendants of enrolled tribal members and a non-enrolled spouse of an enrolled tribal member who reside on Cherokee Indian trust lands may be issued a hunting license by paying a fee of ten (\$10.00) dollars. The license shall be in effect for a period of one year. No other persons shall be eligible to obtain a tribal hunting license.

(c) The tribal hunting license shall authorize the holder to engage in such hunting and trapping as shall be authorized by this chapter and shall include hunting on non-posted areas of Cherokee trust lands, hunting big game and hunting with primitive weapons during special seasons.

(Ord. No. 754, 5-3-2001)

### **Sec. 113-5. Prohibitions.**

(a) It shall be unlawful to hunt or discharge a firearm within 100 yards of any commercial property, elderly housing, hospital, school, housing project, campground, motel, church or

any other property used by the public for public gathering, unless such activity is performed while participating in an organized exercise.

(b) It shall be unlawful to spotlight wild animals or birds.

(c) Migratory game birds may be hunted or taken only during the times and in the manner permitted by Federal regulations.

(d) It shall be unlawful to shoot into a squirrels nest.

(e) It shall be unlawful to cut den trees.

(f) It shall be unlawful to hunt, trap, kill or take any bird of prey, elk, deer or wild turkey.

(g) It shall be unlawful to carry a rifle or shotgun on tribal reserve lands during the closed hunting season unless it shall be unloaded and locked in a case or the trunk of a vehicle.

(h) It shall be unlawful to trap any big game or any other game except a species specified in this Chapter within Cherokee Indian trust lands.

(i) Game birds may be taken one-half hour before sunrise through one-half hour after sunset with shotgun, bow and arrow, dogs or by falconry.

(j) Bear, wild boar, raccoon, opossum, and coyote may be taken day or night.

(k) It shall be unlawful to hunt or trap on the possessory holding of another tribal member without the permission from the possessory holder or their agent.

(l) It shall be unlawful to cut wood or timber, except for campsite use, on tribal reserve land at any time except in those areas designated for cutting by the BIA Forestry department.

(m) It shall be unlawful to hunt any game on Sunday. For purpose of this chapter, Sunday shall be defined as extending from sunrise on Sunday morning until sunrise on the following Monday morning.

(Ord. No. 90, 2-6-1992; Ord. No. 754, 5-3-2001)

### **Sec. 113-6. Trapping.**

(a) It shall be legal to trap mink, muskrat, opossum, raccoon, skunk, weasel, wildcat and fox. It shall be illegal to trap any other species on Cherokee Indian trust lands.

(b) It shall be unlawful to:

(1) Take wild animals by trapping with any steel jaw, leghold or connibear trap, unless it:

a. Has a jaw spread of not more than 7 1/2 inches;

b. Is horizontally offset with closed jaw offset of at least 3/16 inches for a trap with a jaw spread of more than 5 1/2 inches; (this provision shall not apply if the trap is set in water with a quick drown type set);

c. Is smooth edged and without teeth or spikes;

d. Has a weather resistant permanent tag attached legibly giving the trapper's name and address.

(2) Set a steel jaw or leghold trap on dry land with a solid anchor with a trap chain longer than eight inches from the trap to the anchor unless fitted with a shock absorbing device approved by the Wildlife agent.

(3) Remove or disturb any lawfully set trap or remove any fur bearing animal from the trap without permission of the trap owner.

(4) Set or use a trap so that animals or birds will be suspended when caught.

(5) Set or use a hook of any sort to take a wild animal or wild bird.

(6) Every trap set on Cherokee Indian trust lands must be visited daily and any animal caught must be promptly removed.

(7) Baiting shall be allowed only on a hunter's own assigned possessory holding. Baiting shall be allowed on the possessory holding of another only with the owner's permission. Baiting on possessory holdings and tribal reserve shall be permitted from April 1 through August 15. All hunters must notify a tribal wildlife agent of the location of all bait. All baits must be removed from site no later than August 15.

(Ord. No. 754, 5-3-2001)

#### **Sec. 113-7. Big game.**

(a) Big game, for purposes of hunting on Cherokee Indian trust lands, shall be limited to bear, wild boar, raccoon, opossum, fox and coyote.

(b) (1) The season for hunting of boar, fox, raccoon, opossum, and coyote with dogs shall be from September 1 through the last day of February.

(2) The hunting of bear shall be from September 1 through December 31.

(3) The season for hunting of bear or wild boar by still hunting shall be from September 1 through December 30.

(c) The limits for bear which maybe taken or killed shall be one per day, one in possession or two per season. There shall be no limit on wild boar.

(d) It shall be unlawful to take or kill any bear weighing less than 100 pounds or to take or kill a female bear with a cub.

(e) It shall be illegal for any person to sell any organ, skin or body part of any big game animal to any non-member or to any person beyond the boundaries of Cherokee Indian trust lands or to any person who will remove such organ, skin or body part from Cherokee Indian trust lands.

(Ord. No. 754, 5-3-2001)

#### **Sec. 113-8. Small game and other species.**

- (a) There shall be an open season and no bag limit on the hunting of crow.
- (b) There shall be an open season on the hunting of groundhog from September 1 through February 28, with a bag limit of five and a season limit of 50.
- (c) The season for hunting of grouse shall be from October 1 through February 28 with a daily bag limit of three, a possession limit of six and a season bag limit of 30.
- (d) The season for hunting or box trapping of rabbit shall be from November 19 through January 31 with a daily bag limit of five, a possession limit of ten and season bag limit of 75.
- (e) The season for hunting squirrel shall be from October 1 through January 1 with a daily bag limit of eight, a possession limit of 16 and a season bag limit of 75.

(Ord. No. 754, 5-3-2001)

**Sec. 113-9. Weapons.**

- (a) Hunting with shotguns larger than ten gauge is prohibited.
- (b) When hunting migratory game birds, shotguns must be plugged so as to limit their maximum capacity to three shells.
- (c) Hunting with bow and arrow shall be limited to bows having a minimum pull of 45 pounds. Broadhead type arrows with a width of 7/8 inch may be used for small game. Poisonous, drugged, barbed or explosive arrowheads are illegal and shall not be used for taking any game.
- (d) The following species may be hunted or killed with a .22 caliber pistol having a barrel of not less than 5 1/2 inches: rabbit, squirrel, opossum, raccoon, fur bearing animals and other legal non-game animals and birds.
- (e) A hunter or trapper lawfully taking wildlife by another method may use a pistol to dispatch an animal or bird otherwise taken.

(Ord. No. 754, 5-3-2001)

**Sec. 113-10. Dogs.**

- (a) During hunting or training, all dogs must wear a collar with a weather resistant I.D. tag showing the owner's name and address and the date of vaccination on the tag.
- (b) Dog training season for the training of hunting dogs shall be from July 23 through August 23. It shall be unlawful for any person to possess a weapon or climbing gear while running dogs during the training season.
- (c) An individual hunter may only have two dogs loose or running at any given time. No hunting party shall allow more than eight dogs to be loose or running at any given time. Additional dogs must be leashed or caged.
- (d) It shall be unlawful to remove a tracking device or identification collar from a dog.



(Ord. No. 754, 5-3-2001)

**Sec. 113-11. Safety.**

Any person hunting with the use of firearms or bow and arrow, shall wear a cap or hat made of hunter orange material or an outer garment of hunter orange visible from all sides.

(Ord. No. 754, 5-3-2001)

**Sec. 113-12. Penalties.**

(a) Any person subject to the criminal jurisdiction of the Cherokee Court who is convicted of an offense in violation of any provision concerning big game shall be fined not less than \$500.00 nor more than \$1,000.00 for each offense, together with an amount sufficient to provide for restocking of the animal or animals involved in the violation, together with the revocation of all hunting privileges for not less than one nor more than three years.

(b) Any persons subject to the criminal jurisdiction of the Cherokee Court who is convicted of an offense involving small game or other provisions of this Chapter not covered by subsection (a) shall be fined not less than \$50.00 nor more than \$250.00 for each offense. Repeat offenders may also suffer the revocation of all hunting privileges for not less than one nor more than three years.

(c) Any person who is not subject to the criminal jurisdiction of the Cherokee Court who violates any provision of this Chapter shall be subject to a civil penalty and fine of not less than \$500.00 nor more than \$1,000.00 for each violation, together with an amount sufficient to provide for restocking of the animal or animals involved in the violation. Flagrant or intentional violation of the provisions of this Chapter may be referred to federal or state law enforcement officials for prosecution for trespass or other applicable criminal provisions, at the discretion of Cherokee law enforcement personnel.

(d) All fines and restocking fees collected by the Cherokee Court will be returned to the Cherokee Wildlife Agency to be used by the tribe in support of the wildlife program.

(e) Any person convicted of removing or destroying a tracking device or identification collar from a dog shall be subject to the penalties provided in subsection.

(f) Nuisance animals are animals that destroy personal or private property. Persons shall notify Fish and Game to investigate and determine course of action.

(Ord. No. 754, 5-3-2001)

**Sec. 113-13. Enforcement.**

(a) Enforcement of this Chapter shall be by Cherokee Fish and Game Management game wardens and Cherokee police officers, who shall have authority to make arrests and issue civil citations for violations of the provisions of this Chapter.

(b) The penalty for a non-Indian breaking the hunting law shall be immediate and permanent revocation of their hunting privilege.

(Res. Of 11-6-1931; Res. Of 11-8-1933; Res. Of 11-15-1933; Res. Of 10-5-1934; Res. No. 6, 11-6-1934; Res. Of 10-18-1935; Res. Of 11-13-1935; Res. No. 7, 10-11-1938; Res. No. 89, 12-8-1938; Res. No. 135, 7-5-1939; Res. No. A-4, 10-27-1939; Res. No. 34, 10-18-1950; Res. No. 71, 10-25-1950; Res. No. 56, 10-19-1953; Res. No. 39, 12-7-1955; Res. No. 366, 10-12-1960; Res. No. 535, 10-23-1962; Res. No. 40, 4-28-1967; Res. No. 407, 4-8-1971; Res. No. 211, 10-5-1975; Ord. No. 355, 2-7-1991; Ord. No. 462, 6-7-1991; Ord. No. 754, 5-3-2001)

**Sec. 113-14. Effective date.**

Following ratification, this Chapter shall be published in the Cherokee One Feather for two consecutive weeks and shall be effective on the first day of the month following the second publication of this Chapter.

(Ord. No. 754, 5-3-2001)

**Editor's note:** Ord. No. 754, adopted May 3, 2001, amended the Code by repealing former § 113-14, and adding a new § 113-14. Former § 113-14 pertained to the fowl and game reserve, and derived from Resolution No. 518 of February 19, 1987.

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## Chapter 113A: Pollution Control and Environment\*

**\*Cross references:** Zoning, ch. 61; utilities, ch. 62; prohibition of open dumping, ch. 113B; control of open burning, ch. 113C; Cherokee water code, ch. 130; Tribal health enterprise, ch. 130A; roads and highways, ch. 136A; building codes and flood control, ch. 143; wastewater discharge, ch. 145.

### ARTICLE I. IN GENERAL

**Secs. 113A-1--113A-20. Reserved.**

### ARTICLE II. OVERFLIGHTS

**Sec. 113A-21. Purpose.**

This Overflights ordinance was created to protect the lands, sacred sites and the peaceful enjoyment of Tribal habitations of the Eastern Band of Cherokee Indians from the invasion of noise and air pollution and the invasion of individual and collective privacy on the part of commercial air tour sightseeing agencies and other flight operations.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-22. Authority.**

A. Like land, water, and minerals, the airspace of the Eastern Band of Cherokee Indians over and near the Reservation is an important resource for Indian people, and the Indians must use their rights to ensure proper utilization of such a resource. The Eastern Band of Cherokee Indians Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of members of the Tribe. The Tribe believes it is important to establish an Overflight ordinance in order to use the aforesaid laws and powers to protect the health, safety and welfare of the Tribe.

B. Section 23 of the Charter and Governing Document of the Eastern Band of Cherokee Indians gives the Tribe the authority to adopt laws and regulations for the government of the Tribe.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-23. Definitions and applicability.**

*A. Definitions.*

(1) A "commercial air tour" means any sightseeing flight operated under visual flight conditions for compensation or hire, taking into account such factors as the areas where the flights are conducted, the frequency of flights, the routes of flights, and the operator's advertising, solicitation, or holding out to the public as willing to provide a sightseeing flight.

(2) For purposes of this rule, "the Reservation" means any part of the Eastern Band of Cherokee Indian Reservation. This includes fee land parcels within the external boundaries of the Reservation.

(3) A "military flight" refers to any flight on the part of any division of the United States Armed Services. This definition does not include any flight conducted on the part of any military official who is not acting in the course of his/her duties as a member of the Armed Services.

(4) A "medical flight" is any flight used to transport injured or ill individuals or to transport vital organs for the purpose of transplantation.

(5) A "noncommercial flight" refers to any flight that is not operated under visual flight conditions for compensation or hire. This includes, but is not limited to, flights for the purposes of personal recreational use, agricultural use, forestry and military and medical uses.

*B. Applicability.*

(1) This rule applies to all commercial air tours within the exterior boundary of the Reservation who fly below 5,000 feet above ground level (AGL) over the Reservation.

(2) This article does not apply to medical, forestry or military flights.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-24. Air tour licensing requirements.**

A. This section corresponds with 42 C.F.R. part 135 of the Federal Aviation Regulations (FAR) as follows:

(1) All commercial air tour operators operating, over the Eastern Band of Cherokee Reservation must comply with 42 C.F.R. Part 135 of the Federal Aviation Regulations within six months of the ratification of this article.

(2) Notwithstanding paragraph (1) above, an operator may conduct commercial air tours pursuant to 42 C.F.R. Part 91 of the FAR if:

(i) The operator secures a letter of agreement signed by the Tribal Business Committee and the Tribal Council describing the conditions under which such flights will be conducted; and

(ii) The flights are:

(a) Not violative of the Tribe's health or welfare;

(b) Nonintrusive;

(c) Not unreasonably impacting Reservation resources and resident and/or visitor experiences; and

(d) Adhere to the requirements of the Air Tour Management Plan (ATMP); and

(iii) No more than five air tour flights cumulative are provided in any 30-day period.

B. No commercial air tour may operate over the Reservation under paragraph 4(A)(2) until an ATMP for the Reservation has been adopted.

C. Each operator that conducts a commercial air tour over the Reservation shall comply with the operating specifications that are based on the ATMP for the Reservation.

D. No existing commercial air tour operator shall continue to conduct commercial air tours over the Reservation until they comply with all of the terms of this article, or until they reach an agreement with the Tribal Council and the Tribal Business Committee as contemplated by section 113A-28 of this article.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-25. The Office of the Tribal Aviation Commissioner (reserved).**

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-26. Air Tour Management Plan (ATMP).**

A. Visitor activities on the Reservation must occur in such a manner and by such means so as to prevent impairment of Reservation resources and values. Consistent with this requirement and the purposes and values of the Eastern Band of Cherokee Indians, opportunities for all residents and visitors, including air tour passengers and ground based visitors, and the special interests of Native Americans, must be managed in an equitable manner.

B. Following these determinations, the Tribal Council and the Tribal Business Committee will undertake a formal scoping process that enables the agencies and the public to develop a proposed ATMP that responds appropriately to the needs determined by the Tribal Business Committee and the Tribal Council's requirements for the safe and efficient use of the Eastern Band of Cherokee Nation's airspace. This would be done by means of a public scoping session in which the public can comment on the proposed ATMP.

C. An operator who operates or proposes to establish a commercial air tour over the Eastern Band of Cherokee Reservation shall apply to the Tribal Business Committee for the

appropriate operation specifications. The Tribal Business Committee shall promptly notify the Tribal Council that a formal proposal has been submitted to conduct an air tour over the Reservation.

D. The Tribal Business Committee will undertake to establish an ATMP in cooperation with the Tribal Council. The Tribal Council shall have the responsibility for assisting and cooperating in the ATMP's development and in determining the nature and extent of impacts on natural and cultural resources, health and welfare of the Tribe, and resident and/or visitor experience opportunities. The Tribal Business Committee shall be responsible for initiating the ATMP and for ensuring the safe and efficient use of the Eastern Band of Cherokee Nation's airspace and to protect the public health and welfare from aircraft noise and pollution. All of this will be done in recognition of the fact that Native peoples have rights to the protection of their lands and sacred sites, and to the peaceful use and enjoyment of Tribal habitations, without invasion of their individual and collective privacy.

(1) If the Reservation has any bona fide commercial air tours on the date of publication of this overflights article, the Tribal Business Committee, the Tribal Council, affected air tour operators, and other interested parties will begin the ATMP development process upon the adoption of the final ordinance.

(2) If the Reservation has no commercial air tour companies on the date of adoption of this rule, the ATMP development process will begin when an operator first applies to the Tribal Business Committee for approval under section 113A-24 that would permit such operations on the Reservation.

(3) The Tribal Business Committee and the Tribal Council will then undertake a formal scoping process that enables the agencies and the public to decide whether commercial air tour flightseeing is appropriate over a particular area of the Reservation and under what conditions flightseeing may or may not take place.

(4) The Tribal Business Committee and the Tribal Council shall identify other interested parties in the vicinity of the Reservation and shall offer them a role in formulating the ATMP and, to the extent the Tribal Council desires, ensure their effective participation in its development. This may be through the Tribal Business Committee and the Tribal Council cooperating in the development of an Environmental Assessment (EA) or an Environmental Impact Study (EIS) or by means of some other appropriate agreement.

(5) The Tribal Council and the Tribal Business Committee shall not unilaterally decide to ban all commercial air tours over the Reservation before an application is filed and may not authorize air tours except pursuant to this article.

(6) If either the Tribal Council or Tribal Business Committee lacks the funds to conduct the EA/EIS punctually, the operator may pay for it, thereby expediting the process, but only after prior approval to proceed by the Tribal Business Committee and the Tribal Council.

E. In making their decisions, the Tribal Council and the Tribal Business Committee shall take the following general principles into account:

(1) The general health and welfare of the Tribe.

(2) Existing management plans for the Reservation.

(3) In certain areas of the Reservation where "natural quiet" is an appropriate

concern, every ground Reservation resident and/or visitor should have the reasonable opportunity to enjoy unimpaired quiet.

(4) Diversity of resident and/or visitor experience, taking into account the purpose, value, history, and nature of the Reservation.

(5) In certain areas of the Reservation, commercial air tours can provide an appropriate means to experience the Reservation environment from a perspective which can enhance both Reservation residents' and visitors' enjoyment and understanding of natural and cultural resources, and natural processes.

(6) Access to the Reservation, and providing the ability of diverse populations to experience the Reservation.

(7) Ability of ground residents and/or visitors or air tour visitors to obtain a similar experience, including natural quiet, near but not in or over specific areas of the Reservation.

(8) Timing, e.g., restrictions for particular events or occasions, or for seasonal wildlife considerations.

(9) Impacts on cultural events or values, wildlife, wilderness, solitude, and ability to view elements of the Reservation.

(10) Protection of the sanctity of sites sacred to the Eastern Band of Cherokee Indians, and the peaceful enjoyment of Tribal habitations and traditional activities.

(11) Altitude of flights.

(12) Time of occurrence of flights.

(13) Potential contamination that may result from fuel tanks stored on the Reservation for plane refueling.

(14) Other pollution including, but not limited to, air and water pollution.

(15) The frequency of flights and the number of flights per operator.

This list is not to be construed as exhaustive.

F. The Air Tour Management Plan may prohibit, authorize, or authorize, with conditions, commercial air tour flights over the Reservation itself, and to the extent to which other interested, non-Tribal parties were cooperating agencies in the development of the ATMP flights over non-Tribal lands near the Reservation. The limitations or conditions may address:

(1) Potential effects of the ATMP on the general health and welfare of the Tribe.

(2) Air tour routes.

(3) Maximum or minimum altitudes.

(4) Time of day restrictions.

(5) Restrictions for particular events.

- (6) Maximum number of flights per unit of time.
- (7) Intrusions of privacy on Tribal lands.
- (8) Mitigation of noise, visual, pollution, or other impacts.
- (9) Prohibition of flights.
- (10) Potential contamination that may result from leaking fuel tanks stored on the Reservation for plane refueling.
- (11) Other pollution including, but not limited to, air and water pollution.

This list is not to be construed as exhaustive.

G. If restrictions are placed on the maximum number of air tour flights per unit of time, allocation of opportunities to conduct air tours initially would be determined in the public process of the ATMP development. Once the ATMP is adopted and in place, free market mechanisms, buying and selling, would be allowed to allocate these opportunities among interested entities. Such opportunities are not property rights.

H. If:

- (1) The ATMP procedure results in specification of a maximum number of commercial air tour flights on the Reservation;
- (2) The entire number of available flights is allocated to existing operators; and
- (3) A new entrant wants to commence commercial air tour operations on the Reservation;

Then that new entrant must:

- (i) Obtain FAR 42 C.F.R. Part 135 certification from the Tribal Business Committee, including approval of operation specifications that permit the new entrant to operate such commercial air tours from the Reservation; and
- (ii) Purchase from an existing commercial air tour operator on the Reservation all or a portion of the existing operator's authorized commercial air tours on the Reservation.

I. The ATMP should prescribe incentives for the adoption of "quiet aircraft technology" by air tour operators operating on the Reservation. Such incentives might include, for example, preferential routes or times of operations. An ATMP may not favor one operator or kind of aircraft over another on any basis other than demonstrable noise impacts on the ground residence on the Reservation.

J. Both the Tribal Council and Tribal Business Committee may sign and adopt the environmental determination, which may include a Finding of No Significant Impact (FONSI), Environmental Assessment (EA), or Environmental Impact Statement (EIS), and the Record of Decision for the ATMP, should a study be completed.

K. Any person may petition the Tribal Business Committee to initiate an amendment of a completed ATMP. The Tribal Business Committee and the Tribal Council shall consider

proposed amendments to a completed ATMP on a resources-available basis, but must make a good faith effort to consider such proposed amendments at least once every 24 calendar months. At any time, either entity may, but neither entity must, propose and sponsor amendments of a completed ATMP.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-27. Enforcement.**

A. The Tribe will enforce the terms of the ATMP by imposing administrative or civil sanctions against operators who violate the term of their 42 C.F.R. Part 135 operating certificate operation specifications. Sanctions may include the entire range of Tribal enforcement measures, including revocation of the offending operator's permit to conduct tours on the Reservation, a fine, revocation of trader's licenses, or injunctive relief.

B. Any person who violates any of the provisions of this article is subject to the imposition of civil penalties for such unlawful activities. The Business Committee, through the Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for civil penalties, including reasonable attorney's fees and costs. Any civil action concerning such violations shall be heard in Tribal Court, and the alleged violator shall be served and have the opportunity to be heard. Any person who is found by the Tribal Court to have committed the violations, shall be subject to a civil penalty of not less than \$100.00, but not more than \$1,500.00, for each day each violation occurs, including reasonable attorney's fees and costs.

C. The Business Committee, through the Tribe's Attorney General, is authorized to bring a civil action on behalf of the Tribe or its members, in Tribal Court, or any other court of law, against any person who has committed any violation under the provisions, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred, or to be incurred, by the Tribe for cleaning up any hazardous waste, or abating the effects thereof, together with the costs of the suit, including reasonable attorney's fees. The Tribal Council must approve the filing of any civil action for damages before such action is filed.

D. All civil damages shall be paid to the Tribe. This includes any property which is forfeited to the Tribe for payment of civil damages.

E. Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe if the attorney is an employee of the Tribe, or shall otherwise be paid according to the provisions of any retainer agreement. All costs of suit awarded in any civil action shall be paid to the Tribe.

F. Any person who is not a member of the Tribe who is found by the Tribal Court to have committed any violations may be excluded from the Reservation, and may have his or her rights to engage in commercial dealing, or consensual activities, on the Reservation suspended or terminated.

G. Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, including the filing of an action for injunctive relief in Tribal Court, or the filing of a civil action for civil damages, or any other relief in any court of competent jurisdiction.

H. The Eastern Band of Cherokee Court of Indian Offenses shall have jurisdiction to hear all



matters arising from this article.

I. Any Tribal member or other person living on or around the Reservation may refer a complaint of ATMP violations to the Tribal Business Committee for appropriate enforcement actions.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-28. Interim authority.**

A. If there are no bona fide commercial air tour operations on the Reservation as of August 1, 1998, no commercial air tour operations may commence until an ATMP is adopted for the Reservation.

B. If a bona fide commercial air tour operation exists over the Reservation as of August 1, 1998, that operator may continue to operate that existing service, provided the Tribal Council, the Business Committee, and the operator have negotiated an interim operating agreement that embodies the existing service, which includes the following:

- (1) The agreement must protect the general health and welfare of the Tribe; and
- (2) The operator applies for appropriate operation specifications pursuant to this article; and
- (3) The agreement must ensure the protection of Reservation resources and values; and
- (4) The agreement must enhance safe operation of the air tour; and
- (5) The agreement must foster the adoption of quiet technology; and
- (6) The agreement must allow for modifications of the operations based on experience, provided that modification improves protection of Reservation resources and values; and
- (7) An operator providing service pursuant to 42 C.F.R. Part 91 applies for 42 C.F.R. Part 135 authority; and
- (8) The agreement must set out to avoid potential contamination that could result from leaking fuel tanks stored on the Reservation for plane refueling purposes; and
- (9) The agreement must set out to prevent air, water and other potential pollution.

This list is not to be construed as exhaustive.

C. The draft of the Interim Operating Agreement shall be published for public comment.

D. Interim Operating Authority shall extend until adoption of the ATMP at the Reservation, but may be suspended or revoked before then by the Tribal Business Committee if the operator operates in material violation of the procedures and specifications of the Interim Operating Agreement.

E. The parties may agree on any changes to the Interim Operating Authority that otherwise meet the standards of this article.

F. Interim Operating Authorities may not be bought and sold.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-29. Fees.**

To the extent that fees are charged for ground visitors, the ATMP may impose, and commercial air operators will pay, a reasonable fee.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-30. Compliance monitoring.**

The ATMP shall consider whether a system is necessary to monitor compliance or to distinguish between tour and nontour aircraft.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-31. Rules and regulations.**

The Business Committee shall promulgate rules and regulations for the enforcement of this article.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-32. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this article are specifically repealed.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-33. Severability.**

If any section of this article is deemed unconstitutional, the remaining provisions shall have full force and effect.

(Ord. No. 268-A, 8-21-1998)

**Sec. 113A-34. Effective date.**

This article shall be effective 30 days after execution by the Principal Chief.

(Ord. No. 268-A, 8-21-1998)

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## Chapter 113B: Prohibition of Open Dumping\*

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\***Cross references:** Pollution control and environment, ch. 113A.

**Sec. 113B-1. Purpose.**

The purpose of this chapter is to improve environmental health, public sanitation, and general aesthetics by prohibiting the open dumping of solid waste on the lands of the Eastern Band of Cherokee Indians.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-2. Definitions.**

(1) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

(2) *Garbage* shall mean all putrescible wastes, including animal offal and carcasses, and recognizable industrial byproducts, but excluding sewage and human wastes.

(3) *Open dump* shall mean a solid waste disposal site that does not have a permit.

(4) *Person* shall mean an individual, corporation, company, association, partnership, unit of Tribal government, state agency, federal agency, or other legal entity.

(5) *Putrescible* shall mean a solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as commercial kitchen wastes, offal, and carcasses.

(6) *Refuse* shall mean all nonputrescible waste.

(7) *Sludge* shall mean any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

(8) *Solid waste* shall mean any hazardous or nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage and sludge generated by the treatment thereof in sanitary sewage collection, treatment, and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. This term does not include:

(a) Fowl and animal fecal waste; or

(b) Solid or dissolved material in:

(1) Domestic sewage and sludge generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluent to the surface waters;

(2) Irrigation return flows; and

(3) Wastewater discharges and the sludge incidental thereto and generated

by the treatment thereof which are point sources subject to permitting under section 402 of the Federal Water Pollution Control Act; except that sludge meeting the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act shall also be a solid waste for the purposes of this chapter.

(9) *Vector* shall mean a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.

(10) *Erosion control measure, structure, or device* shall mean a physical device constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.

(11) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(12) *Reservation* shall mean all the land within the limits of the Cherokee Indian Reservation, or the Qualla Boundary, established on September 6, 1839, by Executive Order, presently containing 56,573 acres more or less, and under the jurisdiction of the United States government, and including rights-of-way running through the Reservation.

(13) *Director of Sanitation* shall mean the person in charge of the daily operations of the Eastern Band of Cherokee Indians Solid Waste Program.

(Ord. No. 283-A, 11-25-1998)

### **Sec. 113B-3. Applicability.**

This chapter applies to all lands of the Cherokee Indian Reservation located in Swain, Jackson, Haywood, Graham, and Cherokee Counties.

(Ord. No. 283-A, 11-25-1998)

### **Sec. 113B-4. Open dump closure.**

A person operating or having operated an open dump for disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including any corporation, shall immediately close the site in accordance with the following requirements:

(1) At the discretion of the Director of Sanitation, all solid waste will be either removed and placed in an approved solid waste disposal site or facility, or will be compacted and covered in place with one foot or more of suitable compacted earth. A condition of closing the site by compacting and covering the waste in place shall be recordation of the waste disposal location by the possessory holder with the Bureau of Indian Affairs, Branch of Real Property Management.

(2) In addition, at the request of the Director of Sanitation in coordination with Indian Health Service, effective vector control and erosion control measures shall be implemented. The Director of Sanitation may also request means by which to prevent unauthorized entry to the site including gates, chains, berms, fences, signage or other methods deemed necessary.

(3) All steps needed for proper closure will be funded by the person operating the

dump or the possessory holder who holds land on which such an open dump is or has been operating.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-5. Enforcement.**

(1) A person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall immediately notify the Tribe in writing and begin corrective action as listed in section 113B-4 above.

(2) A person, possessory holder, or corporation who gives notice provided for in the preceding paragraph shall be relieved from any civil or criminal penalties listed in section 113B-6 unless the violations continue to occur.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-6. Penalties.**

(1) *Criminal prosecution.* In addition to the closure requirements listed in section 113B-4 above, a person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to imprisonment of 60 days or a fine of \$500.00, or both for each violation. Persons who are not subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to punishment in the North Carolina or United States courts, as appropriate.

(2) *Civil proceedings.* A person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall be subject to the imposition by the Tribal Department of Sanitation of a civil penalty not to exceed \$5,000.00 for each violation. A civil penalty shall be assessed only after the Tribe has given the alleged violator notice of contemplated board action and a hearing, if requested. If the offender fails to pay the civil penalty so assessed within 15 days after written notice of final assessment thereof, then said penalty may be recovered by the Tribe in a civil action in the nature of debt.

(3) *Injunction and abatement.* The violation of this chapter is hereby declared to be a public nuisance, and this chapter may be enforced by injunction and or an Order of Abatement. Such actions may be commenced in the Cherokee Indian Court against all persons subject to its jurisdiction while those not subject to the jurisdiction of the Cherokee Court may be subjected to the jurisdiction of the North Carolina Courts or the United States Courts, as appropriate.

(4) *Exclusion.* Any person who is not a member of the Tribe who is found by the Tribal Court to have committed any violations may be excluded from the Reservation, and may have his or her rights to engage in commercial dealings or consensual activities on the Reservation suspended or terminated.

(5) *Costs.* In addition to the above proceedings, the Director of Sanitation, through the Tribal Attorney General, is authorized to initiate proceedings separately or in connection with either a criminal, civil, injunctive, abatement or exclusion proceeding brought under

this Code. Such proceedings may seek to recover for any damages caused to the lands or other resources of the Eastern Band of Cherokee Indians as the result of any violation of this section. This includes payment of costs of all associated remedial action taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.

(6) *Scope of penalties or damages.* Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, including any relief in any court of competent jurisdiction.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-7. Rules and regulations.**

The Environmental Department shall promulgate rules and regulations for the enforcement of this chapter.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-8. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this chapter are specifically repealed.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-9. Severability.**

If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.

(Ord. No. 283-A, 11-25-1998)

**Sec. 113B-10. Effective date.**

This chapter shall be effective 30 days after execution by the Principal Chief.

(Ord. No. 283-A, 11-25-1998)

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## Chapter 113C: Control of Open Burning\*

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\***Cross references:** Pollution control and environment, ch. 113A.

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**Sec. 113C-1. Purpose.**

The practice of the open burning of combustible materials results in pollution of the air which can detrimentally affect the health and well-being of the human community and the natural resources on which they depend. The purpose of this section is to control the air pollution resultant from the open burning of combustible materials on the Cherokee Indian

Reservation.

(Ord. No. 282-A, 11-5-1998)

**Sec. 113C-2. Definitions.**

For the purpose of this chapter, the following definitions apply:

- (1) *Air curtain burner* shall mean a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) *Dangerous materials* shall mean explosives or containers used in the holding or transporting of explosives.
- (3) *Hazardous waste* shall mean a hazardous waste as defined in 40 C.F.R. § 261.3.
- (4) *Land clearing* shall mean the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way; agricultural, residential, commercial, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property cleanup activities.
- (5) *Log* shall mean any limb or trunk whose diameter exceeds six inches.
- (6) *Nuisance* shall mean causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (7) *Occupied structure* shall mean a building in which people may live or work or one intended for housing farm or other domestic animals.
- (8) *Open burning* shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (9) *Person* shall mean:
  - (a) The person in operational control over the open burning; or
  - (b) The possessory landholder or person in control of the land when he has directly or indirectly allowed the open burning or has benefitted from it.
- (10) *Public pickup* shall mean the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a Tribal or other governmental agency, private company contracted by a governmental agency or municipal service.
- (11) *Public road* shall mean any road that is part of the state highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (12) *RACM* shall mean regulated asbestos containing material as defined in 40 C.F.R. § 61.142.

(13) *Refuse* shall mean any garbage, rubbish, or trade waste.

(14) *Director* shall mean the Director of the Tribal Environmental Office.

(15) *Salvageable items* shall mean any product or material that was first discarded or damaged and then all, or part, was saved for future use, and includes insulated wire, electric motors, and electric transformers.

(16) *Synthetic material* shall mean manmade material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

(17) *Fire chief* shall mean the person authorized by the Tribal government to administer and enforce Tribal fire policies.

(18) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(19) *Tribal Environmental Office* shall mean the staff authorized by the Tribal government to implement and enforce Tribal environmental policies.

(20) *BIA* shall mean the Bureau of Indian Affairs.

(Ord. No. 282-A, 11-5-1998)

### **Sec. 113C-3. Applicability.**

This chapter applies to all operations involving open burning. This chapter does not authorize any open burning which is not allowed by the Bureau of Indian Affairs Branch of Forestry, or affect the authority of the Bureau of Indian Affairs Branch of Forestry to issue or deny permits for open burning in or adjacent to woodlands. The issuance of any open burning permit by the Bureau of Indian Affairs Branch of Forestry or any local government does not relieve any person from the necessity of complying with this chapter or any other air quality rule.

(Ord. No. 282-A, 11-5-1998)

### **Sec. 113C-4. Prohibited generally; exception.**

All open burning is prohibited except open burning allowed under Rule 113C-5, Rule 113C-6, or Rule 113C-7.

(Ord. No. 282-A, 11-5-1998)

### **Sec. 113C-5. Permissible open burning without a permit.**

The following types of open burning are permissible without a permit:

- (1) Open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:



(a) The material burned originates on the premises of private residences and is burned on those premises;

(b) There are no public pickup services available;

(c) Nonvegetative materials, such as household garbage or other manmade materials (i.e., shingles, tires, plastic) are not burned;

(d) The burning is started no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

(e) The burning does not create a nuisance; and

(f) Material is not burned when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;

(2) Campfires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials, refuse or salvageable materials for fuel;

(3) Fires purposely set to forest lands for forest management practices acceptable to the Bureau of Indian Affairs Branch of Forestry;

(4) Fires purposely set to agricultural lands for disease, pest control, and other agricultural practices acceptable to the agriculture extension service;

(5) Fires purposely set for wildlife management practices acceptable to the Tribal Fish and Game Department;

(6) Fires for the disposal of dangerous materials when it is the safest and most practical method of disposal, provided preapproval is obtained from the Tribal Environmental Director in writing;

(7) Fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood if the Tribal Environmental Director grants permission for the burning. The person desiring to do the burning shall document to the Tribal Environmental Director that there is no other practical method of disposal of the waste. Factors that the Tribal Environmental Director shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The Tribal Environmental Director shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this subparagraph shall comply with the conditions of subparagraphs (1)(a) and (1)(b) of this rule;

(8) Fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;

(9) Fires purposely set for the instruction and training of firefighting personnel,

including fires at permanent firefighting training facilities, or when conducted under the supervision of or with the cooperation of one or more of the following agencies:

- (a) The Bureau of Indian Affairs Branch of Forestry;
- (b) The North Carolina Insurance Department;
- (c) North Carolina technical institutes; or
- (d) North Carolina community colleges, including:
  - (I) The North Carolina Fire College; or
  - (II) The North Carolina Rescue College.

(Ord. No. 282-A, 11-5-1998)

**Sec. 113C-6. Permissible open burning with a permit.**

Open burning for land clearing or right-of-way maintenance is permitted if the following conditions are met, and a written permit from the from the Tribal Environmental Office is issued.

(a) Prevailing winds at the time of burning are away from any area, including public road within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;

(b) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The Tribal Environmental Director may grant exceptions to the setback requirements if:

(I) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained before the open burning begins from all residents or owners of dwellings, commercial or institutional establishments, or other occupied structures within 1,000 feet of the open burning site; or

(II) An air curtain burner as described in Rule 113C-7 of this chapter, is utilized at the open burning site;

(III) Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth are not burned. However, kerosene, distillate oil, or diesel fuel may be used to start the fire;

(IV) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the Tribal Environmental Director. The owner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this part; and

(V) No fires are started or vegetation is added to existing fires when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area.

(Ord. No. 282-A, 11-5-1998)

**Sec. 113C-7. Air curtain burners.**

(1) Debris from land clearing or right-of-way maintenance may be carried off-site for open burning to facilities permitted in accordance with this rule for the operation of an air curtain burner. However, no material may be taken off-site for open burning in areas where a permitted air curtain burner is not available.

(2) Air permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months. Operating air permits shall be required for air curtain burners located at permanent sites or where materials are transported in from another site.

(3) Air curtain burners described in paragraph (b) of this rule shall comply with the following conditions and stipulations:

(a) Prevailing winds at the time of burning shall be away from any area, including a public road within 250 feet of the burning, as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;

(b) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;

(c) No fires shall be started or material added to existing fires when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;

(d) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;

(e) Operators of the air curtain burner shall be certified to read visible emissions and the facility shall be tested for visible emissions within 90 days after initial operation;

(f) Air curtain burners shall meet manufacturers specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturers specifications shall be kept on-site and be available for inspection by the Tribal Environmental staff;

(g) Except during startup, visible emissions shall not exceed five percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than five percent but no more than 35 percent shall be allowed for any one-hour period. During startup, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 30 minutes, and there shall be no more than one startup per day;

(h) The owner or operator of an air curtain burner shall not allow ash to build up in

the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall water the ash prior to its removal to prevent the ash from becoming airborne;

(i) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;

(j) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and

(k) The location of the burning at temporary sites shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

(4) Compliance with this rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this chapter or any other air quality rules.

(5) Recordkeeping requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site.

(Ord. No. 282-A, 11-5-1998)

### **Sec. 113C-8. Penalties.**

(1) Individuals or corporations violating the provisions of the above sections of this chapter shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to imprisonment for 60 days or a fine of \$500.00, or both for each violation. Persons who are not subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to punishment in the North Carolina or United States courts, as appropriate.

(2) Any person over whom the Tribal Court can exercise criminal jurisdiction, and who violates any of the provisions shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not less than \$100.00, nor more than \$5,000.00, for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment of not less than one day, nor more than 90 days, for each day each violation occurs. As an alternative sentence, any person found guilty of violating any of the provisions may be placed on probation, and required by the Tribal Court to provide not less than 40 hours, but not more than 200 hours, of community service assisting the solid waste agency, or performing other kinds of community service.

(3) Any person who violates any of the provisions is subject to the imposition of civil penalties for such unlawful activities. The Director of the Solid Waste Agency, through the Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for civil penalties, including reasonable attorney's fees and costs. Any civil action concerning such violations shall be heard in Tribal Court, and the alleged violator shall be served and have the opportunity to be heard. Any person who is found by the Tribal Court to have committed the alleged violations shall be subject to a civil penalty of not less than \$100.00, but not more than \$1,500.00, for each day each violation occurs,

including reasonable attorney's fees and costs.

(4) The Director of the Solid Waste Agency, through the Tribe's Attorney General, is authorized to bring a civil action on behalf of the Tribe or its members, in Tribal Court, or any other court of law, against any person who has committed any violation under the provisions, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred, or to be incurred, by the Tribe for cleaning up any solid or hazardous waste, or abating the effects thereof, together with the costs of the suit, including reasonable attorney's fees. The Tribal Council must approve the filing of any civil action for damages before such action is filed.

(5) Any Tribal law enforcement officer is authorized to seize the property of any person who commits and is charged with the criminal violation of any of the provisions, if such property, while used in the commission of such offenses, is located on the Reservation. If such person is convicted of any offense under the provisions, such seized property shall be forfeited to the Tribe. Such property shall be seized as security for the payment of any civil penalties or damages which may be assessed or imposed, and such property is subject to forfeiture to the Tribe for payment of any civil penalties or damages actually assessed or imposed.

(6) All civil penalties assessed by the Tribal Court shall be paid to the Environmental Protection Board, and shall be retained in a trust fund designated for paying costs of remedial responses to environmental emergencies occurring on the Reservation, and shall only be expended on such purposes. This includes any property which is forfeited to the Tribe for payment of civil penalties.

(7) All civil damages shall be paid to the Tribe. This includes any property which is forfeited to the Tribe for payment of civil damages.

(8) Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe if the attorney is an employee of the Tribe, or shall otherwise be paid according the provisions of any retainer agreement. All costs of suit awarded in any civil action shall be paid to the Tribe.

(9) Any person who is not a member of the Tribe who is found by the Tribal Court to have committed any violations may be excluded from the Reservation, and may have his or her rights to engage in commercial dealings, or consensual activities, on the Reservation suspended or terminated.

(10) Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, including the filing of an action for injunctive relief in Tribal Court, or the filing of a civil action for civil damages, or any other relief in any court of competent jurisdiction.

(Ord. No. 282-A, 11-5-1998)

#### **Sec. 113C-9. Rules and regulations.**

The Lands Committee shall promulgate rules and regulations for the enforcement of this chapter.

(Ord. No. 282-A, 11-5-1998)

#### **Sec. 113C-10. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this chapter are specifically repealed.

(Ord. No. 282-A, 11-5-1998)

**Sec. 113C-11. Severability.**

If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.

(Ord. No. 282-A, 11-5-1998)

**Sec. 113C-12. Effective date.**

This chapter shall be effective 30 days after execution by the Principal Chief.

(Ord. No. 282-A, 11-5-1998)

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## Chapter 113D: Soil Erosion and Sedimentation Control

### ARTICLE I. GENERAL PROVISIONS

**Sec. 113D-1. Title.**

This chapter may be cited as the Eastern Band of Cherokee Soil Erosion and Sedimentation Control Law.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-2. Severability.**

If any section of this chapter is held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-3. Effective date.**

This chapter shall take effect and be enforced on June 1, 2001.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-4. Purposes.**

This chapter is adopted for the purposes of:

(1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(2) Establishing procedures through which these purposes can be fulfilled.

(Ord. No. 564, 2-26-2001)

## **Sec. 113D-5. Definitions.**

As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

*Accelerated erosion:* Any increase over the rate of natural erosion as a result of land-disturbing activity.

*Access and haul roads:* All roads either permanent or those to be obliterated after completion of land-disturbing activities, used for private travel, construction vehicles, earth-moving or heavy equipment or other machinery and constructed and used in conjunction with land-disturbing activities which require a permit under this chapter.

*Adequate erosion control measure, structure, or device:* One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

*Affiliate:* A person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

*Approved sediment control plan:* A written course of action including maps, drawings, calculations or assumptions, found by the administrator or other duly appointed agent to satisfy all requirements of this chapter which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off-site sediment damage associated with a land-disturbing activity.

*Applicant:* Any person, whether the person is financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the environmental planning office or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the environmental review board a motion to appeal a decision by the environmental planning office or his agent as contained in this chapter.

*Being conducted:* A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

*Borrow:* Fill material which is required for on-site construction and is obtained from other locations.

*Buffer zone:* The strip of land adjacent to a lake or natural watercourse.

*Completion of construction or development:* No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

*Continuing violation:* Those violations of this chapter or an approved sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this chapter.

*Director:* The director of environmental planning for the Eastern Band of Cherokee Indians.

*Discharge point:* The point at which runoff leaves a tract of land.

*District:* The county soil and water conservation district, created pursuant to Chapter 139, North Carolina General Statutes, which encompasses the Tribal land in question.

*Disturbed areas:* Those areas where the ground cover on or above the soil surface is removed, including trees, grasses or pavements or other surfaces either natural or manmade.

*Energy dissipater:* A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

*Erosion:* The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

*Final objective:* The type of structure or use resulting from the land-disturbing activity.

*Ground cover:* Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

*Lake or natural watercourse:* Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

*Land-disturbing activity:* Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

*Local government:* The Eastern Band of Cherokee Indians.

*Natural erosion:* The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

*Off-site sediment damage:* The removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any land, public or private not owned by the person responsible for the land-disturbing activity.

*Parent:* An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

*Person:* Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

*Person conducting land-disturbing activity:* Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.



*Person responsible for the violation:* As used in this chapter:

(1) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

(2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act as imposes a duty upon him.

*Phase of grading:* One of two types of grading, rough or fine.

*Plan:* An erosion and sedimentation control plan.

*Sediment:* Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

*Sedimentation:* The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

*Siltation:* Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

*Stabilize:* To establish groundcover sufficient and adequate to prevent erosion. Temporary stabilization measures are those that are sufficient to prevent erosion until the appropriate time for establishing permanent groundcover.

*Storm drainage facilities:* The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

*Stormwater runoff:* The direct runoff of water resulting from precipitation in any form.

*Subsidiary:* An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

*Ten-year storm:* The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

*Tract:* All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

*25-year storm:* The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

*Uncovered:* The removal of ground cover from, on, or above the soil surface.

*Undertaken:* The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

*Velocity:* The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

*Waste:* Surplus materials resulting from on-site construction and disposed of at other locations.

*Waste areas:* Areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

*Working days:* Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-6. Exclusions.**

(a) This chapter shall not apply to the following land-disturbing activities:

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals, including, but not limited to:

- a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts;
- b. Dairy animals and dairy products;
- c. Poultry and poultry products;
- d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;
- e. Bees and apiary products;
- f. Fur-producing animals;
- g. Ornamental horticulture, including the raising of shrubs, Christmas trees, and other nursery operations; and
- h. Trout production and other aquaculture activities;

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with best management practices the provisions of this chapter shall apply to such activity and any related

land-disturbing activity on the tract;

(3) Activities for which a permit is required under federal mining laws; or

(4) For the duration of an emergency, activities essential to protect human life.

(Ord. No. 564, 2-26-2001)

**Secs. 113D-7--113D-19. Reserved.**

## **ARTICLE II. EROSION AND SEDIMENTATION CONTROL PLANS AND NOTIFICATION PROCEDURES**

**Sec. 113D-20. Plan required.**

(a) No person shall initiate any land-disturbing activity uncovering one acre or more (43,560 square feet) without having an erosion and sedimentation control plan approved by the Tribe.

(b) An erosion and sedimentation control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising of one acre or more, if one acre or more is to be uncovered. The plan shall be filed with the environmental planning office at least 30 calendar days prior to the commencement of the proposed activity.

(c) Persons conducting land-disturbing activity on a tract which covers one acre or more shall file three copies of the erosion control plan with the environmental planning office at least 30 calendar days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the environmental planning office, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the environmental planning office will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the environmental planning office.

(d) The environmental planning office will review each complete plan submitted to them and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Incomplete plans shall be returned for completion. The 30-day review period will not begin until all required items are submitted. The environmental planning office shall have five business days to check the plans for completeness. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 calendar days of receipt shall be deemed approved. Disapproval of a plan must specifically state in writing the reasons for disapproval. The environmental planning office must approve, approve with modifications, or disapprove a revised plan within 15 calendar days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the environmental planning office determines that the plan is inadequate to meet the requirements of this chapter, the county may require any revision of the plan that is necessary to comply with this chapter. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 calendar days of receipt shall be deemed approval of the plan. The environmental planning office shall establish an expiration date of three years for erosion control plans approved under this chapter.

(e) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the environmental planning office. A professional is not required to design plans.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-21. Financial responsibility statement.**

Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter.

(Ord. No. 564, 2-26-2001)

**Sec. 133D-22. Coordination with the National Environmental Policy Act (NEPA).**

Any plan submitted for a land-disturbing activity for which an environmental document is required by the National Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Tribe shall promptly notify the person submitting the plan that the 30-calendar-day time limit for review of the plan pursuant to subsection 113D-20(d) of this chapter shall not begin until a complete environmental document is available for review.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-23. Plan disapproval.**

(a) The environmental planning office may disapprove an erosion control plan upon a finding that an applicant, or a parent company, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the environmental planning office pursuant to the Act and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local chapter adopted pursuant to the Act by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant any criminal provision of a local chapter adopted pursuant to the Act or;
- (4) Has failed to substantially comply with the provisions of this chapter, or rules or regulations adopted pursuant to this chapter. For purposes of this section an

applicant's record may be considered for only the two years prior to the application date.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-24. Plan amendment.**

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the environmental planning office, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-25. Failure to file a plan.**

Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-26. Compliance with water quality laws.**

The approval of an erosion control plan is conditioned on the applicant's compliance with federal and Tribal water quality laws, regulations, and rules.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-27. Plans involving ditches to lower the water table.**

A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the environmental planning office and the United States Army Corps of Engineers.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-28. Plan approval or disapproval.**

(a) If the submitted plan is approved by the environmental planning office, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.

(b) An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives, or other requirements of this chapter:

(1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

(2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted

to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(6) *Manage storm water runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-29. Notification procedures for land disturbing activity not meeting the erosion control plan requirements.**

(a) In cases where less than one acre will be disturbed, applicants for building permits on any construction will be asked to complete a form that explains how erosion control will be managed during construction. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form. No fee is required for completing the form.

(b) Should the applicant fail to fill out the notification form in advance of clearing land, give false or misleading information on the form or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in section 113D-73.

(Ord. No. 564, 2-26-2001)

**ARTICLE III. PERMITS**

**Sec. 113D-30. Permit required.**

(a) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefore from the environmental planning office, except that no permit shall be required for any land-disturbing activity:

(1) For the purpose of fighting fires;

(2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or

(3) That does not exceed 43,560 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(b) Tribal council hereby establishes a \$50.00 per acre fee for sediment and erosion control permits for commercial sites. If a person initiates land-disturbing activity for which a permit is required without obtaining such a permit, the environmental planning office is authorized

to double the regular permit fee.

(c) Requests for a permit to conduct land-disturbing activities shall contain a sediment control plan.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-31. Permit applications.**

(a) Clear lines of communication between the environmental planning office, the person financially responsible, and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this chapter, but to avoid costly delays and resubmittal of applications by the developer as well. It is recommended that prior to submitting a formal application for a permit, persons conducting land-disturbing activities notify the environmental planning office and briefly describe the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities and request application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the environmental planning office. A permit will not be issued based upon a notification of intent.

(b) Forms, application requirements, and plan assistance are available upon request from the environmental planning office. All requests for information, submission of plans and applications, and requests for assistance will be handled through the office of the environmental planning office.

(c) The environmental planning office shall review the application and accompanying plan for completeness and compliance with this chapter. If the submitted plan is approved by the environmental planning office, a permit to conduct land-disturbing activities shall be issued in the name of the applicant. Permits are valid for three years after they are issued; construction shall begin within the three-year time period or the permit shall expire and a new permit shall be required.

(d) Permits shall be prominently displayed on the site until the project is certified complete by the environmental planning office. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-32. Surety.**

(a) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the environmental planning office, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the Tribal attorney general, in an amount of not less than \$500.00 nor more than \$5,000.00 per acre of disturbed area as set forth in the approved sediment control plan to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the environmental planning office as discussed in the following subsections.

(1) Land-disturbing activities not in compliance with this chapter or an approved sediment control plan for 90 working days after notice of violation is received through registered or certified mail or other means detailing specific items of

violation, shall be subject to forfeiture of all applicable surety.

(2) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines or other requirements of this chapter.

(3) Forfeited surety shall be used to establish erosion control structures or ground cover in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity.

(4) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the environmental planning office who shall perform an inspection of the improvements. If the conditions of this chapter are met, within 30 calendar days of the date of notification of completion the Tribe shall authorize in writing the release of applicable surety.

(Ord. No. 564, 2-26-2001)

**Secs. 113D-33--113D-39. Reserved.**

**ARTICLE IV. EROSION CONTROL REQUIREMENTS**

**Sec. 113D-40. Responsibilities of persons conducting land-disturbing activities.**

(a) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.

(b) It is the responsibility of the person conducting the land-disturbing activity to apply to the environmental planning office or his agent for any permit required and receive said permit contingent upon an approved erosion and sediment control plan, before beginning any land-disturbing activity which uncovers one acre or more.

(c) If any land-disturbing activity requires a permit as defined in this chapter, a building permit shall not be issued, until a plan has been approved by the environmental planning office or the proper notification form filled out. The building permit may be applied for at the same time as the permit or notification form required by this chapter.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-41. Protection of property.**

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-42. More restrictive rules shall apply.**

Whenever conflicts exist between federal or Tribal laws, ordinance, or rules, the more restrictive provision shall apply.



(Ord. No. 564, 2-26-2001)

**Sec. 113D-43. Access and haul roads.**

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-44. Operations in lakes or natural watercourses.**

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. The applicant shall consult with the US Army Corps of Engineers and the Tribe to determine if a permit is required before undertaking any land-disturbing activity in or near a watercourse, wetlands or swamp.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-45. Borrow and fill areas.**

When the person conducting the land-disturbing activity is also the person conducting the borrow fill activity, areas from which borrow is obtained or fill is deposited shall be considered as part of the land-disturbing activity. When the person conducting the land-disturbing activity is not the person obtaining the borrow or depositing the fill, these areas shall be considered a separate land-disturbing activity.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-46. Additional measures.**

Whenever the Tribe determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-47. Restoration of areas affected by failure to comply.**

The Tribe may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity as required to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This includes damage to properties adjacent to, nearby or downstream of the permitted property that are not owned by the person engaging in the land-disturbing activity. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

(Ord. No. 564, 2-26-2001)

**Secs. 113D-48, 113D-49. Reserved.**

**ARTICLE V. STANDARDS FOR LAND-DISTURBING ACTIVITY**

**Sec. 113D-50. Mandatory standards.**

No land-disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

(1) *Buffer zone.*

a. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Tribe approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

b. Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

c. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

d. Where a temporary and minimal disturbance is permitted as an exception by (1)a. of this section, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the director of environmental planning.

e. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations.

(2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract

comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 45 calendar days following completion of construction or development whichever period is shorter.

(4) *Plan approval.* No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless an erosion and sedimentation control plan for such activity is filed 30 or more calendar days prior to initiating the activity and approved by the Tribe.

(Ord. No. 564, 2-26-2001)

### **Sec. 113D-51. Design and performance standards.**

Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(Ord. No. 564, 2-26-2001)

### **Sec. 113D-52. Storm water outlet protection.**

(a) Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse at the discharge point does not exceed the greater of:

- (1) The velocity established by the table in subsection (d) of this section; or
- (2) The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

If the foregoing requirements cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the pre-development velocity by ten percent.

(b) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The environmental planning office recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or

roughened swales and waterways in lieu of closed drains and high velocity paved sections;

(3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(c) *Exceptions.* This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(d) The following is a table for maximum permissible velocity for storm water discharges:

Material	Maximum Permissible Velocities	
	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded loam to cobbles (noncolloidal)	5.0	1.5
Graded silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

*Source.* Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(Ord. No. 564, 2-26-2001)

### **Sec. 113D-53. Responsibility for maintenance.**

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Ord. No. 564, 2-26-2001)

### **Secs. 113D-54--113D-59. Reserved.**

## **ARTICLE VI. APPEALS**

### **Sec. 113D-60. Environmental review board established.**

(a) The environmental review board is hereby established to hear these appeals pursuant to this chapter and other environmental laws of the Eastern Band of Cherokee Indians as designated by the Tribal council.

(b) The environmental review board shall be composed of two Tribal council members appointed by Tribal council chairman and one local qualified person appointed by the Principal Chief.

(c) The environmental review board is authorized and directed to establish procedures necessary for fair and careful review of appeals related to the Tribe's environmental laws.

(d) The Tribe's legal division shall advise and assist the environmental review board in any matters that shall come before it.

(Ord. No. 564, 2-26-2001)

### **Sec. 113D-61. Appeals.**

If an erosion control plan is disapproved or modified, the environmental planning office shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the environmental planning office disapproval of the plan to the environmental review board.

(1) The appeal shall not be considered unless a written demand for a hearing is filed with the environmental planning office within 15 calendar days after receipt of written notice of disapproval or modifications.

(2) Hearings held pursuant to this section shall be conducted by the environmental review board within 30 calendar days after the date of the appeal or request for a hearing. The environmental planning office shall participate in the hearing to explain the basis for its decision. The appealing party shall participate in the hearing to explain the basis for his or her appeal of that decision.

(3) If the environmental review board upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, that decision shall be final for the Eastern Band of Cherokee.

(Ord. No. 564, 2-26-2001)

### **Secs. 113D-62--113D-69. Reserved.**

## **ARTICLE VII. ENFORCEMENT**

### **Sec. 113D-70. Inspections and investigations.**

(a) The environmental planning office, agents, officials, or other qualified persons authorized by the environmental planning office will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the

plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.

(b) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the environmental planning office while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(c) If it is determined that a person engaged in land-disturbing activity has failed to comply with this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.

(d) The environmental planning office shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

(e) The environmental planning office shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(Ord. No. 564, 2-26-2001)

### **Sec. 113D-71. Stop-work orders.**

(a) The environmental planning office may issue a stop-work order if he or she finds that a land-disturbing activity is being conducted in violation of this article or of any rule adopted or order issued pursuant to this article, that the violation is knowing and willful, and that either:

(1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent;

(2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent; or

(3) The land-disturbing activity is being conducted without an approved plan.

(b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the environmental planning office pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials, which do not contribute to the violation, may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.

(c) The stop-work order shall be served by the Cherokee Police or by some other person

duly authorized by law to serve process as provided by Tribal law, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity; the environmental planning office shall forward a copy of the order to the person financially responsible. The Cherokee Police or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The environmental planning office shall also deliver a copy of the stop-work order to any person that the environmental planning office has reason to believe may be responsible for the violation.

(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in section 113D-73.

(e) The environmental planning office shall designate an employee to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the environmental planning office, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The environmental planning office shall rescind a stop-work order that is issued in error.

(f) The issuance of a stop-work order shall be subject to appeal to the environmental review board pursuant to article VI of this chapter.

(Ord. No. 564, 2-26-2001)

#### **Sec. 113D-72. Injunctive relief.**

(a) Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the Eastern Band of Cherokee Indians, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Cherokee court.

(b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

(Ord. No. 564, 2-26-2001)

#### **Sec. 113D-73. Civil penalties and restitution.**

The environmental planning office may order and impose civil penalties upon any person for violations of this chapter. Civil penalties shall not exceed \$1,000.00 per violation. All civil penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. The environmental planning office may also order restitution to any person injured by violations of this chapter. The decision to impose a civil penalty or order of restitution shall be subject to appeal to the environmental review board pursuant to article VI of this chapter. If a civil penalty or restitution is not paid within 30 days of the order, or within 30

days after a final appeal decision by the environmental review board, then, in addition to other remedies provided by this chapter, the Eastern Band of Cherokee Indians may seek enforcement of the order in the Cherokee court.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-74. Suspension or revocation of trader's permit or business lease.**

The business committee may suspend or revoke any person's trader's permit and/or business lease if, after notice and opportunity for hearing, the business committee issues written findings that a business has repeatedly violated this chapter. The business committee may not suspend or revoke any trader's permit or business lease unless the person has been given 30-days' notice and an opportunity for hearing.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-75. Criminal penalty.**

A violation of this chapter is a misdemeanor, punishable in the Cherokee court by imprisonment of not more than one year and fine of not more than \$5,000.00.

(Ord. No. 564, 2-26-2001)

**Sec. 113D-76. Sovereign immunity.**

Nothing in this chapter shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians

(Ord. No. 564, 2-26-2001)

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## Chapter 113E: Water Quality Code for Surface Waters

**Sec. 113E-1. Title.**

This chapter may be cited as the Eastern Band of Cherokee Indians Water Quality Code for Surface Waters.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-2. Severability.**

If any section of this chapter is held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-3. Effective Date.**

This chapter shall take effect and be enforced on March 30, 2001.

(Ord. No. 668, 5-3-2001)



#### **Sec. 113E-4. Purposes.**

The purposes of these standards include the following:

- (a) To restore, maintain, and enhance the existing water quality
- (b) To protect human health, social welfare, aquatic life, wildlife and the economic well-being of the Eastern Band of Cherokee
- (c) To assure that no contaminants are discharged into Eastern Cherokee waters from either point sources or non-point sources without being given the degree of treatment or control necessary to prevent pollution, and
- (d) To set numeric and narrative standards that provide a legal basis for water pollution control.

(Ord. No. 668, 5-3-2001)

#### **Sec. 113E-5. Use of standards.**

(a) No person or business operating within the territory of the Eastern Band of Cherokee Indians shall discharge contaminants from a point source in such a way that Cherokee surface waters are contaminated in violation of this Chapter. The provisions of this Chapter shall apply to all new and existing point source discharges. All discharges of municipal sewage, industrial waste, or other wastes shall receive the greatest degree of effluent pollutant reduction achievable through application of stringent effluent limitations and a schedule of compliance, including, if necessary, a standard permitting no discharge of pollutants.

(b) To the full extent permitted by federal law, the United States Environmental Protection Agency (EPA) shall use these standards for establishing any water quality based national pollutant discharge elimination permits (NPDES) for point sources on the Eastern Band of Cherokee Indians Reservation.

(c) The Eastern Band of Cherokee Indians will use these standards for purposes of prioritizing water and sewer improvements needed to prevent non-point source discharges from contaminating Cherokee surface waters in violation of these standards. All cost effective and reasonable best management practices for non-point source control shall be implemented by the Eastern Band of Cherokee Indians as expeditiously as possible.

(d) In implementing the provisions of these rules as they relate to interstate streams, the Eastern Band of Cherokee Indians will comply with the Federal Water Pollution Control Act, as amended.

(e) These water quality standards shall be reviewed and or revised as needed, but at least every three years.

(Ord. No. 668, 5-3-2001)

#### **Sec. 113E-6. Definitions.**

(a) *Acute toxicity* means a relatively short-term lethal or other adverse effect to a test organism caused by pollutants, usually occurring within four days for fish and large

invertebrates and shorter times for smaller organisms.

(b) *Background conditions* means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. The background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(c) *Ceremonial and religious water use* means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(d) *Cherokee surface waters* means all water above the surface of the ground within the exterior boundaries of the Qualla Boundary and all other lands held in trust for or owned by the Eastern Band of Cherokee, including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(e) *Chronic toxicity* means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time. Refer to EPA approved species as listed in Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA/600/4-91/002 and Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, EPA/600/4-90/027F.

(f) *EPA* means the United States Environmental Protection Agency.

(g) *Geometric mean* means the  $n$ th root of a product of " $n$ " factors.

(h) *Mean retention time* means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(i) *Mixing zone or dilution zone* means a limited area or volume of water where initial dilution of a discharge takes place and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(j) *NPDES* means a national pollutant discharge elimination permit issued by the EPA.

(k) *pH* means the negative logarithm of hydrogen ion concentration.

(l) *Primary contact recreation* means activities in which a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(m) *Regional administrator* means the Administrator of Environmental Protection Agency's Region 4 Office.

(n) *Secondary contact recreation* means activities in which a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(o) *Temperature* means water temperature expressed in degrees Celsius (C) or Fahrenheit (F).

(p) *Total dissolved solids* means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 degrees Celsius. This is considered to be a measure of the dissolved content of the water.

(q) *Toxicity* means acute and or chronic toxicity.

(r) *Toxic substance or toxicant* means any substance or combination of substances which after discharge and upon exposure ingestion, inhalation, or assimilation into any organism either through the environment or indirectly through food chains has the potential to produce adverse health effects.

(s) *Tribal resource waters* means waters designated by the Eastern Band of Cherokee Indians that are of such exceptional recreational or ecological significance that water quality should be maintained and protected under all circumstances, other than temporary lowering and the lowering allowed under Section 316 of the Federal Clean Water Act [codified at 33 USC 1251, et seq., with implementing regulations at 40 CFR Part 131].

(t) *Trout waters* are those waters which have conditions which will sustain and allow for the propagation and protection of fish on a year round basis. Trout waters are designated as "cold water aquatic habitat" pursuant to section 113E-8, Cherokee Code.

(u) *Turbidity* means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(v) *Wildlife habitat* means the waters and surrounding land areas of the reservation used by fish, or other aquatic life and wildlife at any stage of life.

(Ord. No. 668, 5-3-2001)

### **Sec. 113E-7. Antidegradation**

(a) Existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of waters exceeds levels established by this Chapter as necessary to support the uses designated in this Chapter, including propagation of fish, shellfish, and wildlife, and recreation in and on the water, the existing quality shall be maintained and protected. The Tribal Council shall have the authority to waive the provisions of this section upon an affirmative showing, after consultation with the EPA and a full public hearing on the question, that allowing lower water quality is necessary to accomplish important economic or social development in the area in which the waters are located. Any lower water quality allowed will not interfere with or injure any existing uses made of such waters. In no case, may water quality be degraded below the base levels set for the protection of the surface water uses as set forth in this Chapter, unless a variance is granted pursuant to Section 113E-14, Cherokee Code.

(c) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

(d) Where high quality waters are designated as Tribal Resource Waters, the existing water

quality shall be maintained and protected, and no degradation shall be allowed.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-8. Designation of uses.**

(a) The uses of Cherokee surface waters are as follows:

<i>Designation</i>	<i>Use</i>
1	Primary contact recreation; ceremonial and religious use
2	Public water supply; secondary contact recreation
3	Fishing and wildlife
3a	Warm water aquatic habitat
3b	Cold water aquatic habitat (trout waters)
4	Agricultural water supply
5	Industrial water supply
TRW	Tribal Resource Waters

(b) Any Cherokee surface waters not specifically listed in this section are hereby designated for Use 2, public water supply and secondary contact recreation and Use 3, Fishing and Wildlife.

(c) These surface waters are hereby designated for the following listed uses. Additionally, use 3b, cold water aquatic habitat, applies to all streams listed in these communities.

*Big Cove Community*

Ravenfork	1
Straightfork	1
Galamore	1 (TRW)
Bunches Creek	1
Ace Creek	1 (TRW)
Stillwell Creek	1 (TRW)
Tooni Branch	1 (TRW)
Indian Creek	1
Heintooga Creek	1 (TRW)
Selma Creek	1 (TRW)
Spread Branch	1 (TRW)
Moody Branch	1 (TRW)
Board Cove Branch	1 (TRW)
Pigeon Creek	1 (TRW)
Mingo Creek	1 (TRW)
Soggy Hill Branch	2
Grassy Branch	2
Lambert Branch	2
Tow String	1
Becks Branch	1 (TRW)
Sherrill Cove Branch	1 (TRW)

*Big Cove Community*

Flat Bald Branch	1 (TRW)
Madcap Branch	1 (TRW)
Redman Creek	1 (TRW)

*Seco Community*

Wolf Laurel Branch	1 (TRW)
Rough Branch	2
Jenkins Creek	1
Washington Creek	1
Pheasant Creek	1
Soco Creek	1
Long Branch	1
Wrights Creek	1
Hornbuckle Creek	1
Polecat Branch	1 (TRW)
Blackrock Creek	1
Shut-in Creek	1
Bigwitch Creek	1
Maney Branch	1
Bradley Branch	1
Mink Branch	2
Swimmer Branch	1
Tooni Branch	1
Stillwell Branch	2

*Soco Community*

Madcap Branch	1 (TRW)
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*Birdtown Community*

Oconaluftee River	1
Adams Creek	2
Goose Creek	2
Fisher Branch	2
McCoy Branch	2
Owl Branch	1
Gibbs Branch	1
Coopers Branch	1
Wiggins Branch	1

*3200 Acre Tract*

Shepards Creek	2
Conleys Creek	1
Falls Branch	1
Moore Branch	1
Williams Branch	1
Sitton Creek	1
Fishtrap Branch	1 (TRW)

(Ord. No. 668, 5-3-2001)

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**Sec. 113E-9. Minimum quality criteria applicable to all surface waters.**

(a) All surface waters including those within the mixing zone must be capable of supporting desirable diversified aquatic life and shall be free from:

- (1) Substances that settle to form objectionable deposits or sediments,
- (2) Floating debris, scum, oil, and other floating materials that form a nuisance or interfere with legitimate water uses,
- (3) Material or practices that produce objectionable color, odor, taste, or turbidity,
- (4) Substances which are chronically or acutely toxic or produce adverse physiological or behavioral responses in humans, animals, plants, fish and other aquatic life,
- (5) Substances which produce undesirable aquatic life or result in the dominance of nuisance species, and
- (6) Substances which cause fish flesh tainting,

(b) All surface waters shall meet the following criteria:

- (1) *Dissolved oxygen*: Dissolved oxygen concentrations shall be maintained at a daily average of not less than 5.0 mg/l with an instantaneous minimum of not less than 4.0 mg/l in streams and in the surface layer of lakes and impoundments that are thermally stratified, or five feet from the water's surface (mid-depth) if the lake or impoundment is less than ten feet deep at the point of sampling for lakes and impoundments that are not stratified,
- (2) *pH*: The normal pH of the water shall be 6.0 to 8.5 and shall not be caused to vary more than 1.0 unit. However, if the natural background pH is outside the 6.0 to 8.5 limits, it shall not be changed more than 1.0 unit unless after the change the pH will fall within the 6.0 to 8.5 limits, and the Tribal Council determines that there will be no detrimental effect on stream usage as a result of the greater pH change.
- (3) *Temperature*: The maximum temperature rise above natural temperatures shall not exceed 2.8 degrees C (5.04 degrees F), and in no case to exceed 29 degrees C (84.2 degrees F). The temperature for trout waters shall not be increased by more than 0.5 C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F).
- (4) *Turbidity*: The turbidity in the receiving water will not exceed 50 Nephelometric Turbidity Units (NTU) in waters not designated as trout waters (cold water aquatic habitat) and 10 NTU in waters designated as trout waters. For lakes and reservoirs not designated as trout waters, the turbidity will not exceed 25 NTU. If turbidity exceeds these levels due to natural background conditions, the existing turbidity level cannot be increased.
- (5) *Toxic substances*:

(A) Aquatic life and human health standards:

1. *Aquatic life.* The concentration of toxic substances shall not result in chronic or acute toxicity or impairment of the uses of aquatic life. Regardless of direct measurements of chronic or acute toxicity, the concentrations of toxic substances shall not exceed the chronic or acute values, unless specifically authorized by the process set forth in subsection (5)e of this section.

2. *Human health.* The concentration of toxic substances shall not exceed the level necessary to protect human health through exposure routes of fish tissue consumption, water consumption, or other routes identified as appropriate for the particular body of water.

b. Numeric criteria for all Cherokee surface waters toxic pollutants and chlorine, for which the Environmental Protection Agency (EPA) has published national criteria to protect aquatic life and human health pursuant to Section 304(a) of the Federal Clean Water Act, are listed in Tables 1 and 2 below.

Table 1: Toxic Substance Criteria for Aquatic Life

<i>Compound</i>	<i>Acute ug/l</i>	<i>Chronic ug/l</i>
1. Arsenic	340.0	150.0
2. Cadmium	0.82	0.38
3. Chromium (VI)	16.0	11.0
4. Chromium III	560.0	67.0
5. Copper	4.8	3.6
6. Lead	14.0	0.54
7. Mercury	2.40	0.012
8. Nickel	440	49
9. Selenium		5.0
10. Silver	0.37	--
11. Zinc	36	33
12. Chlorine, total residual	19.0	11.0
13. Cyanide	22	5.2
14. Fluorides	1900.0	
15. Pentachlorophenol	exp (1.005 (pH) -4.869	exp (1.005 (pH) -5.134
16. Aldrin	3.0	
17. g-BHC	0.95	
18. Chlordane	2.4	0.0043
19. 4-4' DDT	1.1	0.001
20. Dieldrin	0.24	0.056
21. a-Endosulfan	0.22	0.056

22. b-Endosulfan	0.22	0.056
23. Endrin	0.086	0.036
24. Heptachlor	0.52	0.0038
25. Heptachlor Epoxide	0.52	0.0038
26. PCB-1242		0.014
27. PCB-1254		0.014
28. PCB-1221		0.014
29. PCB-1232		0.014
30. PCB-1248		0.014
31. PCB-1260		0.014
32. PCB-1016		0.014
33. Toxaphene	0.73	0.0002

Table 2. Toxic Substances Criteria for the Protection of Human Health

<i>Priority Pollutants</i>	<i>Water and Organisms (ug/l)</i>	<i>Organisms Only (ug/l)</i>
1. Antimony	14	4,300
2. Arsenic	0.018	0.14
3. Copper	1300	
4. Mercury	0.05	0.051
5. Nickel	610	4600
6. Thallium	1.7	6.3
7. Cyanide	700	220000
8. Asbestos	7,000,000 fibers/L	
9. 2, 3, 7, 8-TCDD-Dioxin	0.000000013	0.000000014
10. Acrolein	320	780
11. Acrylonitrile	0.059	0.66
12. Benzene	1.2	71
13. Bromoform	4.3	360
14. Carbon Tetrachloride	0.25	4.4
15. Chlorobenzene	680	21000
16. Chlorodibromomethane Dibromochloromene	0.41	34
17. Chloroform	5.7	470
18. Dichlorobromomethane Bromodichloromethane	0.56	46



19. 1,2-Dichloroethane	0.38	99
20. 1,1-Dichloroethylene	0.057	3.2
21. 1,2-Dichloropropane	0.52	39
22. 1,3-Dichloropropylene	10	1700
23. Ethylbenzene	3,100	29,000
24. Methyl Bromide Bromomethane	48	4000
25. Methylene Chloride Dichloromethane	4.7	1600
26. 1,1,2,2-Tetrachloroethane	0.17	11
27. Tetrachloroethylene	0.8	8.85
28. Toluene	6800	200000
29. 1,2-trans-Dichlorethylene	700	140000
30. 1,1,2-Trichloroethane	0.60	42
31. Trichloroethylene	2.7	81
32. Selenium	170	11,000
33. Zinc	9,100	69,000
34. Benzidine	0.00012	0.00054
35. Benzo(a)Anthracene	0.0044	0.049
36. Benzo(a)Pyrene	0.0044	0.049
37. Benzo(b)Fluoranthene	0.0044	0.049
38. Benzo(k)Fluoranthene	0.0044	0.049
39. Bis2-ChloroisopropylEther	1,400	170,000
40. Bis2-Ethylhexyl Phthalate	1.8	5.9
41. Butylbenzyl Phthalate	3,000	5,200
42. 2-Chloronathalene	1,700	4,300
43. Chrysene	0.0044	0.049
44. Dibenzo(a), (h)Anthracene	0.0044	0.049
45. 1,2-Dichlorobenzene	2,700	17,000
46. 1,3-Dichlorobenzene	400	2,600
47. 1,4-Dichlorobenzene	400	2,600
48. 3,3-Dichlorobenzidine	0.04	0.077
49. Diethyl Phthalate	23,000	120,000
50. Dimethyl Phthalate	313,000	2,900,000
51. Di-n-Butyl Phthalate	2,700	12,000
52. 2,4-Dinitrotoluene	0.11	9.1

53. 1,2-Diphenylhydrazine	0.040	0.54
54. Fluoroanthene	300	370
55. Fluorene	1,300	14,000
56. Hexachlorobenzene	0.00075	0.00077
57. Hexachlorobutadiene	0.44	50
58. 1,2,4-Trichlorobenzene	260	940
59. Toxaphene	0.00073	0.00075
60. Ideno(1,2,3)Pyrene	0.0044	0.049
61. Isophorone	36	2,600
62. Chlordane	0.0021	0.0022
63. a-Endosulfan	110	240
64. b-Endosulfan	110	240
65. Endosulfan Sulfate	110	240
66. PCBs or Polychlorinated Biphenyls	0.00017	0.00017
67. Vinyl Chloride	2.0	525
68. 2-Chlorophenol	120	400
69. 2,4-Dichlorophenol	93	790
70. 2,4-Dimethylphenol	540	2300
71. 2-Methyl-4,6-Dinitrophenol	13.4	765
72. 2,4-Dinitrophenol	70	14000
73. Pentachlorophenol	0.28	8.2
74. Phenol	21000	4600000
75. 2,4,6-Trichlorophenol	2.1	6.5
76. Acenaphthene	1200	2700
77. Anthracene	9600	110000
78. Bis2-Chloroethyl Ether	0.031	1.4
79. Hexachlorocyclopentadiene	240	17000
80. Hexachloroethane	1.9	8.9
81. Nitrobenzene	17	1900
82. N-Nitrosodimethylamine	0.00069	8.1
83. N-Nitrosodi-n-Propylamine	0.005	1.4
84. N-Nitrosodiphenylamine	5.0	16
85. Pyrene	960	11000
86. 1,2,4-Trichlorobenzene	260	940
87. Aldrin	0.00013	0.00014

88. alpha-BHC	0.0039	0.013
89. beta-BHC	0.014	0.046
90. gamma-BHC(Lindane)	0.019	0.063
91. 4,4-DDT	0.00059	0.00059
92. 4,4-DDE	0.00059	0.00059
93. 4,4-DDD	0.00083	0.00084
94. Dieldrin	0.00014	0.00014
95. Endrin	0.76	0.81
96. Endrin Aldehyde	0.76	0.81
97. Heptachlor	0.00021	0.00021
98. Heptachlor Epoxide	0.00010	0.00011

(C) When applying acute or chronic toxicity or human health criteria, the following shall apply:

1. When evaluating human health effects all waters must comply only with the organisms criteria except for water classified as public water supply. Stream segments and tributaries which are classified as public water supply shall comply with the water and organisms criteria.
2. When applying toxicity or human health criteria the following stream flows shall be used:

Acute Toxicity: 7Q10 (see Section 113E-10, Cherokee Code)  
Chronic Toxicity: 7Q10 (see Section 113E-10, Cherokee Code)  
Human Health: Harmonic mean flow

(D) Application of toxic and human health criteria for which no numeric criteria have been established:

1. *Aquatic life standards.*

a. *Acute toxicity:* The value not to be exceeded as published by the EPA in 1980 or the one-hour average value as published in 1985 or later shall be used as an acute toxicity number for calculating effluent limitations or reviewing ambient water quality data.

b. *Chronic toxicity:* The 24-hour average as published by the EPA in 1980 or the four-day average as published in 1985 or later shall be used as a chronic toxicity number for calculating effluent limitations or reviewing ambient water quality data.

c. *Hardness dependent:* If metals concentrations for criteria are hardness-dependent, the chronic and acute concentrations shall be based on 25 mg/l hardness if the ambient hardness is less than or equal to 25 mg/l. Concentrations shall be based on the actual mixed

stream hardness if it is greater than 25 mg/l. Hardness is expressed as calcium carbonate (CaCO<sub>3</sub>).

## 2. Human health standards.

a. *Noncarcinogens*: These concentrations will be determined using a Reference Dose (RfD) as published by the EPA pursuant to Section 304(a) of the Federal Water Pollution Act as amended or a RfD issued by the EPA as listed in the Integrated Risk Information Systems (IRIS) file, in which case the more recent value will be used. Water quality standards or criteria used to calculate water quality-based effluent limitations to protect human health through the different exposure routes are determined as follows:

(i) Fish tissue consumption:

$WQS = (RFD) \times \text{Body Weight} \times (RSC) / (FCR \times BAF)$ , where:

WQS = water quality standard or criterion

RFD = reference dose

FCR = fish consumption rate (17.5 grams/day)

BAF = bioaccumulation factor

RSC = relative source contribution

(ii) Water consumption and fish tissue consumption:

$WQS = (RFD) \times \text{Body Weight} \times (RSC) / (WCR + (FCR \times BAF))$ , where:

WQS = water quality standard or criterion

RFD = reference dose

FCR = fish consumption rate (17.5 grams/day)

BAF = bioaccumulation factor

RSC = relative source contribution

WCR = water consumption rate (assumed to be 2 liters per day for adults)

BAF values are based on EPA publications pursuant to Section 304(a) of the Clean Water Act. FCR values are average consumption rates for a 70 Kg adult for a lifetime of the population; alternative FCR values may be used when it is considered necessary to protect localized populations which may be consuming fish at a higher rate.

b. *Carcinogens*: The concentrations of toxic substances will not result in unacceptable health risk and will be based on a Carcinogenic Potency Factor (CPF). An unacceptable health risk for cancer will be considered to be more than one additional case of cancer per one million people exposed (10<sup>-6</sup> risk level). The CPF is a measure of the cancer causing potency of a substance. Water quality standards or criteria used to calculate water quality-based effluent limitations (and for all other purposes of water quality criteria under Section 303(c) of the Clean Water Act) to protect human health through the different exposure routes are determined as follows:

(i) Fish tissue consumption:

$WQS = (\text{Risk}) \times \text{Body weight} \times (RSC) / (CPF \times (FCR \times BAF))$ , where:

WQS = water quality standard or criterion

Risk = risk factor (10<sup>-6</sup>)

CPF = cancer potency factor  
FCR = fish consumption rate (17.5 grams/per day)  
BAF = bioaccumulation factor  
RSC = relative source contribution

(ii) Water consumption (including a correction for fish consumption):  
 $WQS = (\text{Risk}) \times \text{Body Weight} \times (\text{RSC}) / (\text{CPF} \times (\text{WCR} + (\text{FCR} \times \text{BAF})))$ ,  
where:

WQS = water quality standard or criterion  
Risk = risk factor (10<sup>-6</sup>)  
CPF = cancer potency factor  
FCR = fish consumption rate (17.5 grams/per-day)  
BAF = bioaccumulation factor  
WCR = water consumption rate (assumed to be 2 liters per day  
for adults).  
RSC = relative source contribution

BAF values are based on U.S. EPA publications pursuant to Section 304 (a) of the Clean Water Act. FCR values are average consumption rates for a 70 Kg adult for a lifetime of the population: alternative FCR values may be used when it is considered necessary to protect localized populations which may be consuming fish at a higher rate.

(E) Discharger specific criteria: The Tribal Council may establish discharger specific alternative criteria for existing discharges if all of the following conditions are satisfied:

1. The discharge existed prior to January 2001;
2. The discharger performs acute and or chronic bioassay and instream biological assessments and other evaluations as deemed appropriate by the Council;
3. The designated use of the waters is maintained; and
4. The water quality standards of downstream waters are attained and maintained.

All discharger specific alternative criteria will be subject to the public participation requirement for revisions to water quality standards and will be subject to review by the EPA.

(Ord. No. 668, 5-3-2001)

### **Sec. 113E-10. Water quality criteria for specific uses.**

(a) *Primary contact recreation, ceremonial and religious water use.* The quality of water in this classification is suitable for recreational purposes involving prolonged contact and the risk of ingesting water in quantities sufficient to pose a health hazard; such as swimming and water skiing; religious or traditional purposes by members of the Eastern Band of Cherokee that involve immersion, and intentional or incidental ingestion of water; and the protection of sensitive and valuable aquatic life and riparian habitat. The waters shall also

be suitable for other uses in the use classifications list. Standards specific to the use are as follows;

(1) *Bacteria*. Fecal coliform shall not exceed a geometric mean of 200 colonies per 100 ml nor shall more than ten percent of the samples examined during any month exceed 400 colonies per 100 ml.

(2) *Specific conductance*. There shall be no substances added to increase the conductivity above 1000 microhms/cm.

(3) *Dissolved solids*. There shall be no substances added to the water to cause the dissolved solids to exceed 750 mg/l as a monthly average value, not to exceed 1500 mg/l at any time.

(b) *Public water supply, secondary contact recreation use*. Water in this classification is for use as a source of raw water supply for drinking and food processing purposes. The water treatment process shall be approved by the Tribal Business Committee. The raw water supply shall be such that after the treatment process, it will satisfy the regulations established pursuant to Section 1412 of the Public Health Service Act as amended by the Safe Drinking Water Act (Pub. L. 93-523). Waters shall also be suitable for secondary contact recreation, including activities in which a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing). Standards specific to the use are:

(1) *Bacteria*. For the months of May through October, when water contact recreation activities may be expected to occur, fecal coliform shall not exceed a geometric mean of 200 per 100 ml nor shall more than ten percent of the samples examined during any month exceed 400 per 100 ml. For the months of November through April, when incidental recreational contact is not likely, fecal coliform shall not exceed 1000 per 100 ml as a geometric mean (either MPN or MF count) based on at least five samples taken over a 30-day period nor exceed a maximum of 4000 per 100 ml in any one sample.

(2) *Specific Chemical Constituents*: In addition to the provisions in Table 2, the following concentrations shall not be exceeded at any time.

<i>Constituent</i>	<i>Concentration (mg/l)</i>
*Barium	1
*Benzene	0.005
Carbon Tetrachloride	0.005
Chloride	230
*Cyanide (free)	0.2
*1,4-dichlorobenzene	0.075
*1,2-dichloroethane	0.005
*2,4 dichlorophenoxy acetic acid	0.1
Fluoride	1
Methylene blue active substances	0.5
*Methoxychlor	0.04

Nitrate (N03-N)	10
Phenolic compounds (expressed as phenol)	0.001
Sulfate	250
Total Trihalomethanes	0.1
*1, I, 1-trichloroethane	0.2
*Trichloroethylene	0.005
*2-(2,4,5-Trichlorophenoxy propionic acid (Silvex)	0.05
*Vinyl chloride	0.002
Chlorpyrifos (dursban)	0.02
Color	75 platinum cobalt color units

\* Maximum contaminant levels (MCL's)

(3) *Specific conductance*: No substances shall be added to increase the conductivity above 500 microhms/cm

(4) *Dissolved solids*: No substance shall be added to the waters which will cause the dissolved solids to exceed 500 mg/l.

(5) *Threshold odor*: No substance shall be added which will cause the threshold odor number to exceed 24 (at 60 degrees C) as a daily average.

(6) *Radioactive substances*: No radioactive substances shall be added which will cause the gross beta activity (in the known absence of Strontium-90 and alpha emitters) to exceed 1000 picocuries per liter at any time.

(c) *Fish and wildlife use*. Waters in this classification are intended for fishing and the propagation of fish, aquatic life, and wildlife. Waters that meet the fish and wildlife criteria shall also be suitable for secondary contact recreation.

(1) *Warm water aquatic habitat*: The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, wildlife, arboreous growth, agricultural, and industrial uses.

(A) *Bacteria*: For the months of May through October, when water contact recreation activities may be expected to occur, fecal coliform shall not exceed a geometric mean of 200 per 100 ml nor shall more than ten percent of the samples examined during the month exceed 400 per 100 ml. For the months of November through April, when incidental recreational contact is not likely, fecal coliform shall not exceed 1000 per 100 ml as a geometric mean (either MPN or MF count) based on at least five samples taken over a 30-day period nor exceed a maximum of 4000 per 100 ml in any one sample.

(B) *Specific conductance*: There shall be no substances added to increase the conductivity above 1000 microhms/cm.

(C) *Solids*: No substance shall be added to the waters which will cause the dissolved solids to exceed 750 mg/l as a monthly average value nor exceed 1500 mg/l at any time. Neither total dissolved solids nor total suspended solids shall be changed to the extent that the indigenous aquatic community

is adversely affected. No settleable solids shall be added that may adversely alter the stream bottom.

(D) *Phenolic compounds*: No substances added which will cause the phenolic content to exceed 0.300 mg/l (expressed as phenol).

(E) *Flow*: Flow shall not be altered to a degree which will adversely affect the aquatic community.

(F) *Ammonia*: Unionized ammonia (as N) shall not exceed the value determined from the table in EPA' s Ambient Water Quality Criteria Document/Ammonia 1999, EPA 822R-99-014.

(2) *Coldwater aquatic habitat*: The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams which support trout populations (whether self-sustaining or reproducing on a year round basis. All of the criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(A) *Dissolved oxygen*: A minimum concentration of six mg/l as a daily average and five mg/l as an instantaneous minimum shall be maintained at all times. In impoundments which support trout, the concentration of dissolved oxygen in the bottom layers of stratified waters shall be consistent with natural water quality.

(B) *Temperature*: Water temperature shall not be increased by more than 0.5 degrees Celsius as a result of discharge of heated liquids and in no case be increased to exceed the required temperature necessary to support trout habitat.

(C) *Turbidity*: The turbidity in the receiving water shall not exceed ten NTU in streams, lakes and reservoirs. If turbidity exceeds this level due to natural background conditions, the existing turbidity level cannot be increased.

(D) *Toxic substances*: The following values shall not be exceeded:

Cadium	0.4 ug/l
Chlorine, total residual	11.0 ug/l
Toluene	0.36 ug/l

(d) *Agricultural water supply*. The quality of water in this classification is suitable for irrigation and livestock watering.

(1) *Bacteria*: Fecal coliform shall not exceed a geometric mean of 1000 colonies/100 ml nor shall a single sample exceed 2000 colonies/100 ml (geometric mean calculation based on a minimum of five samples taken over a maximum of 30 days).

(2) Concentration of the following substances shall not exceed the following criteria:

Aluminum	5.0 mg/l
Boron	5.0 mg/l
Cobalt	1.0 mg/l



Fluoride	2.0 mg/l
Vanadium	0.1 mg/l

(3) The minimum water quality criteria for all surface waters in Section 113E-9, Cherokee Code, apply.

(e) *Industrial water supply*. The quality of water in this designation is suitable for production of goods or services for profit. There are no standards specific to this use. The minimum water quality criteria for all surface waters in Section 113E-6, Cherokee Code, apply.

(Ord. No. 668, 5-3-2001)

### **Sec. 113E-11. Sampling and analyses**

(a) Sample collection and preservation used to determine water quality and to maintain the standards set forth in these water quality standards shall be performed in accordance with procedures prescribed by the latest EPA authoritative analytical reference, including but not limited to the latest editions of any of the following authorities: (1) American Public Health Association, "Standard Methods for the Examination of Water and Wastewater;" (2) "Methods for Chemical Analyses for Water and Wastes," (3) "EPA Guidelines Establishing Test Procedures for the Analysis of Pollutants" (4) "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA/600/491/002" and "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, EPA/600/4-90/027F."

(b) Sampling procedures.

(1) *Streams*. Stream monitoring stations below waste discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

(2) *Reservoirs and impoundments*. Sampling stations in reservoirs shall be located at least 250 feet from a waste discharge, and otherwise, where the attainment of a water quality standard is to be assessed. Water quality measurements shall be taken at intervals throughout the water column at a sampling station. For toxic substances and nutrients, the entire water column shall be monitored. For dissolved oxygen in stratified lakes, measurements shall be made in the top layer of the water. In nonstratified lakes measurements will be made at intervals throughout the entire water column.

(c) All methods of analysis used in measuring the quality of surface water for purposes of determining compliance with these standards shall be in accordance with procedures prescribed in the current version of 40 C.F.R. Part 136 or other methods approved in writing by the EPA.

(d) Bacteriological surveys. The monthly geometric mean is used in assessing attainment of standards when a minimum of five samples are collected in a 30-day period. When less than five samples are collected in a 30-day period, no single sample shall exceed the applicable upper limit for bacterial density set forth in Section 113E-10, Cherokee Code.

(Ord. No. 668, 5-3-2001)

### **Sec. 113E-12. Mixing zone.**

In order to provide a reasonable opportunity for the mixture of discharges and receiving waters, mixing zones may be established in the area of the discharge. Water quality standards will not apply in these regions, except that the zone will be subject to the conditions established in accordance with this section. Mixing zone limits will be defined on a case by case basis upon consideration of the magnitude and character of the waste discharge, and the size and character of the receiving waters. Methods and guidelines for mixing zone policies are prescribed in accordance with the EPA's Water Quality Standards Handbook, Second Edition (1993). For the protection of the receiving waters and to maintain conformity with NPDES permit requirements the mixing zone discharges shall meet the following criteria:

- (a) They shall permit free passage of aquatic organisms around the mixing zone.
- (b) They shall not result in offensive conditions, acute toxicity to aquatic life or produce undesirable aquatic life.
- (c) They shall not produce a dominance of nuisance species outside of the assigned mixing zone.
- (d) They shall not endanger public health or welfare.

Any designated mixing zone shall be approved by the Tribal Environmental Office in consultation with the EPA..

(Ord. No. 668, 5-3-2001)

**Sec. 113E-13. Low flow.**

The governing flow criterion for water quality standards, except toxic substances, generally shall be the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10) These governing criteria are established specifically for setting effluent limitations and for the design of wastewater treatment facilities. In addition, the governing flow also establishes a value below which deviations from water quality standards can be anticipated.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-14. Variances.**

(a) Variances may be granted by the Tribal Council to dischargers for pollutant specific contamination. This process shall be permitted with the goal of meeting the applicable criteria rather than lowering the water quality standards or changing the designated use of the stream.

(b) The discharger shall demonstrate that attaining the water quality standard is not feasible because:

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use;
- (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating Tribal water conservation requirements to enable uses to be met;

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate the diversion in a way that would result in the attainment of the use;

(5) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread economic and social impact.

(c) All variances shall be subject to review and comment by EPA in addition to the Tribal Council review and approval.

(d) The variance request shall include the following information:

(1) The nature and duration of the request;

(2) Relevant data including physical information, water quality analyses and biological assessments;

(3) Explanation and evidence of best management practices for compliance with the water quality standards, and all information regarding the consideration of alternative pollution control strategies;

(4) Economic and legal factors relevant to the ability to comply with the water quality standards;

(5) A proposed compliance schedule including the date each step toward compliance will be achieved, and the date by which final compliance will be achieved;

(6) A plan for safety should there be an excessive rise in the contaminant level for which the variance is requested;

(7) A plan for interim control measures during the effective variance period;

(8) A plan to perform monitoring and other reasonable requirements prescribed by the variance;

(9) Other information believed to be pertinent by the applicant for the variance.

(e) *Consideration and disposition of a variance request.*

(1) The variance request shall be presented to the Tribal Council in resolution form. The Tribal Council shall not act on the variance when it is first presented but shall order it tabled and published for a period of at least 30 days.

(2) At or before the time the variance request is presented to the Tribal Council, a

full copy shall be presented to Tribal Environmental Planner and to the EPA for review and comment..

(3) After the variance request is initially tabled by the Tribal Council, the person or entity requesting a variance shall post the variance for public comment at the Tribal Council House for a 30-day period. During that time the variance request shall be published at least twice in the Cherokee One Feather at the expense of the person or entity requesting the variance.

(4) All variance requests shall be subject to a public hearing. Comments shall be received from the public and considered by the Tribal Council in reaching its decision.

(5) The Tribal Council shall also consider comments on the proposed variance from the Tribal Environmental Planner and the EPA, including alternate means of achieving the goals of the variance with less impact on water quality.

(6) Every variance that is granted shall have a compliance schedule which shall include increments of progress toward meeting quality standards for each contaminant level covered by the variance and implementation of control measures required for each contaminant.

(7) The Tribal Council shall act upon the variance request within 90 days of receipt of the request.

(8) If the Tribal Council decides to deny the request the applicant shall be notified in writing. Such notice shall state the reason for denial. Within 30 days after the receipt of such notice, the applicant may request a hearing. If no hearing is requested by the applicant within the 30 day period, then the decision of the Tribal Council shall be final, and there shall be no appeal.

(9) If the variance is granted, the applicant shall be notified in writing. This notice shall identify the variance, the facility covered and the period of time for which the variance will be effective. The variance shall not be granted for a period longer than three years.

(10) The discharger must either meet the standard upon the expiration of the variance or make a new demonstration of unattainability and show that reasonable progress is being made toward meeting the standard.

(11) The variance shall terminate when the discharger achieves compliance with the standards of this Chapter, and shall automatically terminate if the discharger fails to comply with monitoring and other prescribed requirements set forth in the variance.

(Ord. No. 668, 5-3-2001)

#### **Sec. 113E-15. Enforcement.**

(a) The Tribal Environmental Office shall periodically test Cherokee surface waters at different locations to determine if the standards for uses designated in this Chapter, or allowed under any variance, are being met.

(b) Whenever the Tribal Environmental Office determines that the water quality standards are not being met, then the matter will be referred to the EPA for appropriate action under

the NPDES program.

(c) When the Tribal Environmental Office can demonstrate two or more violations by a discharger, or failure of a discharger to bring its discharges into compliance with these standards or those allowed in any variance, that shall be grounds for the following actions:

(1) The Tribal Business Committee may, after notice and opportunity for hearing, order the person to cease and desist from the violations and to comply with this chapter. The Business Committee may enforce compliance with an order issued pursuant to this section by imposing and collecting civil penalties as authorized under this section.

(2) The Business Committee may order and impose civil penalties upon any person for violations of this chapter. Civil penalties shall not exceed \$1,000.00 per violation per month. All civil money penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. If a civil penalty or restitution is not paid within 30 days, then, in addition to other remedies provided by this chapter, the Eastern Band of Cherokee Indians may seek enforcement of the Business Committee's order in the Cherokee Court.

(3) If the discharger fails to comply with a cease and desist order or to pay civil penalties, then the Business Committee may suspend or revoke any person's trader's permit and/or lease.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-16. Criminal penalties.**

Intentionally or negligently causing pollution of Cherokee surface waters by causing them to fall below the standards set by this Chapter on two or more occasions is a misdemeanor, punishable in the Cherokee Court by imprisonment of not more than one year and fine of not more than \$5,000.00. Each violation after the first shall be a separate act in violation of this section.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-17. Civil action.**

Any person who suffered actual damages as a result of a violation of this chapter shall have a right of action in the Cherokee Court against a person who has violated this chapter for actual damages. An party found liable for violation of this chapter may also be ordered to pay the injured party a statutory penalty of \$1,000.00 for each violation.

(Ord. No. 668, 5-3-2001)

**Sec. 113E-18. Sovereign immunity.**

Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

(Ord. No. 668, 5-3-2001)

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**\*Cross references:** Libraries, ch. 125.

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**Sec. 115-1. Compulsory school attendance laws.**

The agents and employees of the State of North Carolina or its political subdivisions are granted permission and authority to enter the Cherokee Indian Reservation for purposes of enforcing the penalties of North Carolina compulsory school attendance laws against Indian children, parents or other persons in loco parentis, as authorized by 25 U.S.C. 231.

(Res. No. A-13, 10-20-1939; Res. No. 70, 10-20-1949)

**Cross references:** Compulsory school attendance, § 14-30.3.

**Sec. 115-2. NonIndian students.**

Children who are not enrolled members of the Eastern Band or any other federally recognized Indian tribe may attend the Cherokee Central School and shall not be denied admission because of race.

(Res. No. 117, 10-31-1968; Res. No. 576, 8-20-1985)

**Sec. 115-3. Cherokee School District.**

The geographical boundaries for the Cherokee Central School System shall be the geographical limits of Cherokee trust lands in Jackson County and Swain County including the Qualla Boundary and 3,200-acre tract. Children who live near or adjacent to Cherokee trust lands may also attend the Cherokee Central School.

(Res. No. 348, 11-29-1984)

**Sec. 115-4. Cherokee School Board.**

(a) The Cherokee School Board shall consist of seven members elected by the qualified voters from each of the following Communities: Birdtown, Wolfetown, Big Cove, Yellowhill, Painttown, and Big-Y; together with one member appointed from the Tribal Council. The elected members shall serve staggered four-year terms. The appointed member shall serve at the pleasure of the Tribal Council.

(b) The Cherokee School Board shall be the governing board responsible for determining the general policies of the Cherokee Central School. The Board shall approve the school budget and formulate and define the administrative policies for the school.

(c) No one shall be eligible to serve on the Cherokee School Board unless they reside in the community they are to represent for one year immediately preceding the date of election, are 18 years of age on the date of election, and are not an employee of the education program of the Cherokee School.

(Res. No. 26-S, 6-20-1969; Res. No. 434, 5-20-1971; Res. No. 110, 1-6-1984; Res. No. 393, 4-1-1985; Res. No. 509, 7-1-1991)

### **Sec. 115-5. Vacancy in School Board.**

If a vacancy occurs within the School Board due to death, resignation or removal, the Tribal Council shall call a special election within 30 calendar days of the vacancy, and a new board member shall be elected in the community in which the vacancy occurs. However, if less than 90 days remains in the original term on the date of vacancy, the seat shall remain vacant until the next regular election.

(Res. No. 430, 6-24-1981; Res. No. 164, 4-8-1983; Res. No. 393, 2-1-1985)

### **Sec. 115-6. School discipline.**

Principals and teachers in the Cherokee Central School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(Res. No. 206, 5-22-1986)

### **Sec. 115-7. School expulsion.**

(a) The Cherokee School Board shall adopt policies governing the conduct of students and shall cause these policies to be published and made available at the beginning of each school year to each student and his parents. The School Board shall also adopt policies establishing procedures to be followed by school officials in suspending or expelling any pupil from school and shall cause such procedures to be published and made available at the beginning of each year to each student and his parents.

(b) The principal of a school, or his delegate, shall have authority to suspend for a period of ten days or less any student who willfully violates policies of conduct established by the School Board, provided that a student suspended pursuant to this subsection shall be provided an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the Superintendent, shall have the authority to suspend for periods of time in excess of ten school days, but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the School Board. The pupil or his parents may appeal the decision of the principal to the School Board.

(d) The School Board may, upon recommendation of the principal and the Superintendent, expel any student 14 years of age or older who has been convicted of a felony and whose continued presence in school constitutes a clear threat to the safety and health of other students or employees. Notwithstanding any other provision of law, the School Board shall have no duty to continue to provide a child with special needs, expelled pursuant to this subsection, with any special education or related services during the period of expulsion.

(Res. No. 205, 5-22-1986)

### **Sec. 115-8. Funding for first generation descendants.**

The Tribal Education Committee and Tribal Education Office is authorized to provide financial assistance, when funds are available, for higher education and adult education services to students who are not enrolled members, but who are first generation descendants of

enrolled members.

(Res. No. 140, 3-3-1988)

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## Chapter 117: Tribal Government\*

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**\*Cross references:** Exclusion powers of Tribe, ch. 2; Cherokee code revisor, ch. 10; Tribal gaming commission, § 16-2.01 et seq.; Cherokee roads commission, ch. 137; elections, ch. 161; emergency management, ch. 166.

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### ARTICLE I. EXECUTIVE BRANCH

#### **Sec. 117-1. Principal Chief and Vice-Chief.**

The Principal Chief and Vice-Chief shall constitute the executive branch of government for the Eastern Band of Cherokee. The Principal Chief and Vice-Chief shall be elected to a four-year term by an at-large election of all qualified voters. No one shall be eligible to serve as a Principal Chief or Vice-Chief unless they are an enrolled member of the Eastern Band of Cherokee Indians, and are at least 35 years of age on the date of the election and have resided on Cherokee trust lands continuously for at least two years immediately preceding the date of the election.

(Tribal Charter and Governing Documents (1986), §§ 1, 5, 9; Res. No. 253, 12-21-1978; Res. No. 430, 6-24-1981; Res. No. 164, 4-8-1983; Res. No. 396, 2-1-1985; Res. No. 132, 5-6-1986)

#### **Sec. 117-2. Duties.**

The Principal Chief and the Vice-Chief are authorized to represent and defend the rights, interests, lands and funds of the Tribe before any legislative committee or body of the federal or state governments.

(Res. No. 96, 12-9-1938)

#### **Sec. 117-3. Economic and social programs.**

The Principal Chief shall act on behalf of the Tribe and the Tribal Council as the authorized signator for any contract, grant or program concerning Reservation services by any federal or state agency or program. No state, county or municipal official shall have legal authority to sign for or approve services within Cherokee trust lands. All contracts with or for the benefit of the Eastern Band of Cherokee Indians shall be reviewed by the attorneys for the Tribe and signed by said attorneys as having been reviewed as to form, prior to the contracts being submitted to the Principal Chief for signature on behalf of the Eastern Band.

(Res. No. 160, 4-2-1976; Ord. No. 393, 4-1-1993)

#### **Sec. 117-4. Veto powers.**

The Principal Chief is authorized to veto any resolution or ordinance enacted by the Tribal Council. Such veto shall be exercised by the Principal Chief indicating his decision to veto



the enactment in writing and returning the document to the Council for further consideration. Any resolution or ordinance neither ratified nor vetoed by the Principal Chief within 30 days of passage by the Council shall be deemed ratified and shall be recognized as the law of the Tribe.

(Res. No. 316, 8-26-1970; Res. No. 314, 11-20-1979; Tribal Charter and Governing Documents (1986), § 13)

**Sec. 117-5. Duties of Vice-Chief.**

The Vice-Chief shall perform all duties of the Principal Chief in the event of an extended illness, an extended business trip or any other event which may cause the Principal Chief to be absent from the Reservation.

(Res. No. 203, 11-7-1969)

**Sec. 117-6. Rescinded by Tribal Charter and Governing Documents (1986), section 11 (reserved for future use).**

**Sec. 117-7. Vacancy in Chief offices.**

In the event of the death, resignation or disability of the Principal Chief, the Vice-Chief shall become Principal Chief and shall serve the balance of the elected term of office until removal or disability or his successor is elected. In case of death, resignation or disability of the Vice-Chief, the Council may elect a successor who shall serve until removal or disability or his successor is elected. In the event the offices of both Principal Chief and Vice-Chief become vacant simultaneously, the Chairman of the Council shall become Principal Chief and shall serve the balance of the elected term of office, and the Council shall elect a Vice-Chief, who shall serve the balance of the elected term. If the Chairman does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled by an election under rules established by the Council.

(Tribal Charter and Governing Documents (1986), § 14)

**Sec. 117-8. Executive retirement plan.**

(a) Funds shall be provided for any person who has served as Principal Chief or Vice-Chief for at least four years and has reached the age of 50 years, in an amount equal to one-fourth the salary at the time of their retirement from office.

(b) Funds shall be provided for any person who has served as Principal Chief or Vice-Chief for at least eight years and has reached the age of 50 years, in an amount equal to one-half the salary at the time of their last retirement from office.

(c) The widow or widower of a former Principal Chief or Vice-Chief who shall have themselves reached the age of 50 years, shall be eligible to receive funds in an amount equal to one-fourth of the salary received by their spouse at the time of their retirement when the spouse had served for at least eight years in such offices, or equal to one-eighth of the salary received by their spouse at the time of their retirement when the spouse had served for at least four years in such offices. A widow or widower shall be eligible for these funds regardless of whether or not they are themselves an enrolled member of the Eastern Band, but such funds shall only be distributed to a person who was married to a Principal Chief or Vice-Chief during the time they were actually holding such office.

(d) In addition to the above retirement benefits, the Eastern Band shall provide funds for Medicare, Medicaid, Blue Cross - Blue Shield, or any other health care plan maintained or contributed to by the Tribe for its employees, for persons or their surviving spouses who have served as Principal Chief or Vice-Chief for at least eight years.

(e) The retirement benefits provided in subsections (a) and (b) shall be reduced by an amount equal to the total of matching funds paid by the Eastern Band to a Tribally sponsored and approved 401k Plan or other retirement plan or program, during the period of time in which such persons were serving in the capacity of Principal Chief or Vice-Chief.

(f) The funding of these retirement and medical benefits shall be appropriated by the Tribal Council from funds received by the Tribe from federal indirect cost programs. These funds shall be used to purchase annuities for the purpose of guarantying availability of funds for these benefits.

(g) This section shall become effective on the date of ratification by the Principal Chief. This section shall not reduce or limit the benefits of any individual who was eligible for benefits under the May 13, 1982 ordinance, and became eligible or actually received such benefits prior to the effective date of the amendments of this section (April 3, 1992).

(Ord. No. 243, 5-13-1982; Ord. No. 143, 4-3-1992)

#### **Sec. 117-9. Executive Advisor to Chief.**

The Principal Chief may appoint an Executive Advisor, who shall provide such assistance and advice as the Chief may request. Such position shall be appointed by the Tribal Council at the request and nomination of the Principal Chief. The person serving in the capacity of Executive Advisor shall sit as a voting member of the Executive Committee, the Business Committee, the Credit Committee and the Community Services Committee.

(Res. No. 29, 10-21-1987)

### **ARTICLE II. LEGISLATIVE BRANCH**

#### **Sec. 117-10. Powers and authority generally.**

The Tribal Council shall constitute the legislative branch of government for the Eastern Band of Cherokee. It shall have authority to legislate, to conduct investigations and hearings into matters of concern to the Tribe; it shall have sole power and authority to approve assignment and transfer of possessory rights to its lands among its members; and shall have quasijudicial powers to resolve disputes concerning Tribal lands and properties and other matters authorized by Tribal law. It shall have power to delegate its duties to committees formed from its membership.

(Tribal Charter and Governing Document (1986), §§ 16, 23)

#### **Sec. 117-11. Members; qualifications; residency requirements.**

There shall be a Tribal Council consisting of 12 members, with two representatives elected from each township by the qualified voters of each township. No one shall be eligible to serve as Council member unless they are an enrolled member of the Eastern Band of

Cherokee Indians, are at least 18 years of age on the date of the election, have resided on Cherokee Indian trust land in the township in which he or she is a candidate for one year immediately preceding the election and continue to reside in the township he or she represents during the term of his or her office. Council members who move their residence from the township they are elected to represent shall be removed from office by the Board of Elections, if such is established by petition of a majority of registered voters in that township. Sitting Council members whose residence is challenged shall be granted a hearing before the Board of Elections.

(Res. No. 253, 12-21-1978; Res. No. 430, 6-24-1981; Res. No. 164, 4-8-1983; Res. No. 393, 2-1-1985; Charter and Governing Document of the Eastern Band of Cherokee Indians (1986), § 9; Res. No. 132, 5-6-1986, Res. No. 509, 9-5-1991; Ord. No. 403, 12-3-1998)

**Sec. 117-12. Council representation.**

(a) In order to provide equal representation to all members of the Eastern Band, the members of the Tribal Council shall, in their deliberations, cast votes on a weighted basis, with the weight of each vote determined by the population represented by each Council member.

(b) The total number of votes to be cast by the Tribal Council shall be 100, with the voting weight of each Council member as follows:

(1)	Big Cove	7.0
(2)	Painttown	6.0
(3)	Graham/Cherokee County	6.0
(4)	Wolfetown	12.0
(5)	Yellowhill	7.0
(6)	Birdtown	12.0

(c) A Tribal census, for the purpose of determining the weight of the vote to be cast by each Council member, shall be conducted prior to the 1981 Tribal election and prior to the election each ten years thereafter to determine the number of enrolled Tribal members residing in each township. After the regular 1981 Tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting weight to each Council member. The individual voting weight shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of enrolled Tribal members residing in each township and the total number of enrolled members.

(Res. No. 276, 3-6-1975; Res. No. 288, 3-18-1975; Res. No. 430, 6-24-1981; Res. No. 206, 4-1-1982; Res. No. 164, 4-8-1983; Res. No. 393, 2-1-1985; Res. No. 77, 1-9-1992; Res. No. 20, 10-10-2001)

**Sec. 117-13. Council sessions.**

(a) The Tribal Council shall meet at least one day in each month in the Tribal Council Chambers with the regularly scheduled date to be the first Thursday of each month. Each Council member shall be provided with a written agenda and copies of proposed legislation on the Friday before the Thursday session convenes. The agenda shall be prepared ten days before the Council session by the Vice-Chief, Chairman of Council, and Chairman of Resolution Committee. Council shall normally convene at 8:30 a.m. and recess at 5:00 p.m. The Committee chairs shall report to the Council on all activities of their committees. The Tribal Council shall conduct a session at least once every six months in the Snowbird

Community.

(b) The Tribal Council is authorized to hold executive sessions closed to the public only for the purpose of discussing personnel actions involving Tribal employees or legal matters involving the Tribe. No action may be approved or taken by the Council while in executive session. Executive sessions shall be scheduled in the afternoons after the completion of regular business.

(Res. No. 122, 2-14-1939; Res. No. 143, 10-6-1969; Res. No. 204, 11-7-1969; Res. No. 337, 10-13-1970; Res. No. 388, 4-7-1977; Res. No. 191, 3-22-1982; Res. No. 289, 7-24-1986; Res. No. 248, 7-15-1988)

**Sec. 117-14. Chairman.**

The Council shall elect a Chairman and Vice-Chairman from their membership who shall also serve on the Business and Credit Committees. The Chairman shall be entitled to vote on all issues. In the event of the death, resignation, removal or vacancy of the Chairman, the Vice-Chairman shall serve as Chairman, only until a new Vice-Chairman is elected or appointed.

(Res. No. 31, 10-27-1981; Res. No. 132, 7-10-1986; Res. No. 461, 1-9-1987)

**Sec. 117-15. Reserved.**

(Tribal Charter and Governing Document (1986), § 15; Res. No. 509, 6-1-1989; Ord. No. 403, 12-3-1998)

**Sec. 117-16. Debate.**

(a) Each Council member shall be limited to five minutes of debate or discussion on each resolution, ordinance or matter under consideration by the Council. Any Council members may yield all or a portion of his time on any matter to another Council member.

(b) This time limit shall apply to all matters before the Council except when by majority vote it shall suspend the time rule for a specific matter under consideration.

(c) Persons in the audience who desire to address the Council shall be required to gain recognition from the Tribal Chairman only through a request of their Council representative or by presentation of a resolution or ordinance.

(Res. No. 41, 12-13-1979; Res. No. 189, 3-22-1982; Res. No. 205, 4-1-1982)

**Sec. 117-17. Subpoena power.**

(a) The Tribal Council and its duly authorized committees shall be authorized to investigate the affairs of the Tribe. In carrying out such investigations the Council or its committees may subpoena witnesses, administer oaths and compel the production of evidence.

(b) If any person fails or refuses to obey a subpoena properly issued and served, the Council or its committees may apply to the Cherokee Court for an order requiring compliance with the subpoena. The Cherokee Court shall have jurisdiction to issue such order after notice to all parties. Compliance with the court order may be enforced through the contempt powers of the court.

(c) No testimony of any witness before the Council or its committees pursuant to a subpoena may be used against the witness at the trial of any civil or criminal action other than prosecution for false swearing to the Council or committee.

(d) Any person who willfully swears falsely, while under oath to the Council or its committee, shall be guilty of a misdemeanor and may be punished, upon conviction, by a fine of \$500.00 or imprisonment for 30 days, or both.

(Res. No. 230, 5-13-1982)

**Sec. 117-18. Veto override.**

In the event the Principal Chief shall veto any act or resolution of the Council, such veto may be overridden by a two-thirds vote of the Tribal Council.

(Tribal Charter and Governing Document (1986), § 13)

**Sec. 117-19. Contracts with Tribe.**

(a) Before a Contract with the Eastern Band of Cherokee Indians shall be valid and binding the following shall occur:

(1) A Contract in an amount less than \$50,000.00 which complies with all budget, financial, and legal requirements for that program and the Tribe, and is within the fiscal parameters of the Annual Budget approved by Tribal Council, may be executed by the Principal Chief.

(2) A Contract in an amount of \$50,000.00 or more which complies with all budget, financial, and legal requirements for that program and the Tribe, and is within the fiscal parameters of the Annual Budget approved by the Tribal Council, shall have the approval of the Business Committee before being executed by the Principal Chief.

(b) All Contracts shall bear the signature of the Principal Chief before they are valid and binding on the Eastern Band of Cherokee Indians.

(Res. No. 73, 11-4-1937; Ord. No. 207-A, 6-15-1998)

**Sec. 117-20. Disqualification from office.**

Any Council member who has violated his oath of office or has been guilty of any offense making him ineligible to hold office may be suspended by two-thirds vote of the Tribal Council.

(Tribal Charter and Governing Document (1986), § 22)

**Sec. 117-21. Travel.**

The Principal Chief and Vice-Chief shall have authority to authorize official travel on behalf of the Tribe by elected officials, employees or staff members. Tribal officials shall submit a written report to the Tribal Council and the Executive branch at the next session following such official travel.

(Res. No. 233, 2-13-1970; Res. No. 328, 2-20-1981; Res. No. 30, 10-21-1987)

**Sec. 117-22. Purchases for Tribe.**

All purchases for or on behalf of the Tribe shall be by purchase order and shall be subject to the approval of the Executive Committee or the Community Services Committee, as appropriate.

(Res. No. 25-S, 5-15-1968)

**Sec. 117-23. Disbursal of Tribal funds.**

(a) Upon approval of the Annual Tribal budget the funds approved for disbursement shall be transferred to a bank to the credit of the Tribe, subject to disbursement by authorized Tribal officials.

(b) No Tribal funds shall be paid out except upon the warrant of any two of the following Tribal officials: the Principal Chief, Vice-Chief or Tribal Secretary.

(Res. No. 18, 10-18-1935; Res. No. 6, 4-25-1952; Res. No. 885, 9-7-1965; Tribal Charter and Governing Documents (1986), § 20)

**Sec. 117-24. Loans to Tribal members.**

Neither the Tribal council nor any Tribal committee appointing or spending Tribal funds shall authorize or approve personal loans of Tribal funds to Tribal members or co-sign or guarantee loans. This section shall not apply to the revolving loan fund established to make business loans and administered by the Eastern Band of Cherokee Indians Community Development Corporation.

(Res. No. 12, 10-12-1934; Res. No. 63, 10-9-1956; Res. No. 421, 6-20-1977; Res. No. 293, 9-2-1982; Res. No. 101, 2-7-1983; Res. No. 194, 6-16-1983; Res. No. 142, 2-17-1984; Ord. No. 430, 10-25-2000)

**Sec. 117-25. Council House.**

The Council House shall serve as a community center for the Tribe and for the holding of meetings that may benefit the Tribe. The Council House shall not be used for dances, entertainment or religious meetings. The Principal Chief shall be charged with the responsibility of ensuring the proper use, security, and maintenance of the Council House.

(Res. of 11-10-1933)

**Sec. 117-26. Tribal property and equipment; inventory.**

Each department head or manager of each Tribal office, activity or enterprise shall prepare and furnish to the Tribal Council a complete property inventory including a description of the condition of all property. Such inventory shall be submitted annually to the Council in the month of January.

(Res. No. 89, 2-25-1974)

**Sec. 117-27. Use of Tribal vehicles.**

Tribal employees and Tribal elected officials shall not use Tribal vehicles for their personal use. Personal use of Tribal vehicles by Tribal employees shall subject them to disciplinary action under the Tribal Personnel Policy. This section shall not apply to the vehicles purchased by the Tribe for the use of the Principal Chief or the Vice-Chief.

(Res. No. 363, 11-24-1970)

**Sec. 117-28. Notice of committee meetings.**

(a) Notice of Council committee meetings shall be mailed to each member five days before the scheduled meeting.

(b) This notice requirement shall not apply to the Business Committee, the Credit Committee, the Education Committee or the Community Services Committee.

(Res. No. 288, 1-8-1981)

**Sec. 117-29. Committee pay.**

Committee members shall receive per diem payment for attending Committee meetings, including non-Council Committee members. However, salaried elected officials shall not receive compensation for Committee attendance.

(Res. No. 135, 9-27-1982)

**Sec. 117-30. Budget Committee.**

A Committee known as the Budget Committee, consisting of three members appointed from the Council shall meet and consult with the Executive Committee to assist in formulating and preparing the annual Tribal and community services budgets.

(Res. No. 8, 10-7-1953)

**ARTICLE III. BOARDS AND COMMITTEES**

**Sec. 117-31. Planning Board.**

(a) The planning board is created with members consisting of the following persons:

- (1) Six members shall be council members.
- (2) The Chief or Vice Chief shall be a member of the planning board.
- (3) There will be one voting representative from the following organizations:
  - \* Travel and promotion;
  - \* Recreation department;
  - \* Natural resources;

- \* Qualla Housing Authority;
- \* Tribal utilities;
- \* Culture department;
- \* Environmental planning;
- \* Finance department;
- \* Department of transportation.

(4) There shall be one member selected from a business at large.

(b) The Council shall name one of the members of the Board to serve as Chairman of the Planning Board for a period of one year. Such appointment may be renewed at the discretion of the Council. The Board shall elect from its members a Vice-Chairman, a Secretary and such other officers at it may desire.

(c) The Council may remove any member of the Board for cause.

(d) The members of the Planning Board shall not receive compensation for their services, but shall be entitled to compensation for expenses, including traveling expenses, incurred in the discharge of their duties.

(e) Five members of the Planning Board shall constitute a quorum for the transaction of business, notwithstanding the existence of any vacancies.

(f) The Planning Board shall have all of the power, authority, discretion and duties with respect to the Cherokee Indian Reservation as are granted to Planning Boards which are created by the State of North Carolina.

(g) The Board shall be required to meet quarterly, to keep minutes of all such meetings and report to the Council at the next Council meeting following each Board meeting.

(Res. No. 397, 3-18-1971; Ord. No. 7, 11-21-1995; Ord. No. 224, 5-16-2000)

**Sec. 117-32. Committee appointments.**

All appointments to Tribal Council committees shall be for terms of two years and shall expire with the election and seating of a new Tribal Council. All Committee members shall be empowered to serve and act following such expiration until their successor has been duly appointed.

(Res. No. 193, 3-22-1982)

**Sec. 117-33. Business Committee.**

(a) The Committee shall approve all sales of improvements among Tribal members together with any transfers of ownership or occupancy of any Tribal lands. The Committee shall negotiate and execute in behalf of the Tribe all leases or permits for both assigned and unassigned Tribal lands in compliance with existing Tribal law and federal law and regulations appertaining thereto and based upon the merits of each application.



(b) The Committee shall approve leasehold estate mortgages by nonmembers when such mortgage will secure a loan to construct a business on leased premises or improve and upgrade an existing business on leased premises. Only mortgages to secure loans from licensed and accredited state or federal lending agencies shall be approved. A material factor in approving such mortgages shall be the financial statements, character and credit references of the applicant, and the Committee shall ensure that the applicant is of good character, has the ability and experience to operate the business enterprise successfully and has sufficient capital to conduct the enterprise on a sound financial basis.

(c) The Committee shall be composed of the Principal Chief, the Vice-Chief, the Chairman of the Tribal Council, the Vice-Chairman of Council and the Agency Superintendent in his capacity as Secretary ex-officio for the Tribe.

(Res. Of 2-11-1931; Res. No. 44, 4-28-1967; Res. No. 63, 12-12-1967; Res. No. 8-S, 1-12-1968; Res. No. 49-S, 7-31-1968)

### **Sec. 117-34. Lands Committee; procedures.**

(a) *Scope and purpose.* The purpose of these policies and procedures is to provide uniformity, consistency and order in:

- (1) Holding and conducting hearings before the Lands Committee.
- (2) Providing appropriate procedures for appeals of Lands Committee decisions.
- (3) Informing interested parties of the procedures for appearing before the Lands Committee.
- (4) Setting forth the authority, nature, and purpose of the Lands Committee.
- (5) Governing disputes over all lands owned by the Eastern Band of Cherokee Indians, whether trust or non-trust.

It shall be the goal of the Lands Committee to resolve disputes between family and Tribal members that involve the ownership or inheritance rights of any land held in trust for the Eastern Band of Cherokee Indians, including the land located within the Qualla Boundary and reservation of the Eastern Band of Cherokee Indians. Whenever possible, the Lands Committee shall give the interested parties the opportunity to resolve the disputes without the intervention or adjudication of the Lands Committee.

(b) *Definitions:*

- (1) *Alternate* means one of three predetermined Tribal Council members appointed by the Chair of the Tribal Council to serve in cases where a conflict of interest may exist with respect to a regular Lands Committee member or when a regular member is absent.
- (2) *Appeal* means a written request for review of an action or inaction of the Lands Committee that is filed with the Chairman of the Tribal Council.
- (3) *Appellant* means any interested person who files an appeal in accordance with these policies and procedures.

(4) *Notice of appeal* means the written document sent to Tribal Council, or any successor body appointed to hear the appeal of the Lands Committee decisions, indicating that the decision is being appealed.

(5) *Person* means any Indian or non-Indian, individual, corporation, tribe, or other organization.

(6) *Enrolled Member* means a member of the Eastern Band of Cherokee Indians who has been placed on the Tribal rolls, including first generation descendants as defined in the Tribal Code.

(7) *Fees* means the amount to be charged to an appellant who wishes to have his case reheard following a final decision of the Lands Committee.

(8) *Lands Committee* means the body appointed by the Tribal Council to make decisions regarding boundary line and other land disputes.

(9) *Hearing* means the formal presentation of evidence, witnesses, documents, or other materials to the Lands Committee.

(10) *Indians* means all person who are members of a tribe as defined by 25 U.S.C. 1301.

(11) *Interested party* means any person who asserts a claim to land within the boundaries of the Eastern Band of Cherokee Indians trust lands.

(12) *Immediate family* means wife/husband, parent/child (whether by blood or adopted), siblings, in-laws, grandparent/grandchild, step-parent/step-child, and aunt/uncle/niece/nephew.

(13) *Land* means that land located within the boundaries of the Eastern Band of Cherokee Indians Reservation.

(c) *Authority and jurisdiction.* The Lands Committee is established in accordance with section 117-10 of the Cherokee Tribal Code and empowered to make decisions settling boundary line and other land disputes between Tribal members. Review of Lands Committee decisions shall be done in accordance with these policies and procedures and may be heard only through Tribal Council as set forth in section 117-10 and section 16 of the Governing Document and Charter of the Eastern Band of Cherokee Indians (1986).

(d) *Hearing before the Lands Committee.*

(1) *Applicability.* The provisions of this section shall apply to anyone who shall appear before the Lands Committee.

(2) *Request for hearing.* Any tribal member may request a hearing before the Lands Committee by sending a written request to the Realty Office of the Bureau of Indians Affairs. The request shall include the following information:

(A) A description of the property dispute.

(B) An outline of the issues to be heard by the Lands Committee.

(C) A list of all person or entities that may have an interest in the disputed property.

(D) Copies of any agreements, contracts, liens, right-of-ways, or other documents that may affect the property.

(E) The reason(s) for requesting a hearing.

(F) A statement that there is no previous Lands Committee ruling more than a year old.

Failure to include the above information in the request for hearing may result in a rejection of the request and require a re-submission of the request to be in compliance with this section. In addition, hearings will be denied if the BIA's Realty Office determines that a previous ruling (on the same issues) by a committee or by Council is in place.

(3) *Hearing procedures.*

(A) The Lands Committee shall meet on the second and fourth Thursday of every month to consider requests submitted in accordance with subsection (d)(2) of this section. The hearings shall be conducted on the record.

(B) The Lands Committee shall not be bound by technical rules of evidence but shall allow all relevant evidence into the proceeding.

(C) Interested Tribal members shall be given an opportunity to address the Lands Committee and present relevant evidence that will assist the Committee in resolving the dispute. Relevant evidence shall include, but not be limited to, maps, BIA records, contracts or other written agreements, testimony of witnesses, history of the property and other evidence deemed appropriate. The Committee shall have the sole discretion to determine what evidence is relevant to the proceeding.

(D) When it appears appropriate, the Committee may elect to convene the hearing on the disputed property to assist in resolving the matter.

(E) Tribal members appearing before the Committee shall have the right to be represented by counsel at their own expense or to appoint a spokesperson to speak for them.

(F) Prior to any hearings being held, the Realty Office of the Bureau of Indian Affairs shall notify all interested parties of the hearing at least ten days prior to the date of the hearing. Included in the notification shall be a copy of the Lands Committee's policies and procedures. If a majority of the interested parties are represented, a hearing will be held and a decision rendered. If a majority is not represented at the first meeting, no hearing will be conducted and a second notification will be sent to all interested parties ten days prior to a second scheduled hearing. Any failure to appear for a hearing after receiving notification from the Realty Office may result in a Committee decision that adversely affects the unrepresented party. Any person who cannot appear for a scheduled hearing may elect to have a representative appear on their behalf by forwarding a notarized statement appointing their

representative.

(G) Upon presentation of all relevant evidence, the Committee may render the decision immediately, or may take the matter under further advisement or consideration. In the event the Committee chooses to consider the matter further, a final decision shall be issued in writing to all interested parties, within ten days of the hearing.

(H) A majority of Committee members shall consist of two or more Committee members.

(I) After two notices have been given the Lands Committee can make a decision regardless of whether or not a majority of the interested parties have replied to the notice or are present at the hearing.

(4) *Re-Hearing before the Committee.* Following a decision of the Lands Committee, any Tribal member affected by the Committee's decision, may request a new hearing. If the request is made within one year of the prior ruling, the Lands Committee will consider any new evidence presented by Tribal member. Said request shall be in writing and shall contain the following:

(A) Name of individual making the request.

(B) Reasons for the request.

(C) Any new evidence to be considered by the Committee.

(D) Names of all individuals that may be affected by the new hearing.

The request shall be submitted to the Realty Office of the Bureau of Indian Affairs. The individual requesting the new hearing shall be required to deposit with the Tribal Finance Office sufficient funds to cover a per diem payment (per diem rate to be the same as the rate currently used by Tribal Council) for each Lands Committee member. The Tribal members shall also provide proof of payment to the Realty Office at the time the request for re-hearing is submitted. If the party requesting the rehearing prevails at the rehearing, the amount paid as a fee for the rehearing shall be returned to that party.

(5) *Rehearing before Tribal Council.* If the request for a rehearing is made more than one year after a prior Lands Committee hearing, the request for a new hearing must be submitted to Tribal Council. In this case, Tribal members shall be required to deposit with the Tribal Finance Office sufficient funds to cover a per diem payment for each member of Council. The Tribal members shall also provide proof of payment to the Tribal Chair at the time the request for a rehearing is submitted. If the party requesting the rehearing prevails at the rehearing, the amount paid as a fee for the rehearing shall be returned to that party.

(6) *Conflicts of interest.* No Committee member shall preside or vote in any matter in which he/she has a personal interest. Further, no Committee member may participate in any dispute in which a member or their immediate family has an interest. In the event a Committee member has a conflict in accordance with this section, they shall be replaced on the Committee by one of the two alternates during the course of the hearing.

(e) *Appeals of Lands Committee decisions.*

(1) *Applicability.* This section shall apply to all appeals from decisions made by the Lands Committee by any Tribal member who may be adversely affected by the decision.

(2) *Notice of final decision.*

(A) The Lands Committee, in accordance with subsection (d)(3)(G), shall mail all interested parties known to the Committee an affidavit of mailing along with written notice of the Committee's decision.

(B) Failure to give such notice shall not affect the validity of the decision or action of the Committee, however the time within which an appeal may be filed shall not begin to run until notice has been given.

(C) All final decisions of the Lands Committee shall include a paragraph containing the following language:

You may appeal the decision of the Lands Committee to the Tribal Council within 30 days of the date of this notice.

(3) *Appellate procedure.* Any Tribal member affected by the decision of the Lands Committee shall have the right to appeal the decision to the Tribal Council in accordance with the procedures set forth in this section.

(A) The person seeking review shall submit a letter to the Tribal Council Chairman within 30 days of the notice of the final decision of the Lands Committee and shall be required to deposit with the Tribal Finance Office sufficient funds to cover a per diem payment for each member of Council. (See procedures outlined in subsection (d)(5) above.) The letter shall contain the following:

- (i) Reason(s) for requesting the appeal.
- (ii) All parties affected by the decision of the Lands Committee.
- (iii) A copy of the final decision of the Lands Committee.

(B) The Tribal Council Chairman shall review the request, along with any other information included with the request, to determine if review of the Lands Committee decision is appropriate. In considering the request, the Tribal Council Chairman shall consider the following:

- (i) Was the requesting party given an opportunity to present their position before the Lands Committee?
- (ii) Does the request contain relevant evidence not considered by the Lands Committee?
- (iii) Does the decision of the Lands Committee appear to violate any provisions of Tribal law?
- (iv) Does the request contain new evidence not presented to the Lands Committee?

(v) Any other information deemed necessary to complete the matter.

(C) If review is deemed appropriate by the Tribal Council Chairman, the matter shall be presented at the next session of Tribal Council for review.

(4) *Scope of review.*

(A) All matters presented to Tribal Council shall be reviewed solely on the basis of the criteria listed in subsection (e)(3)(B). Review of the Lands Committee's decision by Tribal Council shall reconsider the evidence presented at the Lands Committee hearing to determine if the actions of the Lands Committee violated due process as defined in these procedures, or if the Lands Committee violated Tribal law.

(B) If it is determined that the decision of the Lands Committee violated due process or Tribal law, Tribal Council shall remand the matter to the Committee for further consideration.

(C) If it appears there was no violation of due process or Tribal law, Tribal Council shall uphold the decision of the Committee. Any decision of the Tribal Council regarding the appeal shall be voted on by the Tribal Council and sustained by a majority of the members of the Tribal Council permitted to participate in the appeal.

(D) For purposes of this section and the appeal, no Lands Committee member who participated in the initial findings before the Lands Committee shall be allowed to vote on any issue on appeal from the Lands Committee.

(E) All decisions of Tribal Council regarding the actions of the Lands Committee are final and not subject to further review or consideration by any other body or forum.

(f) *Prior acts or laws.* Any and all prior resolutions, ordinances or codifications of such (i.e., section 47-27 of the Cherokee Code) that operate in conflict with the procedures set forth herein are hereby rescinded.

(Res. No. 520, 10-12-1962; Res. No. 924, 10-25-1965; Ord. No. 12, 11-21-1995; Ord. No. 167, 5-24-1996; Ord. No. 690, 10-3-1997; Ord. No. 668, 9-7-1999)

**Sec. 117-35. Reserved for future use.**

(Research committee repealed, Ord. No. 8, 11-21-1995; Res. No. 142, 2-17-1984; Ord. No. 176, 7-9-1992)

**Sec. 117-36. Community Services Committee.**

(a) The Community Services Committee shall be composed of eight members, which shall include the Principal Chief, Vice-Chief, and one Council member from each township. The six Council members shall be elected by the Tribal Council at each annual meeting of the Tribal Council held in October following the Tribal election, and shall hold office from the date of election until the following general election or until their successors shall be elected.

(b) The Vice-Chief shall serve as Chairman of the Committee and the Committee shall select a Vice-Chairman from their membership. The Committee shall keep minutes of all meetings, which minutes shall be open to inspection at all times by members of the Tribal Council or officials of the Bureau of Indian Affairs.

(c) No action shall be taken by the Committee without a quorum present, with a quorum constituting five members of the Committee. A majority of the members present at any meeting at which a quorum exists shall have authority to approve action in the name of the Committee. All expenditures of the Committee budget shall be approved by the Committee at a regularly scheduled meeting.

(d) The budget as adopted by the Tribal Council shall be adhered to and no obligations shall be incurred in the name of the Tribe or the Committee contingent upon approval by the Tribal Council at some future session. The members of the Committee shall be financially responsible for any expenditures or obligations other than those in the budget.

(e) The appointment of chief of police for the Cherokee Police Department shall be made in accordance with the usual hiring procedures currently used by the Tribe. The chief of police will be responsible for planning and carrying out an adequate law and order program for the Cherokee Indian Reservation and shall report directly to the executive director of the community services division. The police chief shall have authority over the law and order program and, with the concurrence of the executive director, shall select qualified persons for appointment to the positions of police officers. Any corrective action involving the police department shall follow the procedures outlined in the Tribe's personnel manual. The number of persons employed by the police department shall be determined by the funds available in the budget.

(f) The Committee shall conduct meetings at such regular times as the Committee may determine. The Chairman shall have authority to call meetings of the Committee at such other times as he or she deems necessary. A special meeting may be called at the request of any three members of the Committee by giving all members five days' written notice of the time, place and purpose of such special meeting. All Committee meetings called in accordance with these conditions shall be considered as regular meetings for purposes of action taken or directed by the Committee.

(g) All prior resolutions concerning the Community Services Committee or which conflict with the provisions of this section are hereby rescinded to the extent they are inconsistent with this section including, but not limited to, Resolution No. 36 (1954) and Resolution No. 29 (1987) also codified at section 117-9 in the Cherokee Code.

(Res. No. 36, 1954; Res. No. 29, 10-21-1987; Ord. No. 14, 10-8-1991; Ord. No. 112, 3-7-2000)

### **Sec. 117-37. Manpower Committee.**

(a) The Manpower Committee shall be composed of the members of the Executive Committee, the Chairman of the Tribal Council, and two members of the Tribal Council elected by the Council.

(b) The duties and authority of the Manpower Committee shall be to oversee, select or approve all personnel actions for Tribal employees subject only to those specific powers and authority delegated by the Tribal Council to the Community Services Committee.

(Ord. No. 17, 10-8-1991; Ord. No. 418, 5-6-1993)

**Sec. 117-38. Legislative reading ordinance; form of ordinances.**

(a) No ordinance enacted by the Tribal Council shall be valid unless it has been introduced in compliance with subsection (b) at a regular or special session not less than 25 calendar days prior to the day the ordinance has been voted upon by the Council.

(b) All ordinances proposed to be considered by the Tribal Council shall be either placed on the agenda by the Clerk or introduced by the Principal Chief as emergency legislation. The Clerk shall assign the ordinance a number and read the ordinance into the record. By majority vote, the Tribal Council may waive the reading requirement and deem the ordinance read into the record. After the reading of the ordinance, the Council may discuss the proposed ordinance but no member may propose any motion or amendment to the ordinance at the first reading. At the conclusion of discussion the Chair shall automatically table the ordinance and either assign the ordinance to a Committee for further investigation or study or direct that the ordinance be placed on the agenda at the next scheduled Council session that is not less than 25 calendar days after the first reading.

(c) All ordinances appearing on the Council agenda for the second time, after the required 25-day waiting period, may be brought to the floor for consideration, debate, motions, amendments and passage.

(d) All proposed ordinances shall be drafted to include:

(1) A background ("whereas") section describing the history of the issue, prior ordinances and resolutions related to the matter, and the need or reason for the proposed ordinance or amendment;

(2) Language to enact the proposed ordinance or amendment ("now therefore be it ordained . . .");

(3) The proposed ordinance;

(4) When an amendment is proposed, it shall include the Cherokee Code section number of the existing ordinance, the existing language of the section(s) proposed to be amended, and enough of the existing ordinance as is necessary to understand the context of the proposed change, with proposed additions underlined and proposed deletions stricken through;

(5) A clause rescinding all prior resolutions and ordinances that are inconsistent with the proposed ordinance or amendment;

(6) A clause stating that the ordinance or amendment is to be effective upon ratification by the Principal Chief, or at some other proposed time; and

(7) The name of the program, enterprise, committee, or person submitting the proposed ordinance.

(e) The proposed ordinance shall be published by the Tribal Operations Program (TOP) in the Cherokee One Feather for public review and comment.

(f) No cover resolution shall be submitted. The Tribal Council may, in its discretion, consider



resolutions that are not in this form when there is an urgent need and there is not sufficient time to withdraw and redraft the ordinance, provided that the proposed ordinance or amendment is clear.

(Ord. No. 146, 4-3-1992; Ord. No. 503, 4-9-1999)

**Sec. 117-39. Review of court decisions by Tribal Council.**

The Tribal Council shall have no authority to hear appeals of any case decided by the Cherokee Court of Indian Offenses or any successor Cherokee Court. No case decided by the Cherokee Court shall be directly altered, amended or overturned by the Tribal Council on the basis of any petition, protest or appeal by any interested party, and the Tribal Council shall not enact any resolution or ordinance that will directly alter, amend or overturn the decision in any individual case decided by the Cherokee Court.

(Ord. No. 63, 12-5-1991)

**Secs. 117-40--117-44. Reserved.**

**ARTICLE IV. MISCELLANEOUS**

**Sec. 117-45. Code of conduct.**

(a) No elected official, program director or executive staff employee of the Eastern Band of Cherokee Indians shall participate in the selection or in the award or administration of a contract or grant award of funds from any government agency, if a conflict of interest, real or apparent, shall be involved.

(b) A conflict of interest shall be deemed to arise for purposes of this section when the elected official, program director or executive staff employee or any member of their immediate family, or an organization or firm which employs such official, director, executive staff employee or family member has a financial or other interest in the firm or person selected for the contract or grant award.

(c) No elected official, program director, executive staff employee or any member of their immediate family shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors who are contracting to perform services or sell goods or property to the Tribe or a Tribal program.

(d) No elected official, program director or any member of their immediate family, shall enter into any contract for services or goods with any Tribal entity, enterprise or program for the purpose of either receiving or providing services or goods. This provision shall not apply to such persons qualifying for housing benefits from the Qualla Housing Authority or for medical benefits from the Indian Health Service or other programs available to all Tribal members.

(e) For purposes of this section, "immediate family" shall be defined as spouse, parent, child or brother or sister.

(f) Any elected official, program director, executive staff employee or member of their immediate family who violate this section shall be guilty of a misdemeanor and may be punished by the Cherokee Court of Indian Offenses, or any successor court, by a fine of no more than \$5,000.00 or 12 months' confinement, or both.

(Ord. No. 507, 9-11-1995)

**Sec. 117-46. Financial accountability.**

(a) Subsequent to the approval of Annual Budgets by the Tribal Council, no funds may be expended for any line item in excess of the budgeted amounts. The Budget Committee shall have authority to reallocate appropriations within the overall budget. The Tribal Council shall have sole authority to amend the overall budget.

(b) Inadvertent expenditures in excess of a budgeted line item amount shall be reimbursed by the authorizing official unless the Tribal Council approves the expenditure and amends the appropriate line item.

(c) Intentional or flagrant expenditures in excess of a budgeted amount shall constitute a criminal offense by the authorizing official against the Tribe. Punishment for violation of this section shall be a fine of not more or less than \$1,000.00, imprisonment for up to 30 days and reimbursement to the Tribal Finance Office.

(d) The Tribal Finance Office shall not knowingly issue payments in excess of a budgeted amount.

(e) The Tribal Council shall not approve or adopt an Annual Budget in excess of its projected income.

(Ord. No. 624, 5-8-1987)

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## Chapter 125: Libraries\*

**\*Cross references:** Education, ch. 115.

Sec. 125-1. Public libraries.

**Sec. 125-1. Public libraries.**

(a) The Tribal Council does hereby establish and recognize as public libraries the Qualla Boundary Public Library and the Snowbird Community Library.

(b) The Snowbird Community Library shall operate as a branch of the Qualla Boundary Public Library.

(c) The public library shall be governed by a board of trustees, composed of nine members plus the librarian, who shall serve as a nonvoting, ex-officio member. The board shall have the power and authority to organize, to adopt bylaws and elect officers.

(d) The members of the board of trustees shall serve staggered terms of three years, so that three positions will become vacant each year.

(e) Membership to the board shall be by nomination from the recognized and organized civic groups on the Qualla Boundary and the Tribal Council Library Committee, with final

selection to be made by the Principal Chief.

(f) The Library Committee shall establish criteria for selection of board members, which shall include dedication to the library and ability to carry out the duties and responsibilities of the board.

(Res. No. 140, 6-23-1978; Res. No. 367, 4-2-1981; Res. No. 325, 9-28-1982)

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## Chapter 130: Health and Sanitation\*

**\*Cross references:** Animals, ch. 19; utilities, ch. 62; pollution control and environment, ch. 113A; Tribal health enterprise, ch. 130A; Cherokee water code, ch. 131; building codes and flood control, ch. 143; wastewater discharge, ch. 145.

### ARTICLE I. IN GENERAL

#### **Sec. 130-1. State sanitation laws.**

All businesses located within the Qualla Boundary shall comply with all health and sanitation requirements of the State of North Carolina.

(Res. No. 197, 2-25-1959)

#### **Sec. 130-2. Private sanitation services.**

(a) Businesses located on the Qualla Boundary shall be permitted to hire or contract sanitation services from the private sector rather than using the services of the Tribal Sanitation Department.

(b) Businesses providing contract sanitation services shall be granted the use of Cherokee landfill but they shall not dispose in the Tribal landfill any material or matter collected from outside the Cherokee Reservation.

(Res. No. 491, 6-6-1985)

#### **Sec. 130-3. Tribal Health Board.**

(a) The Tribal Health Board shall consist of 13 members. One person shall be appointed by the Principal Chief; six Council representatives shall sit on the Tribal Health Board, one member from Tsali Manor, one member from Social Services, one member from Health Delivery, and one member from Child Care. These members shall be voting members of the Tribal Health Board. Two members (non-voting) shall be from IHS: one patient advocate, and one employee advocate to be voted on by members of the Employees Association.

(b) The Board shall adopt a constitution and By-laws to govern their acts and deliberations. The Board shall meet monthly.

(c) The Board shall monitor and investigate health care delivery to members of the Eastern Band of Cherokee Indians and their families. The Board shall seek to ensure efficient and appropriate health care to Tribal members, promote maximum utilization of all available

medical resources, plan for health care programs, be responsible for budget preparation and allocation, establish health and medical priorities for the Cherokee Indian Reservation, assist or advise in the selection of medical personnel, plan and provide for training of medical personnel and Board members, plan for construction of all new health facilities, investigate availability of scholarships in the health services field, and investigate all contracted services offered by public health services.

(Res. No. 66, 1-1-1971; Res. No. 340, 10-13-1971; Res. No. 159, 7-11-1974; Res. No. 222, 10-31-1974; Res. No. 5, 1-8-1976; Ord. No. 227, 6-6-1996)

#### **Sec. 130-4. Public Health and Sanitation Code.**

The Tribal Council endorses the Public Health and Sanitation Code as the official Tribal document for the regulation and control of health and sanitation activities on the Cherokee Reservation. This chapter represents the proper references for any and all questions concerning legality, conformance of standards and enforcement.

(a) It shall be unlawful for any person, individual, firm, association, organization, partnership, business trust, corporation or company to sell at wholesale or retail any meats, meat food products, poultry, poultry products, fish, shellfish, crustacea, scallop, and seafood products from any nonpermanent structure. Nonpermanent structures include, but are not limited to, trucks, vans and other mobile units. Delivery units that transfer products between approved processors and meat and seafood markets possessing a valid operational permit required by North Carolina Administrative Code 10.A 0502 are exempted from this chapter.

(b) Any person, firm or corporation subject to the criminal jurisdiction of the Cherokee Court violating this chapter shall be guilty of a misdemeanor, and each violation shall be not less than \$100.00, nor more than \$1,000.00, or shall be imprisoned for not more than 60 days, or both.

(c) Any person, firm or corporation not subject to the civil jurisdiction of the Cherokee Court who violates this chapter shall be guilty of a civil violation of the Cherokee Code and may be subject to a fine not more than \$1,000.00 for each offense. Persons, firms or corporations violating this provision may lose their privilege of continuing to conduct business on Cherokee Tribal lands, at the discretion of the Tribal Business Committee.

(Res. No. 272, 9-23-1976; Ord. No. 242, 9-1-1994)

#### **ARTICLE II. RESERVED\***

**\*Editor's note:** Ord. No. 87, adopted Jan. 13, 2000, completely repealed Art. II of this chapter which referred to solid waste user fees and encompassed §§ 130-5--130-12. Section 130-13 was repealed by a previous ordinance, Ord. No. 283-A, adopted October 12, 1998.

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### **Chapter 130A: Tribal Health Enterprise\***

**\*Cross references:** Pollution control and environment, ch. 113A; health and sanitation, ch. 130.

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## **ARTICLE I. IN GENERAL**

### **Sec. 130A-1. Purpose.**

(a) Pursuant to the authority vested in the Eastern Band of Cherokee Indians by its governing document and particularly by section 23 thereof, and its inherent Tribal sovereign authority to oversee, protect and preserve the assets and benefits of the Tribe, together with its capacity and authority to conduct business activities by and on behalf of the Tribe including, but not limited to, the management and direction of Cherokee Dialysis Center and Tsali Care Center, the Tribal Council hereby creates this Tribal enterprise that shall be known as the Tribal Health Enterprise, hereafter referred to as THE.

(b) In any suit, action or proceeding involving the validity or enforcement of any of its contracts, THE shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this chapter. A copy of the chapter, duly certified by the clerk of the Tribal Council, shall be admissible in evidence in any suit, action or proceeding.

(Ord. No. 429, 2-22-1999; Ord. No. 429, 10-27-2000)

### **Secs. 130A-2--130A-20. Reserved.**

## **ARTICLE II. BOARD OF ADVISORS**

### **DIVISION 1. GENERALLY**

#### **Sec. 130A-21. Duties generally.**

The Board of Advisors shall be chosen and act in the manner set forth in this article, administer, and oversee, and direct the Health Enterprises of the Tribe.

(Ord. No. 429, 2-22-1999)

#### **Sec. 130A-22. Composition.**

The Board of Advisors shall be composed as follows: four enrolled members of the Eastern Band of Cherokee Indians or at least a majority of the Board of Advisors will be members of the Eastern Band of Cherokee Indians; who have demonstrated their health and/or business acumen, with a majority of Board members possessing professional or other equally qualified credentials.

(Ord. No. 429, 2-22-1999)

#### **Sec. 130A-23. Appointment.**

Members of the Board of Advisors shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Board of Advisors shall be selected on the basis of their business and/or professional experience and ability to significantly contribute to the capabilities and functions of THE. Certain members of the Board are delineated by positions and cannot vote: Cherokee Indian Hospital Administrator, EBCI Executive Director of Health and Medical Services, and one Council representative.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-24. Eligibility criteria.**

No person shall be eligible or qualified to serve or continue to serve as a member of the Board of Advisors who:

(a) Owns or has an immediate family member, as defined in Tribal Council Resolution No. 287 (1996), who owns a financial interest in any health enterprise in the five surrounding counties (Haywood, Jackson, Graham, Cherokee, and Swain) or who owns a financial interest in the management of any health operation in the five surrounding counties (Haywood, Jackson, Graham, Cherokee, and Swain);

(b) Has been convicted of a felony or any other criminal offense involving moral turpitude;

(c) Possesses a professional license that has been disciplined or revoked in the past ten years.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-25. Holding other positions of employment.**

Members of the Board of Advisors may hold other positions of employment with the Tribe, or any enterprises of the Tribe, and may engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-26. Terms.**

Each member of the Board of Advisors shall serve a four-year rotating term, with the Chairperson being subject to removal, with cause, at the pleasure of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Board of Advisors from serving successive terms, except a Board member shall not serve more than two successive terms.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-27. Resignation.**

A member of the Board of Advisors may resign at any time by providing the Tribal Council, Principal Chief, and the Chairman of the Board of Advisors with written notice of his or her intention to resign on a date certain. The Board member resigning will continue to serve on the Board of Advisors until such time as a replacement is selected, but in no event more than 30 business days from the date specified in the resignation. The resignation shall become effective on the date stated and need not be accepted by the Tribal Council to be effective.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-28. Filling of vacancies.**

A nomination to fill a vacancy in the Board of Advisors shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.

(Ord. No. 429, 2-22-1999)

**Secs. 130A-29--130A-40. Reserved.**

**DIVISION 2. POWERS AND DUTIES**

**Sec. 130A-41. Duties generally.**

THE Board of Advisors shall be charged with the following duties and is authorized to undertake any and all actions necessary and appropriate for the execution of such duties, consistent with the purposes for which the enterprise is established. THE shall be authorized to exist, operate and exercise the following enumerated powers for a perpetual period from the date of ratification of this chapter over all THE activities, owned by, or operated on behalf of the Tribe.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-42. Limitations of authority.**

THE shall possess only those powers arising under this division, and the authority and power of THE is constrained by the limitations contained in this chapter.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-43. Creation; continuation.**

THE shall come into existence as a separate, single purpose instrumentality of the Tribe on the date this chapter is adopted and continue in perpetuity until its existence is terminated through legislative action of the Tribal Council.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-44. Waiver of sovereign immunity.**

(a) THE has the authority to propose a waiver of its right and the right of the Tribe to exercise sovereign immunity in those contracts, agreements or undertakings to which the THE is a party. Such a proposed waiver may include provisions:

- (1) Stating what law will govern disputes;
- (2) Agreeing on the right to sue and be sued;
- (3) Designating the jurisdiction in which existing or future disputes may be resolved, provided that the parties first exhaust all remedies in the Cherokee Court of Indian Offenses or any successor Tribal Court of the Eastern Band of Cherokee Indians; and

(4) Agreeing to resolve existing and future disputes by arbitration.

(b) No proposed waiver of sovereign immunity by THE shall allow or authorize:

(1) Any person to enter on or into any land, structure, facility, or enterprise not under the direct control and oversight of THE; or

(2) Any judgment or arbitration award to be enforceable against any assets of the Tribe or any other enterprise, fund, or entity of the Tribe, except against those assets described in subsection (c), below.

(c) The enforcement of any judgment, order or arbitration award against THE in accordance with a waiver of sovereign immunity may be made only against the following:

(1) The assets of THE, not including real property and fixtures; and

(2) The revenues related to, or arising from, the operation of THE.

(d) After the effective date of this amended section February 22, 1999, no future waiver of sovereign immunity by the THE shall be effective unless it is approved by the Cherokee Tribal Council and ratified by the Principal Chief. The amendment of this section shall not affect existing waivers of sovereign immunity properly entered into by the THE or the Tribal Council under prior law.

(Ord. No. 429, 2-22-1999)

#### **Sec. 130A-45. Meetings of the Board of Advisors.**

The Board of Advisors shall establish regular meetings, not less than monthly.

a. *Notice of meetings.* Notice of each meeting of the Board shall be mailed to each member, addressed to each Board member's address or usual place of business, not less than five nor more than 20 business days from the day on which the meeting is to be held, or notice may be delivered to such member personally not less than two business days before the day on which the meeting is to be held. Notice of any meeting of the Board need not be given to any member who shall waive such notice.

b. *Emergency meetings.* The Board of Advisors may call emergency meetings upon 24 hours' notice to Board members with the time and place of such meeting and the business to be transacted at such meeting. Any business conducted in an emergency session shall be approved by not less than a majority of the full Board of Advisors. If the situation calls for a Board of Advisors member to participate by a telephone conference call, the Chairman will decide whether such participation is acceptable pursuant to the requirements contained in this chapter.

c. *Attendance; absentees.* The Board of Advisors shall endeavor to attend all meetings of THE. The Chairman of the Board shall decide whether absences of a Board member are excused or unexcused. Three consecutive unexcused absences of a Board member shall be reported by the Chairman or Vice-Chairman of the Board to the Principal Chief and to Tribal Council. Three consecutive unexcused absences may be considered cause for removal by the Tribal Council.

(Ord. No. 429, 2-22-1999)

#### **Sec. 130A-46. Election of officers.**



The Board of Advisors shall, at the first meeting of each fiscal year (October 1-September 30), elect from among themselves a Chairperson, a Vice-Chairperson, Treasurer, and a Secretary. The Board member selected on the basis of his or her experience in auditing or accounting shall be designated Treasurer.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-47. Annual audit.**

The Board of Advisors shall be responsible for the preparation and presentation to the Tribal Council of the certified annual audit, subject to the requirements of section 130A-112.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-48. Recordkeeping.**

The Secretary of the Board of Advisors shall prepare and maintain complete and accurate records of all meetings and actions taken by the Board.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-49. Treasurer's duties.**

The Treasurer shall keep complete and accurate financial records of the Board's expenses and receipts, report at least every fiscal quarter to the Board and shall submit a complete annual report to the Board.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-50. Annual report to the Tribal Council.**

THE Board of Advisors shall report at least annually to the Tribal Council. The Board may, however, be called to report to the Tribal Council as deemed desirable by the Tribal Council.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-51. Reports.**

THE shall file quarterly reports with the Tribal Council. The report shall include:

- a. Unaudited financial statements, prepared in accordance with generally accepted accounting principles, which reflect all business conducted at THE during the preceding fiscal quarter and year to date, as well as a budgeted amount for the balance of the current fiscal year;
- b. Information on material changes and developments since the last report of the business conducted at THE, including a description of competitive conditions, research and development activities, new lines of business conducted by THE, the approximate amount of total sales, revenue, income or loss, attributable to each specific type of health care and for each line of business which accounted for more than ten percent of total sales and revenues of THE;

c. Any material pending legal proceeding to which THE or a business venture of THE is or was a party;

d. Total hirings, promotions and terminations by job classification during the preceding fiscal quarter of THE employees and work force forecast for each position classification for the current fiscal year; and

e. Such other or different matters as the Tribal Council may request. THE shall file with the Tribal Council such additional reports as required from time to time by the Tribal Council as well as meet all federal and state compliance regulations.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-52. Additional duties.**

The Board of Advisors shall by not less than a majority of the Board membership:

a. Annually prepare and submit for approval to the Tribal Council an annual operating budget to include short-range and long-range goals and objectives of THE and the strategies used by THE to accomplish these goals and objectives;

b. Approve budgets for THE, including its annual operating budgets and annual business plans;

c. Approve the establishment of accounts at specified banks as required;

d. Authorize the expenditure of funds in the accounts of THE as necessary for the operation and maintenance of the business and properties of THE and the timely payment of financial liabilities and obligations of THE;

e. Enter into agreements, contracts, or understandings with any government agency, person, partnership, corporation or Indian Tribe;

f. Lease property from the Tribe and others for such periods as are lawfully authorized to hold and manage or sublease such properties;

g. Borrow money and issue temporary or long term evidence of indebtedness and timely repay such debts;

h. Pledge the assets and receipts of THE as security for debts and acquire, sell, lease, exchange, transfer and/or assign the nonrealty property or interest of THE;

i. Undertake and carry out feasibility and other studies and analysis of health operations and markets, prepare health plans, and execute such plans to the extent permitted by the Tribe, and this chapter, and amendments hereto;

j. Prepare and adopt operation and management plans concerning health operations as required or otherwise necessary for the proper conduct of health care endeavors as authorized by the Tribal Council pursuant to this chapter and amendments hereto;

k. Cooperate with all other Tribal health care providers and entities of the Tribe or Tribal designees to include the Cherokee Indian Hospital;

I. THE Board of Advisors shall exercise approval authority with respect to:

(1) Internal management policies, including a written manual sufficiently setting forth policy and procedures regarding (i) hiring, disciplinary and discharge from employment of THE employees including policy and rights of appeal governing the provision of the Indian preference employment rights; and (ii) a written manual setting forth procurement policies.

(2) Vendor contracts, contracts concerning facility maintenance and repairs and contracts and subcontracts regarding ancillary commercial activities of THE.

(3) Advertisement and promotional sales and activities.

(4) Construction plans and specifications, interior and exterior design and furnishings.

(5) Annual operating, capital and working capital budgets.

m. Collaboratively develop with key Tribal and health management staff and approve a plan annually for distributing profits into medical needs;

n. Develop, implement, and approve policies and procedures for the successful operation of THE.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-53. Quorum.**

Three of the four voting members of the Board shall constitute a quorum.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-54. Decision making; presiding officer.**

The Board shall meet and decide all matters by simple majority vote of those members present which constitute a quorum. The Chairperson shall not vote on any issues. A majority vote shall be binding on the Board. The Chairperson, or Vice-Chairperson in the Chairperson's absence, shall preside at each meeting.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-55. Record of meetings.**

The Secretary shall cause to be kept a complete and accurate record of all Board meetings, copies of which shall be furnished to the Board. The Tribal Council may receive records of meetings upon request.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-56. Compensation.**

Such compensation/reimbursement, if any, will occur with the presentation of appropriate receipts and reports and shall be paid from THE funds. Board members shall be reimbursed from THE funds for all reasonable out-of-pocket expenses incurred while acting on behalf of THE Board. Any such compensation and reimbursement shall be considered an operating expense of THE

(Ord. No. 429, 2-22-1999)

**Sec. 130A-57. Signatory power.**

All contracts and other documents executed in the name of THE must be signed by two officers, one of whom shall be the Chairperson or the Vice-Chairperson, provided that if both of them are absent or disabled, any other two officers expressly designated by the Board of Advisors to sign the specific contracts or documents may sign the contracts and documents for and on behalf of THE. A certificate of any officer of THE regarding the absence or disability of the Chairperson and the Vice-Chairperson shall be binding on THE.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-58. Accountability.**

The Board shall be responsible and accountable to the Tribal Council and report to Tribal Council as necessary to augment the quarterly report required in section 130A-51. Upon the request of the Tribal Council, the Board shall promptly and fully advise the Tribal Council with respect to the business and affairs of THE. The Tribal Council may require such written reports regarding THE business and affairs as the Council deems necessary.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-59. Committees.**

The Board may from time to time establish consultant groups and advisory committees which shall have such duties and the members of which shall hold office for such periods as the Board may determine.

(Ord. No. 429, 2-22-1999)

**Secs. 130A-60--130A-70. Reserved.**

**DIVISION 3. OFFICERS**

**Sec. 130A-71. Positions and selection.**

From among the Board members, the Board shall appoint the following officers of THE Board ("officers"): a Chairperson, a Vice-Chairperson, Secretary and Treasurer.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-72. Terms of office.**

The Board shall appoint its officers at each annual meeting of the Board in the second week of October.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-73. Powers and duties.**

Subject to the supervisory authority of the Board, officers shall have the following powers and duties, in addition to such other powers and duties as may be set for the office in this division or applicable law, or as may be assigned by the Board:

a. *Chairperson.* The Chairperson shall preside over all Board meetings; sign on behalf of THE all documents, contracts, or other instruments approved for such execution by the Board; and be responsible, jointly with the Treasurer, for the authorized and secure receipt, maintenance, execution, endorsement, disbursement, and other disposition of all funds, checks, drafts, other order or demands for money, notes, other evidence of indebtedness, securities and other valuable instruments and shall have such other powers and duties as may from time to time be assigned to him/her by the Board.

b. *Vice-Chairperson.* The Vice-Chairperson shall exercise the powers and perform the duties of Chairperson when the Chairperson is absent or disabled, sign on behalf of THE all documents, contracts, or other instruments approved for such execution by the Board, and shall have such other powers and duties as may from time to time be assigned to him or her by the Board.

c. *Secretary.* The Secretary shall issue notices for all Board meetings; keep minutes of all meetings; and serve as custodian of and maintain all minutes of meetings and associated records and correspondence of the Board. The Secretary shall make such reports and perform such other duties as are incident to the office, or are properly required or assigned him/her by the Board.

d. *Treasurer.* The Treasurer shall be responsible, jointly with the Chairperson, for the authorized and secure receipt, maintenance, execution, endorsement, disbursement, and other disposition of all funds, checks, drafts or other order or demands for money, notes, other evidence of indebtedness, securities and other valuable instruments; and be responsible for the maintenance of comprehensive financial books and records of transactions, prepared in accordance with generally accepted accounting principles. The Treasurer shall have principal oversight responsibilities for all financial functions and affairs of THE. The Treasurer shall serve as the Board's principal liaison with the Tribal Council, other members of THE management having financial management responsibilities, any contract manager, accounting firms and other financial directors. The Treasurer shall perform such other duties incident to the office or that are properly required by the Board.

e. *Delegation.* In case of unavailability or disability of any Board member, the Board may temporarily delegate the Board's powers or duties as an officer to another Board member, until the Board member is available or no longer disabled or until that vacancy is filled.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-74. Maintenance, inspection and return of books and records.**

There shall be maintained at the Cherokee Health Delivery System, all financial books and

records, all minutes of Board meetings, and all other materials, books, records, documents, correspondence, and contracts. All such material shall be made available for inspection and copying (copying excludes medical records, or any document specified by the EBCI medical records confidentiality policy), at any reasonable time during the usual business hours:

- a. To the Tribal Council or duly authorized representatives thereof;
- b. To any THE Board member;
- c. To the Tribal Health Board Committee.

Upon termination from office, each Board member, employee and agent of THE shall turn over to his or her successor or to the Chairperson, in a timely fashion and in good order, all monies, books, records, minutes, documents, contracts or other property of THE in his or her custody. If such property is not turned over or is damaged or missing, the Board may charge any Board member and any employee or agent a reasonable replacement fee.

(Ord. No. 429, 2-22-1999)

**Secs. 130A-75--130A-90. Reserved.**

#### **DIVISION 4. OWNERSHIP AND REVENUES**

**Sec. 130A-91. Property held by Tribe.**

THE and all property used in the operation of THE shall be and continue to be owned by the Tribe. Any property, which is to become a fixture or permanent improvement of real property of THE shall continue to be held in the name of the Tribe with restrictions upon alienation imposed by the United States, or in the name of the United States in trust for the Tribe, and the title to such real property shall always remain in trust status.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-92. Limitation on use of THE net earnings.**

No part of the net earnings of THE shall inure to the benefit of or be distributed to any Board member or other private person, except that THE is authorized and empowered to pay reasonable compensation for services rendered to THE as provided in this chapter and to make payments and distribution in furtherance of the purposes set forth in this chapter.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-93. Utilization of profits.**

THE will work collaboratively with key Tribal and health management staff to develop and approve an annual plan for distribution of profits into addressing medical needs.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-94. Audit.**

THE shall provide an annual certified audit of its operations and other such audits as the Tribe deems necessary which shall be conducted by the Tribe's audit firm. The certified public accountants shall report any instances of noncompliance with the ordinances or

regulations of the Tribe, which come to their attention during the performance of the audit. THE auditors shall be paid from operational funds of THE. The auditor shall have access to all books and records, all cash management procedure manuals, all internal control manuals, and all other records, documents, papers and persons employed by the THE as they deem necessary. For each audit, the auditor shall provide the Board of Advisors with a draft management letter and shall permit the Board a reasonable time within which to respond to the letter with changes to the operations of THE which address the concerns expressed in the draft management letter. The results of the certified audit shall be provided to the Board, the Tribe, and such other governmental agencies as may be required by law.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-95. Annual report.**

THE shall submit an annual report to the Tribal Council, signed by the Chairperson of the Board, showing:

- a. A summary of the year's activities;
- b. The financial condition of THE;
- c. The condition of THE properties;
- d. Any significant problems and accomplishments;
- e. Plans for the future; and
- f. Such other information as the Board or the Tribal Council shall deem pertinent.

(Ord. No. 429, 2-22-1999)

**Secs. 130A-96--130A-110. Reserved.**

**DIVISION 5. ADMINISTRATION AND ENFORCEMENT**

**Sec. 130A-111. Obligation to notify Tribe.**

THE shall immediately notify the Chairman of the Tribal Council of the receipt of notice of any summons or complaint upon THE, or any Board member, employee or agent of THE, or any management contractor, in which THE, or any Board member, employee or agent of THE is named in any suit, claim, action or other proceeding in any court, administrative or regulatory forum. A copy of the summons and complaint shall be provided to the Chairman of the Tribal Council with the notice.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-112. Professional services.**

THE shall be entitled to retain the services of any business or professional consultants or any consultants or assistants.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-113. Severability of provisions.**

If any provision of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be violative of applicable law or otherwise invalid, then that provision shall be severable and considered null and void, but such judgment shall not affect, impair or invalidate the remainder of this chapter or its application to other persons and circumstances, but shall remain in full force and effect, and such judgment shall be confined in its operation to the provisions of the chapter or the applicable thereof to the person and circumstances directly involved in the controversy in which such judgment was rendered.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-114. Adoption of By-laws.**

THE Board may adopt By-laws for THE Board of Advisors, provided that such By-laws shall not contain provisions inconsistent with or in violation of the provisions of this chapter or applicable law.

(Ord. No. 429, 2-22-1999)

**Sec. 130A-115. Effect of chapter.**

The effect of this chapter is that all prior ordinances and resolutions in conflict with this chapter are hereby rescinded in their entirety, as of the date this chapter passed.

(Ord. No. 429, 2-22-1999)

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## Chapter 131: Cherokee Water Code\*

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**\*Cross references:** Utilities, ch. 62; health and sanitation, ch. 130; wastewater discharge, ch. 145.

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**Sec. 131-1. Declaration of rights.**

In order to promote the general welfare of the Eastern Band of Cherokee Indians and to develop, manage and preserve the waters and other resources of the Cherokee trust lands, to provide for the exercise of inherent sovereign power of self-government by the Tribe and to further the preservation and development of the resources of the Tribe, the Tribe hereby asserts its prior, exclusive and supreme rights in, ownership of and jurisdiction over the waters of the Cherokee trust lands.

(Ord. No. 25, 11-2-1989)

**Sec. 131-2. Nature of ownership.**

(a) The Eastern Band of Cherokee Indians is the owner of the full equitable title of the rights to and the use of all of the waters of Cherokee trust lands and that title remains undiminished in the Tribe. The United States of America owns only the naked legal title to



such waters and rights solely as trustee for the Tribe.

(b) All rights to the use of Cherokee waters are held by the Tribe in perpetuity for the use and benefit of the Tribe and the lands and other resources of the Tribe. No rights or privileges of any kind shall be recognized except as they are subject to the overriding, prior and supreme right and interest of the Tribe and the policies and provisions of this chapter, together with any regulations established thereunder. No agent of the Tribe, the Tribal Council or the United States shall take any action or recognize any right affecting the water resources of the Tribe and its trust lands which shall in any way decrease or threaten to decrease the prior and supreme rights and interests of the Tribe.

(Ord. No. 25, 11-2-1989)

**Sec. 131-3. Waters defined.**

The waters of the Eastern Band of Cherokee Indians are defined as:

(a) All waters located upon or bordering Cherokee trust lands, whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined watercourse or water body of any kind;

(b) All waters reserved or granted to the Tribe or to Cherokee trust lands by the United States and the Tribe; and

(c) All water which in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.

(Ord. No. 25, 11-2-1989)

**Sec. 131-4. Water policy.**

In taking any action under this chapter, the Tribal Council or the Tribal Business Committee shall be guided by the following policy guidelines:

(a) Whenever practicable, action should benefit the Tribe and its members and further the objective for which Cherokee lands were placed in trust, namely to provide a permanent home for the Tribe and its members, now and in the future. Alternatives to existing or proposed uses shall be considered whenever practicable.

(b) In taking any action under this chapter which may impose substantial economic hardship on persons or entities presently using water, or which threaten the degradation of other economic, historical, aesthetic, natural or environmental values, the Tribal Council and the Business Committee shall consider and give weight to:

(1) The economic dislocation and hardship which will be imposed by its actions;

(2) The investment in time, money and other resources made by the parties affected in reliance upon the existing system of distribution and use of water;

(3) Such other burdens as may be imposed by the action; and

(4) The nature and extent of degradation of other economic, cultural, historical, aesthetic, natural and economic values.

(c) Unless otherwise provided, the Tribal Council or Business Committee shall give preference in the following order:

- (1) Domestic use,
- (2) Municipal/Tribal use,
- (3) Fish and wildlife,
- (4) Agriculture,
- (5) Industry,
- (6) Power,
- (7) Other uses.

(Ord. No. 25, 11-2-1989)

**Sec. 131-5. Guidelines for effective use of resources.**

In addition to policy guidelines contained in section 131-4, the Tribal Council and Business Committee may take appropriate action, in its discretion, to:

- (a) Ensure an adequate supply,
- (b) Maintain water levels,
- (c) Maintain pressure in surface and underground water,
- (d) Prevent or reduce obstruction of surface water or groundwater flow,
- (e) Maximize use of the available supply,
- (f) Create and enhance the efficiency of storage,
- (g) Prevent or reduce pollution or the effects of pollution,
- (h) Shape use of available supplies to promote economic, scenic, aesthetic, historical, cultural, natural or domestic values,
- (i) Provide for long term development,
- (j) Penalize misuse,
- (k) Prevent interference with Tribal administration of water,
- (l) Retain a base flow of rivers, streams and springs necessary to provide for the preservation of wildlife, fish, scenic, aesthetic and other environmental values, or
- (m) Otherwise ensure conformity with the provisions of this chapter.

(Ord. No. 25, 11-2-1989)

**Sec. 131-6. Rights reserved to Tribe.**

(a) The following rights shall be reserved by the Tribe when possessory holdings are issued to individual Tribal members:

(1) All rights to issue water rights in or through leases and permits and to draw the income therefrom or allocate the income therefrom between the Tribe and the possessory holder;

(2) The power and responsibility to control and regulate the use of water on the possessory holding.

(b) The following rights shall be reserved by the Tribe when leases or other use permits are issued to individuals or other legal entities, whether Tribal members or not:

(1) To negotiate any lease fees, permit fees, royalty fees or use fees and rates for consumption or for commercial or industrial use;

(2) The power and responsibility to control and regulate the use of water on the leased property.

(Ord. No. 25, 11-2-1989)

#### **Sec. 131-7. Rights granted to member when possessory holding issued.**

The following rights shall be granted by the Tribe to a Tribal member when a possessory holding is issued:

(a) Riparian rights to use of water standing or flowing through or along the possessory holding, subject to the right of other riparian possessory holdings to make reasonable use of the water and subject to reasonable regulations of the Tribe;

(b) Use of any surface or subsurface water for domestic purposes, subject to health and sanitation regulations of the Tribe or other governmental agencies with lawful authority within Cherokee trust lands.

(Ord. No. 25, 11-2-1989)

#### **Sec. 131-8. Prohibited acts and penalties.**

(a) Any Indian person or firm who shall willfully violate any provision of this chapter or the water policy, including the violation of any use permit, license or right exercised under a lease, shall be guilty of a criminal offense and, upon conviction, shall be fined and imprisoned in the discretion of the court, with each offense not to exceed a fine of \$1,000.00 and imprisonment not to exceed six months.

(b) All persons or firms whose employees, owners or agents are convicted of any such offense shall be subject to the revocation, cancellation or termination of their use permit, license, lease or other use right by the Tribal Business Committee.

(c) Any person or firm not subject to the criminal jurisdiction of the Cherokee Court who shall willfully violate any term or provision of this chapter, the water policy, any use permit, license, lease or use right granted by or through the Tribe, shall be subject to a civil fine of up to \$2,000.00 per violation, together with being subject to revocation of Trader's License, use permit, license, lease or other use right by the Tribal Business Committee. All such civil fines shall be assessed by the Tribe through the Tribal Business Committee and may be enforced by civil suit in the Cherokee Court.

(Ord. No. 25, 11-2-1989)

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## Chapter 136: Signs and Billboards\*

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**\*Cross references:** Zoning, ch. 61; roads and highways, ch. 136A; building codes and flood control, ch. 143.

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### ARTICLE I. BILLBOARDS

#### **Sec. 136-1. Scope.**

The provisions of this article shall govern the number, size, location and character of all billboard signs which may be located on the Cherokee Indian Reservation. No billboard signs shall be allowed on the Cherokee trust lands except in accordance with the provisions of this article.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-2. Jurisdiction.**

All billboard signs shall be under the sole and exclusive jurisdiction of the Tribal Council of the Eastern Band of Cherokee Indians. No billboard sign shall be allowed on Cherokee trust land except with the approval of the Tribal Business Committee.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-3. Billboard signs prohibited.**

Billboard signs shall not be allowed within the Business Zone of the Qualla Boundary of the Cherokee Indian Reservation. The Business Zone is defined, for the purposes of this article, as those geographical areas including:

- (1) On or along U.S. 19 from the intersection of Old Mission Road running in a westerly direction to Owl Branch Road,
- (2) On and along U.S. 441 access road and U.S. 441 Bypass from the exterior boundary line of the Cherokee Indian Reservation to the intersection with U.S. 19,
- (3) On and along old U.S. 441 from the exterior boundary line of the Cherokee Indian Reservation to the intersection with U.S. 19,
- (4) On and along U.S. 441 running from Cherokee Main Street to the entrance of the Great Smokey Mountain National Park,
- (5) On and along Aquoni Road, and
- (6) The state-maintained portions of Big Cove Road.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-4. Billboard permit required.**

(a) All billboard signs placed within the Qualla Boundary shall require a permit issued by the Business Committee. A fee of \$50.00 shall be required for each sign placed after the effective date of this article (July 16, 1987).

(b) A permit issued for a billboard sign shall describe the location of the sign and shall be for a term not to exceed five years.

(c) All signs that are erected or in place prior to the adoption of this article, or any amendment thereto, require a permit or statement of noncompliance. Such statements or permits shall be issued by the Business Committee within 120 days after the initial adoption of this article, or subsequent additions hereto, for which no permit fee shall be collected. In the event the Business Committee fails to issue a permit or statement on noncompliance within the 120-day period, the billboard sign owner shall assume that the sign is in compliance with all provisions of this article and that the billboard sign shall be permitted to stand. The billboard sign owner may request that the Business Committee issue a permit stating such.

(d) Billboard sign permit applications that are denied shall include a list of all findings and reasons for such denial.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-5. Billboard sign regulations.**

Billboard signs, where allowed, shall be subject to the following limitations and requirements:

(a) *Height.* The top of any billboard sign shall not be higher than 30 feet above the natural established grade of the parcel or lot upon which it is located or placed, and in no case shall double-decker signs be allowed.

(b) *Spacing.* No billboard sign shall be nearer than 500 feet to another billboard sign along the same side of a common right-of-way.

(c) *Size.* No billboard sign shall exceed 36 feet in length or 378 square feet in area, inclusive of any border and trim, but excluding the base or apron, support and other structural members. The maximum size limitation shall apply to each side of a sign structure. Two or more billboard signs may be grouped back-to-back, end-to-end or in a single V having an included angle not greater than 30 degrees at a single location. The aggregate area of such signs at a single location facing the same direction shall not exceed 378 square feet, and any such grouping of signs shall not exceed 36 feet in length.

(d) *Calculating number of billboard signs.* A single sign containing copy on one side shall be counted as one sign. Every other sign shall be counted as a separate sign for each face thereof.

(e) *Separation.*

(1) No billboard sign shall be located or placed so as to face a parcel or lot on the same street, occupied by a church, public school, public park or

recreational facility, or cemetery, nor nearer to such uses than 200 feet along a common right-of-way.

(2) No billboard sign shall be located or placed closer than 60 feet to the intersection of any two street lines.

(3) No billboard sign shall be located or placed nearer than 50 feet to any parcel or lot measured along a common right-of-way where the principal or main use is residential.

(4) No billboard sign shall be located or placed in any setback area established or required by any right-of-way easement or zoning regulation. No billboard sign shall be located or placed so that any part of such sign extends nearer to a street line than any building or structure on contiguous property, where such building or structure is within 100 feet of such sign.

(f) *Setback.* No billboard sign shall be erected closer than 15 feet to an adjacent street right-of-way, or greater distance where otherwise required.

(g) *Angle.* No single-faced billboard shall have an interior angle from the road right-of-way to the face of the sign in excess of 45 degrees, except where structural members of the sign are screened by natural or manmade barriers.

(h) *Safety.* The Chief of Police of the Cherokee Police Department shall have the authority to order removal of any billboard sign which, upon investigation, and after notice in writing to the owner of record thereof, he finds to obscure the effectiveness of an official traffic sign or signal or physically interferes with the driver's view of approaching, merging or intersecting traffic.

(i) *Sign matter and copy.* No billboard sign shall be allowed for the display of any statement, word, character or illustration of an obscene, indecent or immoral nature, or to be adverse to the interests of the Eastern Band of Cherokee Indians.

(j) *Aesthetics.*

(1) At least every 12 months, all billboard sign structures shall be painted and the message area shall be renewed.

(2) The name of the owner of the billboard sign shall be attached to each billboard sign structure and be legible from the nearest street right-of-way.

(3) Upright billboard sign supports above the lower edge of the sign which are visible from a right-of-way shall be covered or shielded with a facing.

(4) Billboard signs allowed under this article may be illuminated.

(5) Animated billboard signs shall be prohibited.

(k) *Construction standards.* All billboard signs shall be constructed and erected so as to comply with the Building Code adopted by the Eastern Band of Cherokee Indians.

(Res. No. 676, 7-16-1987)

**Sec. 136-6. Nonconforming billboard signs.**

(a) All existing billboards which are located within the Business Zone as defined in section 136-3 shall be removed before January 1, 1988.

(b) All existing billboard signs which become nonconforming by virtue of the adoption of this article shall be removed within three years of the effective date of this article, or upon termination of the present lease, permit or license, which ever occurs earlier, except as provided under subsections 136-5(h), (i), and (j) which shall be effective immediately upon adoption of this article.

(c) All nonconforming billboard signs shall be discontinued or altered to conform on the following schedule:

<i>Original Cost of Sign</i>	<i>Amortization Period</i>
Less than \$500.00	6 months
\$500.00 to \$1,000.00	12 months
\$1,000.00 to \$3,000.00	24 months
More than \$3,000.00	36 months

(Res. No. 676, 7-16-1987)

#### **Sec. 136-7. Removal of nonconforming billboard signs and enforcement.**

(a) All billboard signs found to be nonconforming with this article, including preexisting nonconforming signs, shall be issued a statement of noncompliance by the Business Committee listing all reasons for such finding.

(b) All billboard signs issued a statement of noncompliance under this section shall be removed, changed or altered to conform with this article within 30 days if such sign presents an immediate danger to the public health or safety or within 90 days for all other billboard signs.

(c) Failure to remove, change or alter a nonconforming billboard sign within the period specified by this article shall result in the removal of said sign by the Tribe at the direction of the Business Committee at the expense of the owner of said billboard sign.

(d) If the owner or lessee of a nonconforming billboard sign that has been removed by the Tribe fails to pay for the costs of removal within 30 days of the billing date for such action, a lien shall be placed against the property of the owner or lessee and the Business Committee shall certify the same to the Tribal Attorney for collection. The amount certified by the Business Committee to the Tribal Attorney for collection shall include the actual cost of removal of such billboard sign, plus 15 percent of the total cost, representing penalty and interest for costs of collection.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-8. Variances.**

(a) *Appointment of Sign Committee.* The Tribal Council shall appoint a Sign Committee consisting of at least five members, at least three of whom are not Tribal elected officials and who have knowledge of the Business Community on the Cherokee Indian Reservation. Committee members shall serve two-year terms and may be reappointed by the Tribal Council.

(b) *Function of Sign Committee.* The Sign Committee shall hear and decide all requests for a variance from this article.

(c) *Variance procedures.*

(1) A request for a variance shall be submitted in writing to the Chairman of the Sign Committee, together with a copy of a sign permit denied by the Business Committee. The written request shall include a concise statement of all reasons why the variance should be granted.

(2) A nonrefundable fee of \$50.00 shall accompany the written request for variance.

(3) The Chairman shall schedule a hearing date to review and rule on the request no later than 30 days after he has received the written request.

(4) To grant a variance from the terms of this article, the Sign Committee must find that all of the following conditions exist:

a. The reason for the variance is not based upon the existence of a nonconforming billboard sign;

b. There are extraordinary and exceptional conditions pertaining to the land or site in question because of its size, shape or topography;

c. Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents or businesses;

d. A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other residents or businesses;

e. The requested variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood;

f. The special circumstances are not the result of the action of the applicant;

g. The variance is not a request to permit a billboard sign which is specifically prohibited under this article.

(5) A majority vote of the entire Sign Committee shall be necessary to decide in favor of the applicant. The Committee shall keep minutes of its proceedings, showing the vote of each member on each question.

(6) The Committee shall inform the applicant of its decision in writing within ten days after the hearing.

(d) *Appeal procedures.* In the event any person is aggrieved by the action of the Business Committee or Sign Committee in issuing or denying a sign permit, they may institute suit in the Cherokee Court. Such suit may challenge the application or interpretation of this article.

(Res. No. 676, 7-16-1987)

**Sec. 136-9. Rental rates and procedures.**



(a) To encourage the highest economic return to the Eastern Band of Cherokee Indians and its enrolled Tribal members, consistent with prudent management and conservation practices, no approval shall be given for any billboard sign at less than the present fair annual rental. In the discretion of the Tribal Business Committee, billboard signs may be approved:

(1) At less than the fair annual rental when such action would be in the best interest of the Eastern Band of Cherokee Indians;

(2) At a nominal rental, for a duration of not more than 60 days, for religious, educational, recreational or other public purposes.

(b) The Eastern Band of Cherokee Indians is committed to a policy of managing its assets in the best interest of all enrolled Tribal members and shall be entitled to receive five percent of all rental income derived from billboard sign locations and sites placed on lands assigned to Tribal members. It shall be the responsibility of all lessees, permittees and others to make arrangements to comply with this provision.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-10. Duration.**

Leases, permits and other arrangements approved for the purpose of billboard signs shall be for a term not to exceed five years duration from the date of final approval and may permit a renewal or extension with the consent of the property owner. Upon the expiration or termination of any lease, permit or agreement for billboard signs, the owner of the billboard sign shall have up to 30 days to remove the sign structure and any other improvements placed on the location or site, and to restore the parcel or lot to its original condition as of the commencement of the lease, permit or agreement. Thereafter, such sign structure and any other improvements shall become the property of the lessor or permitor unless specifically excepted therefrom under the terms of the lease, permit or agreement.

(Res. No. 676, 7-16-1987)

#### **Sec. 136-11. Definitions.**

(a) *Building* shall mean any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosure of persons, animals or property of any kind. This definition shall include tents, awnings or vehicles serving in any way the function of a building.

(b) *Erected* shall include built, constructed, reconstructed, moved upon or any physical operation on the premises required for the placement of a billboard sign. Excavation, fill, drainage, site preparation and the like shall be considered a part of the erection.

(c) *Established grade* shall mean the average elevation of a parcel or lot. Public sidewalks around or abutting a parcel or lot, or in the absence of sidewalks, public streets abutting the parcel or lot, may be included in the computation of average elevation for purposes of lowering but not raising the average elevation.

(d) *Height of sign* shall mean the vertical distance from the established grade to the highest point of a billboard sign.

(e) *Parcel or lot* shall mean a tract of land designated, identified or treated as a single unit of area by the Eastern Band of Cherokee Indians.

(f) *Setback* shall mean the minimum distance between the street line, or base building line, and the front line or side line of the building or any projection thereof, excluding projections specifically permitted.

(g) *Sign, animated* shall mean a sign which involves motion or rotation of any part by any means, or displays flashing, intermittent or color-changing light or lighting.

(h) *Sign, area of* shall mean the total surface of a sign, including its background and frame but not structural supporting elements outside its frame. Where a sign is composed of skeleton letters, characters or symbols applied to a frame or to a background, which is not a structural part of the sign, the area of the sign shall be the smallest rectangle, triangle or circle which will include the display. Where a sign is built with two faces back-to-back, the area of the sign shall be the larger of the areas of the two faces computed as specified herein.

(i) *Sign, billboard* shall mean a sign designed for the application of letters, numerals, symbols, characters or illustrations by painting, light projection, bills or posters, which is to be changed periodically.

(j) *Sign, illuminated* shall mean a sign which is partially or wholly illuminated by electric lights designed and provided for such illumination.

(k) *Street* shall mean a public thoroughfare 20 feet or more in width which affords principal means of access to abutting property.

(l) *Street line* shall mean the right-of-way line of a street or the base building line, whichever will provide for a greater width of street.

(m) *Structure* shall mean anything constructed or erected, which requires location on the ground or attached to something having location on the ground. This definition shall include billboard signs.

(n) *Use, building or commercial* shall mean an ongoing use related to or connected with trade or commerce, such as supplying a product or service to the public for financial gain. Occasional, single or isolated business or commercial activities shall not constitute a principal or main use.

(o) *Use, principal or main* shall mean the primary use of a parcel or lot as distinguished from secondary or accessory uses. There may be more than one principal or main use on a parcel or lot.

(p) *Use, residential* shall mean a use for living or sleeping of persons, such as a single-family, duplex or multiple dwelling, hotel, motel, lodging house, villas or mobile home.

(q) *Variance* shall mean a modification of, or deviation from, the regulation of this article, which is authorized and approved by the Sign Committee after it finds that the literal application of the provisions of this article would cause undue hardship or practical difficulty in the use or development of a specific parcel, lot or building.

(r) *Yard* shall mean a space on the same parcel with a structure, open and unobstructed from the ground to the sky except by encroachments specifically permitted. Yard measurements shall be the minimum horizontal distances. Yards shall extend and be measured inward from the respective parcel or lot lines.

(Res. No. 676, 7-16-1987)

**Sec. 136-12. Effective date.**

This article shall be effective upon enactment and ratification.

(Res. No. 676, 7-16-1987)

**ARTICLE II. SIGNS**

**Sec. 136-13. Statement of purpose.**

The purpose of this article is to permit signs that will by their reason, size, location, construction and manner of display promote economic and social activities that are consistent with the Cherokee Indian Reservation's history and environment. Regulations are designed to enhance the quality of visual communications and to promote the welfare and safety of residents and visitors alike. This article shall apply to all signs visible to vehicular or pedestrian traffic on any of the above roads, streets or adjoining sidewalks.

(Ord. No. 142, 4-7-1988)

**Sec. 136-14. Scope of article.**

This article shall apply to all signs located within the Business Zone of the Qualla Boundary of the Cherokee Indian Reservation. The Business Zone is defined, for the purposes of this sign article, as those geographical areas including:

- (1) On or along U.S. 19 from the intersection of Old Mission Road running in a westerly direction to Owl Branch Road,
- (2) On and along U.S. 441 Access Road and U.S. 441 By-Pass from the exterior boundary line of the Cherokee Indian Reservation to the intersections with U.S. 19,
- (3) On and along old U.S. 441 from the exterior boundary line of the Cherokee Indian Reservation to the intersection with U.S. 19,
- (4) On and along U.S. 441 running from Cherokee Main Street to the entrance of the Great Smokey Mountain National Park,
- (5) On and along Aquoni Road, and
- (6) The state-maintained portion of Big Cove Road.

(Ord. No. 142, 4-7-1988)

**Sec. 136-15. Definitions.**

(a) *Advertising sign* shall mean a sign which directs attention to a business, commodity,

service or entertainment sold, manufactured or offered. Signs are further classified according to location, as follows:

(1) On the same premises as the business, commodity, service or entertainment advertised by the sign;

(2) Remote from the business, commodity, service or entertainment advertised by the sign.

(b) *Awning sign* shall mean a sign constructed of a fabric-like, nonrigid material which is part of a fabric or plastic awning. Awning signs constructed of a flammable substance are prohibited.

(c) *Banner* shall mean any sign made of a flexible fabric-like material except an awning sign.

(d) *Billboard* shall mean an advertising sign used as an outdoor display for the purpose of directing attention to a business, commodity, service or entertainment sold, manufactured or offered at a location other than the location of the billboard sign.

(e) *Border* shall mean a strip along the edges of a sign that outlines the display.

(f) *Canopy* shall mean any shelter-like structure attached to a building and projecting over public or private property.

(g) *Commercial/business sign* shall mean signs which are placed on buildings listing the name of one or more businesses, activities, products, or professional offices conducted or sold within a building, group of buildings, or commercial center.

(h) *Construction sign* shall mean a sign which identifies firms or builders which are erected on the construction site prior to or during the period of construction.

(i) *Designee* shall mean an individual appointed by the Sign Committee to carry out the duties and responsibilities normally incurred by the Building Inspector in absence thereof.

(j) *Directional sign* shall mean an on-premises sign which carries no advertising message but simply the name or logo of an establishment and information directing persons to parking areas, entranceways or exitways, etc.

(k) *Directory sign* shall mean a freestanding sign which contains or lists the names of businesses, activities or offices located within a building, group of buildings, commercial center or geographic area.

(l) *Faces* shall mean the direction in which a display is aimed.

(m) *Festival sign* shall mean signs which are placed to commemorate or attract attention to a festival recognized by the Tribe.

(n) *Freestanding sign* shall a sign that is not attached to any building structure. Such signs shall include, but not be limited to, signs mounted on poles and "A" frame signs.

(o) *Signs* shall mean any letter, symbol, number or combination thereof, which can be seen from the right-of-way of a public street or highway.

(p) *Holiday decorations* shall mean normal and reasonable decorations associated with the celebration of a nationally or Tribally recognized holiday.

(q) *Identification sign* shall mean a sign which carries no advertising message and is used to identify only the following:

(1) The name of an institutional or organization occupying the premises on which the sign is located;

(2) The name, title, occupation or profession of the occupant of the premises on which the sign is located;

(3) The name and type of nonretail business occupying the premises on which the sign is located; or

(4) The name of the building on which the sign is located, including the name and type of firms occupying the building.

(r) *Illuminated sign* shall mean a sign that is illuminated by electric or other devices mainly for clear visibility at night.

(s) *Incidental sign* shall mean a sign which carries no advertising message and is clearly incidental to other major advertising signs on-site and which is used to do one or more of the following:

(1) Direct vehicular or pedestrian traffic flow;

(2) Indicate location of access or exit points;

(3) Direct specific activities to specific areas, (i.e., parking, waiting, etc.); or

(4) Provide other incidental information.

(t) *Industry standard sign* shall mean a sign specific to and used in the normal course of commerce in which that industry operates.

(u) *Marquee sign* shall mean a sign affixed to a hood or projecting roof structure over the entrance to a building, store, or place of public assembly with changeable letters.

(v) *Nameplate sign* shall mean a sign located on the premises that identifies a business or occupation.

(w) *Natural grade* shall mean the highest elevation at which the base of the sign and the ground meet.

(x) *Noncommercial sign* shall mean a sign designed and intended to promote, support, or call attention to a cause, nonprofit and noncommercial service, political message of an individual, political group or other entity.

(y) *Off-premises directional sign* shall mean a freestanding sign located off-premises which contains or lists the name and location of multiple businesses, activities or offices.

(z) *Outdoor advertising device* shall mean twirlings, balloons, flags, lights and other similar materials used to attract attention.

(aa) *Political sign* shall mean a sign attracting attention to political candidates or issues during an election campaign.

(bb) *Portable sign* shall mean a sign which rests on the ground or other surface, but is not directly attached to such surface, and which is designed or constructed to be easily transported from one place to another.

(cc) *Poster* shall mean any sign made of a rigid or semirigid, nondurable material, such as paper or cardboard, other than advertising copy applied to a permanent sign structure.

(dd) *Projection sign* shall mean a sign projecting out from and attached to the exterior wall of any building and forming an angle of 30 degrees or more to such wall.

(ee) *Reader board* shall mean a permanent sign affixed either to the wall of a structure or to an existing freestanding sign which is comprised of a surface to which letters may be attached on a temporary basis. Reader boards shall not serve as a substitution for identification signs.

(ff) *Restaurant* shall mean an establishment where meals are served inside the building to seated persons. The word "restaurant" shall not include drive-in or carryout establishments, snack bars, refreshment stands, or any establishment where food is prepared for consumption primarily off premises.

(gg) *Roofline* shall mean the highest point of the roof of the building or structure.

(hh) *Roof sign* shall mean a sign constructed upon the roof of a building.

(ii) *Sign area* shall mean the area of a sign which shall be determined by measuring the display and border parts of a sign structure. If the sign is composed in part or in whole of freestanding letters, devices, or sculptured matter and not mounted on a measurable surface, the sign area shall be construed to be the area of the least squares, rectangles, or circles that will enclose the letters, devices or sculptured matter.

(jj) *Sign height* shall mean the vertical distance which shall be measured from the street grade of the closest point in the street on which the sign is located or the grade at the base of the sign, whichever is higher, to the highest point of the sign structure.

(kk) *Street grade* shall mean the elevation of the centerline of the street or highway.

(ll) *Special attraction* shall mean an entertainment, cultural or historical attraction conducted either indoors or outdoors with a minimum seating capacity of 500 or an admission charge for adults of \$5.00 or more.

(mm) *Special attraction sign* shall mean a sign providing directions to a special attraction.

(nn) *Surface area* shall mean the surface area shall be measured by the square, rectangle, semicircle, or parallelogram of the sign, and comprise the entire sign, including any border or trim and all elements of the matter displayed, but excluding the base or apron, supports or other structural members. In the case of three-dimensional letters or painted letters directly on a wall surface, the surface area shall be defined as the area encompassing the individual letters themselves including any trim or border and excluding the background that

supports the three-dimensional letters.

(oo) *Suspended sign* shall mean a sign which is suspended from the underside of a horizontal surface, such as a canopy, marquee, or wooden brace and is supported by such surface.

(pp) *Temporary sign* shall mean a sign that can be used for a limited period of time as specified by this article.

(qq) *Traffic signs* shall mean signs indicating federal, state, or Tribal regulations for automobile, truck, bicycle or pedestrian traffic.

(rr) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(ss) *Variance for industry standards* shall mean an authorization by the Sign Committee to an entity in possession of the property to depart from literal requirements of zoning regulations in utilization of his property in cases where strict enforcement of this article would cause undue hardship.

(tt) *Wall sign* shall mean a sign affixed to the surface of the exterior wall of a building, or which forms an angle of less than 30 degrees with such wall and does not project out from the wall more than 24 inches. No wall sign shall extend above the roofline of the building upon which it is located. In cases of flat roofs, no sign shall extend above the parapets. Mansard roofs with an angle of 60 degrees or more from horizontal shall be considered as wall space for the placement of graphics.

(uu) *Window sign* shall mean any sign visible from the exterior of a building because it is placed directly behind or in front of a glass window or opening in a building.

(Ord. No. 142, 4-7-1988; Ord. No. 292, 9-16-1998)

### **Sec. 136-16. Signs exempt from article.**

Signs which are exempt from this article's provisions are as follows:

(a) Signs erected by a governmental agency to regulate, control or direct traffic; including signs indicating bus stops, taxistands, similar transportation facilities, and markings on public roads. Such signs may be illuminated, flashing or moving as required for public safety. Signs erected by a governmental agency which convey information regarding a public service or the location of a public facility may also be illuminated.

(b) Direction, public service and welcome signs constructed by the Tribe.

(c) Signs required by law including, but not limited to, building permits, exit signs, etc.

(d) Signs which warn of hazards to life, limb and property, such as high voltage electrical equipment and explosives.

(e) "No trespassing" signs no larger than four square feet of surface area.

(f) Trade names, logos, symbols or other graphics which are customarily painted on newspaper stands, soft drink dispensers, or gasoline pumps.

(g) The display of holiday decorations and festival graphics.

(h) Signs indicating finance or credit information such as VISA, MASTERCARD, etc., not larger than one square foot per store front.

(i) One freestanding church sign on church property, or two freestanding church signs on church property if a church is located on a corner lot. One sign may face each street that borders the lot. Exempt church signs shall not exceed 36 square feet in surface area per side of graphic up to a maximum of 72 square feet of aggregate surface area.

(j) One church reader board not larger than 12 square feet of surface area.

(k) One church directional sign. These signs may be located on private property with written permission of the owner, at the nearest intersection of the major thoroughfare or public street to the site of the church.

(l) The display of the flag of the United States, North Carolina, or the Tribe.

(m) Private residential signs indicating the name, box, or house number of a particular residence no larger than two square feet.

(Ord. No. 142, 4-7-1988)

**Sec. 136-17. Prohibited signs.**

(a) No sign shall be located in a manner or place so as to constitute a hazard to traffic.

(b) No freestanding sign shall be located in a street right-of-way or project over a street right-of-way.

(c) No sign shall obstruct or substantially interfere with any window, door, fire escape, stairway, ladder or opening intended to provide light, air, access or exit for any building.

(d) Billboard signs shall be permitted only within that area of the Business Zone, as defined by section 136-14 of this article, that lies on or along U.S. 19 from the intersection of Old Mission Road running in a westerly direction to the intersection with U.S. 441 Business Access Road. All billboards in this approved area shall comply with the standards and requirements of article I of this chapter. Billboards shall be prohibited in all other areas within the Business Zone. Billboards within the Business Zone which are presently leased from individual possessory holders shall be permitted to be maintained until the expiration of any billboard permit approved and in effect on or before April 7, 1988.

(e) There shall not be any moving sign or device to attract attention, all or any part of which moves by any means, including motion by the movement of the atmosphere, or by electrical or other means including, but not limited to, pennants, flags, propellers, banners or discs, whether or not any such device has a written message. This shall not include the display of merchandise such as kites, wind chimes, etc., that are sold on the premises.



(f) No signs shall be painted on a roadway or posted to utility poles, trees, fences, rocks, or other signs.

(g) No portable signs or banners shall be permitted, except portable signs or banners placed for one period of not more than 30 days to announce the opening of a new business, or the change of management or ownership of an existing business.

(h) Marquee signs shall be prohibited.

(i) No commercial or industrial building or enterprise with a wall or roof sign shall be permitted to construct or maintain a freestanding sign unless such building or business shall have private off-street parking for at least 15 vehicles.

(Ord. No. 142, 4-7-1988)

### **Sec. 136-18. Commercial and industrial signs.**

(a) *Area of wall and roof sign.* The maximum area of a sign attached to any building shall be calculated as follows: The total area of all signs for each unit of occupancy in a building shall not exceed two square feet per linear foot of each exterior building wall facing a public street or facing a private access way. Only one wall or roof sign may be erected per unit of occupancy for each exterior building wall facing a public street or private access way. The size of each wall or roof sign shall be based only on the linear distance of one wall and building which face more than one street or access may not base the size of any sign on the aggregate linear distance of such walls.

(b) *Projected and suspended sign.* Projected or suspended signs shall be limited to one per business per building front not to exceed 32 square feet per side of sign up to a maximum of 64 square feet of aggregate surface area for the entire sign, provided that the aggregate sign space does not exceed the maximum size allowed in subsection (a) of this section.

(c) *Overhanging sign.* Sign overhanging any sidewalk shall be placed at least nine feet above the sidewalk and shall not extend over the sidewalk a distance equal to or greater than two-thirds the width of the sidewalk.

(d) *Reader board.* Reader boards shall be limited to one per store front, not to exceed 32 square feet of aggregate surface area, provided the aggregate sign space does not exceed the maximum allowed in subsection (a) of this section.

(e) *Freestanding sign.* Detached or freestanding signs, excluding private directional signs, shall be limited to one per commercial or industrial site, not to exceed 32 square feet in surface area per side up to a maximum of 64 square feet of aggregate surface area for the entire sign. All detached or freestanding signs shall be located on the immediate premises of the advertised commercial establishment and shall be no closer than six feet to any street pavement. Detached or freestanding signs for a hotel or motel, gasoline service station or franchised restaurant or food service business and those businesses providing private off-street parking for at least 15 vehicles shall be limited to one per commercial or industrial site, not to exceed 450 square feet of aggregate surface area for the entire sign.

(f) *Private directional sign.* Private on-site directional signs shall not be over four feet in sign height, and shall not have a surface area greater than ten square feet per side of sign up to a maximum of 20 square feet in aggregate surface area.

(g) *Sign height.* No new or replacement freestanding sign shall be greater than 25 feet in height, measured from the adjacent road grade to the uppermost point of the sign. Existing freestanding signs may not be greater than 40 feet in height.

(h) *Common area sign.* Where two or more premises share a common courtyard, access area, or off-street parking area, the businesses therein shall be limited to one freestanding sign which shall be no greater than 32 square feet in surface area per side of sign up to a maximum of 64 square feet of aggregate surface area for the entire sign. In addition, each establishment located within the development shall be permitted one nameplate sign not to exceed four square feet in surface area per side of sign up to a maximum of eight square feet to aggregate surface area for the entire sign to be attached to the freestanding identification sign for the development as a whole.

(i) *Window sign.* Window signs or advertising, including stained glass lettering and logos, shall not cover more than 25 percent of the total window area.

(j) *Directory sign.* A directory sign may be authorized by the Business Committee at any entrance to the Cherokee Indian Reservation and at any intersection of state-maintained highways. All directory signs are subject to the design approval of the Business Committee.

(k) *Chief's sign.* Licensed Indian Chiefs may display one sign no larger than 16 square feet per side. Such signs may be portable, freestanding or permanently fixed to tepees. If such sign is attached to a building it shall be considered a wall sign and counted as part of the total sign area permitted under subsection (a) of this section. Chief signs shall not be placed where they may block an entrance to any business establishment or impede pedestrian or vehicular traffic on sidewalks or streets.

(l) *Off-premises directional sign.* Freestanding signs which contain or list names and locations of more than one business, activity or office shall be permitted at intersections identified and approved by the Tribal Sign Committee. A style and construction standard shall be established by the Sign Committee. The Tribal Sign Committee shall be responsible for the erection of such signs and the approval of each business or activity listed on each such sign. Each business or activity advertising on such signs shall be charged an annual maintenance fee which shall be sufficient to amortize the cost of construction over a three-year period, together with an amount sufficient to maintain such signs.

(m) *Special attraction sign.* Each special attraction operating on the Cherokee Indian Reservation shall be permitted one special attraction sign located off the premises of the attraction. Such special attraction sign shall provide direction to the attraction, with the design, location and size subject to the approval of the Tribal Sign Committee.

(Ord. No. 142, 4-7-1988)

### **Sec. 136-19. Residential signs.**

(a) Each home business shall be allowed one nameplate sign for purposes of identification. Such sign shall not exceed four square feet of total surface area.

(b) Each subdivision, unified housing development, or mobile home park, shall be allowed one freestanding sign per entrance. Such sign shall be no larger than 12 square feet of surface area per side of sign up to a maximum of 24 square feet of aggregate surface area

per sign. Such signs shall not exceed five feet in height.

(Ord. No. 142, 4-7-1988)

**Sec. 136-20. Temporary signs.**

(a) Signs used prior to and during construction to identify a contractor or developer shall be considered temporary signs and shall meet the following requirements:

(1) Each contractor shall have no more than one sign per location which shall be removed upon completion of the project;

(2) Construction signs shall not be placed on trees, rocks or other natural objects;

(3) Construction signs shall be either attached to the building or affixed to a secure temporary post; and

(4) Construction signs shall be no greater than 12 square feet per side of sign up to a maximum of 24 square feet of aggregate surface area for the entire sign.

(b) All other temporary signs shall be approved by the Tribal Business Committee, and shall be of a size and height that is consistent with the letter and spirit of this article.

(Ord. No. 142, 4-7-1988)

**Sec. 136-21. Sign construction and illumination.**

(a) All signs except window signs shall be constructed of materials that will not rapidly deteriorate, fade, fall apart, or in any way become a threat to the public's health or safety.

(b) All signs shall be securely fastened, anchored, and generally placed to withstand adverse weather conditions.

(c) Signs may not use reflecting backgrounds, but may use reflecting letters.

(d) No freestanding or temporary sign shall be constructed or placed closer than six feet to any street or right-of-way and such sign shall not be located in such a manner as to constitute a traffic or safety hazard.

(e) Signs shall be limited to three colors not including logos, provided none of the colors or materials are fluorescent.

(f) Illuminated signs shall be by an indirect white or amber light, shall be shielded and directed solely at the sign. Internally lighted signs shall be by white or amber light.

(Ord. No. 142, 4-7-1988)

**Sec. 136-22. Sign maintenance.**

(a) The owner of each sign shall be responsible for maintaining the area around the sign, including cutting of weeds and grass, and the removal of trash and litter.

(b) In the event one sign is placed over another, the original shall be removed or completely covered so that the original sign cannot be seen.

(c) All signs, supports, braces, poles, wires, and anchors shall be kept in good repair. They shall be maintained in clean and safe condition, free from deterioration, missing parts, and peeling paint. Any sign not in accordance with these standards shall be deemed a nuisance and shall be subject to the procedures for nonconforming signs set forth in this article.

(d) All signs shall at all times comply with all applicable electrical safety standards which the Tribe shall have in effect.

(Ord. No. 142, 4-7-1988; Ord. No. 292, 9-16-1998)

**Sec. 136-23. Sign permit required.**

(a) All signs placed within the Business Zone, except those listed in subsection (b) of this section, shall require a permit issued by the Business Committee. A fee shall be required for each sign placed after the effective date of this article (April 7, 1988) as follows:

<i>Type</i>	<i>Fee</i>
Freestanding commercial or industrial sign	\$25.00
All other commercial or industrial sign	10.00
Residential nameplate sign	10.00
Residential subdivision sign	10.00
Temporary sign	10.00
Political sign	10.00/candidate

(b) A permit shall not be required for the following types of signs, provided they meet all the requirements of this article:

- (1) Private directional or safety sign;
- (2) Temporary construction sign;
- (3) Window sign;
- (4) Municipal, school, recreation and civic club sponsored signs, schedule of events, rules and regulations, and school and park signs that do not exceed three square feet of aggregate surface area per sign;
- (5) Restaurant menu sign;
- (6) Noncommercial sign.

(c) A permit issued for a temporary sign shall describe the locations of the sign (street, setback, etc.), and the period for which the permit is valid. In no case shall the permit be valid for more than 60 days.

(d) All signs that are erected or in place prior to the adoption of this article or any amendments thereto require a permit or statement of noncompliance. Such statements or permits shall be issued by the Business Committee within 120 days after the initial adoption of this article or subsequent amendments hereto for which no permit fee shall be collected. In the event the Business Committee fails to issue a permit or statement of noncompliance within the 120-day period, the sign owner shall assume that the sign is in compliance with all provisions of this article and that the sign shall be permitted to stand. The sign owner may request that the Business Committee issue a permit stating such.

(e) Sign permit applications that are denied shall include a list of all reasons for such findings.

(f) All signs placed after the adoption of this article without permit approval shall be immediately removed if not found to be in compliance with the provisions of this article. If such sign is in full compliance, an after-the-fact permit shall be issued, and all specified fees paid.

(Ord. No. 142, 4-7-1988)

**Sec. 136-24. Nonconforming signs.**

(a) All nonconforming signs shall be made to conform with this article by May 1, 1988, or shall be removed within the time specified by this article.

(b) The period for conformation or removal shall begin to run on the date when the sign becomes nonconforming. During this period, nonconforming signs may be retained, must be maintained in good condition, but shall not be:

(1) Changed to another nonconforming sign;

(2) Structurally altered as to prolong the life of the sign;

(3) Expanded;

(4) Reestablished after discontinuance for 90 days; or

(5) Reestablished after damage or destruction if estimated expense of reconstruction exceeds 50 percent of the appraisal replacement value.

(c) If more than one sign permitted is or becomes nonconforming, the original cost of the street signs so displayed shall be aggregated for purposes of determining the applicable amortization period.

(d) A sign is or becomes nonconforming if it does not conform with this article on either of the following dates:

(1) The date of original enactment; or

(2) Any date on which this article is amended.

(e) Signs found to be nonconforming with this article, including preexisting nonconforming signs, shall be issued a statement of noncompliance, listing all reasons for such finding.

(f) All signs issued a statement of noncompliance under this article shall be removed, changed or altered to conform with this article within 30 days.

(g) Failure to remove, change or alter a nonconforming sign within the period specified by this article shall result in the removal of such sign by the Tribe at the direction of the Business Committee and at the expense of the owner of said sign.

(h) If the owner or lessee of a nonconforming sign that has been removed by the Tribe fails to pay for the costs of removal within 30 days of the billing date for such action, a lien shall be placed against the property of the owner or lessee, and the Business Committee shall

certify the same to the Tribal Attorney for collection. Owners or lessees who fail to pay for such removal costs shall be subject to revocation of Trader's Licenses by the Superintendent of the BIA. The Business Committee may institute a legal collection proceeding to recover the cost of removal by the Tribe.

(Ord. No. 142, 4-7-1988)

**Sec. 136-25. Obsolete or abandoned signs.**

(a) Signs which advertise or pertain to a development complex, business, product, service, commodity, or a purpose which no longer exists or that has not been in use for 30 days or more shall be deemed to be an obsolete or abandoned sign. Signs which are associated with seasonal business shall not be considered obsolete or abandoned, provided there is clear intent to continue the business in the upcoming season.

(b) Obsolete or abandoned signs are prohibited and shall be removed by the owner within 30 days of termination of the business.

(c) If the owner of the abandoned or obsolete sign fails to remove such sign, it shall be removed by the Tribe at the expense of the owner. If the owner fails to pay the removal costs within 30 days, the Tribe shall collect costs under the procedure described in section 136-24(h).

(Ord. No. 142, 4-7-1988)

**Sec. 136-26. Sign Committee terms; reappointment; duties.**

(a) The Tribal Council shall appoint a Sign Committee consisting of at least five members, at least three of whom are not Tribal elected officials and who have knowledge of the business community on the Cherokee Indian Reservation. Committee members shall serve two-year terms and may be reappointed by the Tribal Council.

(b) The Sign Committee shall hear and decide all requests for a variance from this article.

(Ord. No. 142, 4-7-1988)

**Sec. 136-27. Sign Committee procedures.**

(a) No variance shall be granted after April 1, 1999, unless prior written approval is granted by the Sign Committee.

(b) All requests for a variance shall be submitted in writing to the Building Inspector, or a designee of the Sign Committee, and forwarded to the Sign Committee. The written request shall include a concise statement of all reasons why the variance should be granted.

(c) A nonrefundable fee of \$50.00 shall accompany the written request for variance which shall be deposited in the Building Inspector's budget.

(d) The Chairman shall schedule a hearing date to review and rule on the request no later than 15 days after he has received the written request.

(e) To grant a variance from the terms of this article, the Sign Committee must find that all of the following conditions exist:

(1) The reasons for the variance is not based upon the existence of a nonconforming billboard sign,

(2) There are extraordinary and exceptional conditions pertaining to the land or site in question because of its size, shape or topography,

(3) Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents or businesses,

(4) A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other residents or businesses,

(5) The requested variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood,

(6) The special circumstances are not the result of the action of the applicant,

(7) The variance is not a request to permit a sign which is specifically prohibited under this article as referenced in subsection (a) of this section,

(8) The term of the variance shall be granted for existing signs for a period not to exceed 24 months.

(f) A majority vote of the entire Sign Committee shall be necessary to decide in favor of the applicant. The Committee shall keep minutes of its proceedings, showing the vote of each member on each question.

(g) The Committee shall inform the applicant of its decision in writing within five days after the hearing.

(h) Variances for industry standard signs shall be allowed by the Sign Committee when the Committee determines to its satisfaction that such signs are standard and appropriate. The term of the industry standard sign variance shall be specifically set by the Sign Committee on a case-by-case basis.

(i) The Sign Committee shall reserve the right, upon proper justification, to grant other variances under this section for terms as may be specified by the Sign Committee.

(j) The Committee shall recommend amendments to this article to the Tribal Council whenever it deems an amendment necessary or in the best interest of the Tribe.

(Ord. No. 142, 4-7-1988; Ord. No. 292, 9-16-1998)

### **Sec. 136-28. Enforcement of article violations.**

(a) Violations of this article shall be dealt with as follows:

(1) The Building Inspector or his designee will give notice of a violation to the entity in possession of the property. The entity in possession of the property shall have ten days to cure the violation.

(2) If the violation is not cured within ten days following notice being given to the entity in possession of the property, the Building Inspector or his designee shall apprise the Sign Committee.

(3) A 96-hour notice will be given to the entity in possession of the property of a hearing to be held before the Sign Committee to determine why the violation has not been cured.

(4) Following the hearing with the Sign Committee, the Sign Committee shall take whatever action it deems appropriate including, but not limited to, injunctive or declaratory relief or civil or equitable remedies, or a request to the Business Committee to seek revocation of the Trader's Licenses with Superintendent of the BIA.

(b) If any sign is erected, constructed, altered, repaired or continued in violation of this article, the Tribe or Sign Committee may institute suit in the Tribal Court in the name of the Tribe seeking an injunction, mandamus or other appropriate action to prevent or abate such violations.

(c) Any person or firm violating provisions of this article shall be subject to a civil fine up to \$2,000.00. Such fine shall be assessed by institution of a civil action by the Sign Committee or Tribe in the Tribal Court against such person or firm violating this article. If such fine is not paid within 30 days of entry of judgment by the Tribal Court, the Tribe, through recommendation of the Sign Committee, may seek revocation of a Trader's License with the Superintendent of the BIA.

(Ord. No. 142, 4-7-1988; Ord. No. 292, 9-16-1998)

#### **Sec. 136-29. Appeal procedure.**

In the event any person is aggrieved by the action of the Building Inspector or designee, or the Sign Committee, the person aggrieved may appeal the decision to the Business Committee. All appeals shall be filed with the Chairman of the Business Committee no later than ten days after the decision of the Building Inspector or the Sign Committee. An appeal filed after the ten-day time limit shall be deemed invalid and not heard.

(Ord. No. 142, 4-7-1988; Ord. No. 292, 9-16-1998)

#### **Sec. 136-30. Miscellaneous provisions.**

Any sign which is not clearly covered by the provisions of this article shall, for the purposes of this article, be considered a commercial sign and shall comply with all of the provisions concerning commercial signs.

(Ord. No. 142, 4-7-1988)

#### **Sec. 136-31. Severability.**

If any section of this article is held to be invalid or unenforceable, all other sections shall continue in full force and effect.

(Ord. No. 142, 4-7-1988)

#### **Sec. 136-32. Sign Committee composition; appointments.**



The Sign Committee represents members from the Business Community and elected officials. The members of the Committee shall be appointed for two-year terms by the Tribal Council with the Cherokee Merchants' Association nominating the names for membership.

(Res. No. 24, 11-2-1989)

**Sec. 136-33. Display of merchandise.**

Merchants and businesses within the business zone of the Qualla boundary shall display merchandise for sale on the outside of their business premises only if:

- (1) Such merchandise is a Native American product, art or craft; or
- (2) Is an art, craft or product indigenous to the Appalachian region; or
- (3) Is an art, craft or product made by an artisan or craftsman on the premises where the art, craft, or product is displayed; and
  - a. The merchant, artisan or craftsman has been issued a trader's license; and
  - b. The display area is kept in a clean neat and safe condition and appearance for pedestrians and the motoring public; and
  - c. The outside display area is kept on a separate cash register with receipt tapes and is auditable for tribal levy purposes.

(Ord. No. 246, 6-3-1993; Ord. No. 292, 7-17-2000)

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## Chapter 136A: Roads and Highways\*

**\*Cross references:** Motor vehicles, ch. 20; eminent domain, ch. 40; real property, ch. 47; zoning, ch. 61; utilities, ch. 62; pollution control and environment, ch. 113A; signs and billboards, ch. 136; Cherokee roads commission, ch. 137; building codes and flood control, ch. 143.

### ARTICLE I. IN GENERAL

**Secs. 136A-1--136A-20. Reserved.**

### ARTICLE II. UNIFORM STREET ADDRESS AND ROAD NAMING SYSTEM

#### DIVISION 1. GENERALLY

**Sec. 136A-21. Authority.**

The Eastern Band of Cherokee Indians adopt this Uniform Street Address System and Road Naming System pursuant to its inherent sovereign authority.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-22. Purpose.**

(a) The purpose of this article is to provide a uniform system of addressing properties, dwellings, lots, and parcels on the Cherokee Indian Reservation to promote the health, safety, and general welfare of the citizens of the Cherokee Indian Reservation.

(b) The purpose of this article is to provide a uniform system of naming all roads, highways, and byways, in order to provide a quicker response for law enforcement, emergency medical technicians, firefighters, social service personnel, and health care providers.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-23. Establishment of the uniform systems.**

(a) There is hereby established a Uniform Street Address System by which all vacant parcels, lots and tracts of land fronting all streets, avenues and public rights-of-way on the Cherokee Indian Reservation, and all dwellings and other principal buildings, may be numbered.

(b) There is hereby established a uniform road naming system by which all roads, highways, byways, and ways on the Cherokee Indian Reservation having three or more structures shall receive names.

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

**Sec. 136A-24. Definitions.**

For purposes of this article, the following terms shall be defined as specified below. Unless specifically defined, words or phrases used in this article shall be interpreted to give them the meaning:

(a) *Building* shall mean a structure having support by columns or walls for the shelter, support or enclosure of persons, animals, chattels, or equipment. When separated by division walls from the ground up without openings, each portion of such buildings may be deemed a separate building. For the purposes of this article, the term "building" may also include other manmade structures.

(b) *Driveways* shall mean a private way, beginning at the property line of a lot abutting a public road, private road, easement or private right-of-way, leading to a building, use or structure on that lot. A driveway may not serve more than a single lot unless it runs along a lot line shared by two lots and serves not more than two lots.

(c) *Dwelling* shall mean any structure in which a person or persons live.

(d) *Emergency Management Coordinator* shall mean the official of Cherokee Indian Reservation charged with the administration of this article, including his or her authorized agent or delegate.

(e) *Frontage unit* shall mean a standard interval in feet to assign consecutive property numbers on streets or roads. The standard frontage unit adopted for use throughout Cherokee Indian Reservation is 5.28/30 feet.

(f) *Highway* shall mean any road, street, thoroughfare, bridge, or way held out for public use.

(g) *Official road name* shall mean the names of the roads, highways, and byways which are registered with the Emergency Management System and is hereby declared the official road names and map for Cherokee Indian Reservation roads, unless changed by official action of the Tribal government.

(h) *Private road* shall mean any road which is not maintained by a government agency, such as the Cherokee Tribe Roads Department, Bureau of Indian Affairs, the North Carolina Department of Transportation and/or any other municipality on the Cherokee Indian Reservation.

(i) *Road* shall mean a public or private one-way or two-way road for ingress and/or egress. Such roads may be of various types including frontage roads, rear access roads, roads with cul-de-sacs, and dead-end roads. This definition includes secondary roads, but does not include driveways.

(j) *Road address* shall mean the combination of numbers and road names assigned to a particular location by the Cherokee Indian Reservation Naming Committee, according to this article, which uniquely identifies a particular location.

(k) *Street number* shall mean the numeric value assigned to each dwelling, parcel, or lot.

(l) *Structure* means a building, dwelling or other enclosure which is habitable or capable of being served by telephone lines.

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

#### **Sec. 136A-25. Jurisdiction.**

The Eastern Band of Cherokee have jurisdiction over all roads, highways, byways, and properties within the external boundaries of the Eastern Band of Cherokee Reservation.

(Ord. No. 332-A, 10-26-1998)

#### **Sec. 136A-26. Maintenance of a general plat book.**

For the purposes of facilitating correct numbering, a plat book of all streets, avenues and public rights-of-way within the town, showing the proper numbers for all structures and properties, shall be kept on file in the Emergency Management Office and Tribal Planning. These plats shall be open to inspection by all persons during office hours of the Emergency Management Office.

(Ord. No. 332-A, 10-26-1998)

#### **Sec. 136A-27. Duties of the Emergency Management Coordinator.**

(a) The Emergency Management Coordinator is designated as the Tribal agent who will name the roads.

(b) The Emergency Management Coordinator will provide written notice of the pronouncement of a new address to each property owner and lessee by first class mail.

(c) The Emergency Management Coordinator is required to execute this article.

(d) The Emergency Management Coordinator may hire the necessary staff to carry out the provisions of this article, as his or her budget allows.

(e) The Emergency Management Coordinator shall consult with the relevant Tribal departments for all technical assistance.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-28. Future construction.**

Whenever any dwelling, building, or structure is to be erected, located, repaired or altered in the town after the establishment of this uniform system, in order to preserve the continuity and uniformity of the street address system, the street address of the premises shall be written upon the face of the building permit by the Building Inspector. It shall be the duty of the owner to procure the correct numbers, and letters when required, and to fasten them upon such structures as provided by this article. The occupancy permit for any structure erected, located, repaired or altered after ratification of this article shall be withheld by the Building Inspector until permanent and proper numbers, and letters when required, have been affixed to such structure.

(Ord. No. 332-A, 10-26-1998)

**Secs. 136A-29--136A-40. Reserved.**

**DIVISION 2. UNIFORM ADDRESS SYSTEM**

**Sec. 136A-41. Baseline designation.**

Main Street, also known as Highway 19, shall constitute the base line for numbering principal buildings and vacant parcels, lots, and tracts of land along all streets running northerly and southerly. TSA LA GI Avenue, also known as Highway 441, the part of such highway which is in front of the Tribal Council House, shall constitute the base line for numbering principal buildings and vacant parcels, lots, and tracts of land along all streets running easterly and westerly.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-42. Diagonal streets.**

All buildings and vacant parcels, lots and tracts of land and diagonal streets shall be numbered as though they are on northerly and southerly streets if the diagonal runs predominantly north to south. All buildings and vacant parcels, lots and tracts of land on diagonal streets shall be numbered as though they are on easterly and westerly streets if the diagonal runs predominantly east to west.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-43. Reserved.**

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

**Sec. 136A-44. Survey of vacant property and principal structures.**

In order to ensure a complete and orderly survey of the properties on the Eastern Cherokee Reservation:

(a) The Principal Chief shall appoint an employee to review the available Bureau of Indian Affairs documentation regarding the present properties on the Reservation, the possessory holdings, and the buildings and dwellings on all the properties.

(b) To supplement the above review, the Principal Chief shall cause a survey of vacant properties and principal structures to be made and completed, and a street address shall be assigned to principal structures in accordance with the uniform system provided in this article. When such survey has been completed and each principal structure has been assigned its respective number, the owner shall place or cause to be placed upon each principal structure owned by him or her the number and letters assigned under the uniform system as provided herein.

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

**Sec. 136A-45. Timely placement of numbers and letters; forfeiture.**

(a) The numbers, and letters when required, shall be placed on existing buildings within 60 days after notice of addressing. The numbers, and letters when required, shall be procured and paid for by the possessory holder, if there is a lease of Tribal property, or owner of a property which is held in fee.

(b) If the proper numbers and letters are not placed on an existing principal structure on or before the deadline referred to in paragraph (a), then it shall be considered a violation of this article. Each day of the violation shall be subject to a forfeiture. Such forfeiture shall not exceed \$30.00 per day.

(c) The Attorney General's office may institute any action necessary to enforce this collection and any fees associated with the action.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-46. Method of placement of numbers and letters.**

(a) The numbers, and letters when required, shall be conspicuously placed on the side of the structure facing the street or between the structure and the street so as to be seen plainly from the street. Whenever any structure is situated more than 100 feet from the street, the number shall be placed near the street next to the walk, driveway or entrance to the structure.

(b) The numbers, and letters when required, shall be at least five inches in height and contrast in color with the background, and have a fluorescent or light-reflecting finish.

(c) Each dwelling, business, parcel, or lot must display its street number on the front of the building, upon the mail receptacle in front of the building, upon the gate leading to the lot,

and/or upon a post which is visible from the street. The street address shall be displayed so that the number is clearly visible from the street.

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

**Sec. 136A-47. Numeric system.**

A frontage unit shall be assigned for every 5.28/30 feet of ground whether improved property or vacant lot on every road/street within the entire geographical areas of the Cherokee Indian Reservation. Even numbers must always be on the right side and odd on the left side of the point of beginning of the street/road.

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

**Sec. 136A-48. Assignment of new street numbers.**

(a) All owners, occupants, or persons in possession of any dwelling, business, parcel, or lot must apply for a street number within 60 days of ratification of this article.

(b) Completed applications must be provided to the Tribe's Emergency Management Office.

(c) Building permits shall not be issued until the principal owner obtains a street address.

(Ord. No. 332-A, 10-26-1998)

**Secs. 136A-49--136A-60. Reserved.**

**DIVISION 3. UNIFORM NAMING SYSTEM**

**Sec. 136A-61. Naming or renaming a Reservation road.**

(a) Any road that provides access to three or more structures shall be given a name.

(b) The Executive Director of Emergency Management shall be authorized to assign temporary road names as needed. Property owners on the affected road may petition for new names as per subsection (c) of this section. The temporary name thereby assigned shall remain in effect until a petition has successfully resulted in a name change and all appeal rights afforded by this chapter have been exhausted.

(c) A request for new names and name changes must include a completed petition signed by at least 51 percent of the property owners along the affected road.

(d) The name change must be submitted by petition. Such petition shall contain the existing road name and a \$20.00 fee to cover the costs of administration.

(e) There shall be no fee for a request to name an unnamed public or private road. The remaining procedures shall be the same.

(f) The petition and applications may be obtained at the Emergency Management Office of the Cherokee Indian Police Department.

(g) Petitions for road name changes, as well as petitions for naming unnamed roads, shall be considered as needed.

(h) The Emergency Management Coordinator will review the initial request to determine if all procedures are met, to ascertain that the proposed name does not duplicate an existing name or does not have a similar phonetic transcription or sound alike names, and also to ensure that the petition meets all other requirements of this article.

(Ord. No. 332-A, 10-26-1998; Ord. No. 670, 9-7-1999)

**Sec. 136A-62. Road name signs.**

Road name signs shall be acquired and installed by the Tribal Roads Department for all areas of the Cherokee Indian Reservation. The acquisition and installation of road name signs for private roads and private developments will be the responsibility of the property owners of these roads.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-63. Publication of naming of a road.**

The Emergency Management Office shall publish all names chosen for the Cherokee Indian Reservation road in the Cherokee One Feather for two consecutive weeks. Such publication notice shall include the address of the Emergency Management Office.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-64. Existing road names.**

All existing road names shall be grandfathered into the naming scheme, provided the names are not duplicative.

(Ord. No. 332-A, 10-26-1998)

**Secs. 136A-65--136A-80. Reserved.**

**DIVISION 4. APPEALS**

**Sec. 136A-81. Appeal of a road name or road renaming.**

(a) After the required publication of the street name in the One Feather, an individual residing on said road shall have 15 days from the last date of publication to appeal this naming of the road.

(b) Such appeal shall include the following information:

- (1) A statement of the reason for the appeal;
- (2) A suggested name;
- (3) A petition signed by at least 51 percent of the property owners along the affected road; and
- (4) An address, name, and phone number of the contact person.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-82. How to file the appeal.**

(a) The appeal must be filed with the Office of Emergency Management. The appeal must either be personally delivered or mailed to the address which is included in the notice of naming in the Cherokee One Feather.

(b) The Office of Emergency Management shall review the documentation. If the documentation is complete within the time requirements, the appeal will be given to the Executive Committee. Time limits will not be extended for any circumstances.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-83. Executive Committee to hear the appeal.**

The Executive Committee shall review the petition and documentation within 30 days. If the Executive Committee fails to review the petition within the time limit, the proposed name, included in the petition will be used as the street name. If the Executive Committee hears the petition within the time limit and upholds the original naming, then the decision of the Executive Committee will be final. The Executive Committee shall provide ten calendar days' notice of the hearing.

(Ord. No. 332-A, 10-26-1998)

**Secs. 136A-84--136A-90. Reserved.**

**DIVISION 5. MISCELLANEOUS PROVISIONS**

**Sec. 136A-91. Severability.**

In the event of a court finding of invalidity of any clause or section of this article, such invalid clause or section shall be severed from the remaining body of this article, and the remainder of this article shall remain in full force and effect.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-92. Prior inconsistent laws repealed.**

Any existing laws which are inconsistent with this article are specifically repealed.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-93. Rules and regulations.**

The Tribal Council may enact rules and regulations as necessary to enforce this article.

(Ord. No. 332-A, 10-26-1998)

**Sec. 136A-94. Effective date.**

This article shall be effective 30 days after execution by the Principal Chief.



(Ord. No. 332-A, 10-26-1998)

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## Chapter 137: Cherokee Roads Commission\*

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**\*Cross references:** Tribal government, ch. 117; roads and highways, ch. 136A.

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### **Sec. 137-1. Purpose.**

The purpose of this chapter is to create an administrative body whereby the Eastern Band of Cherokee Indians may provide for the proper utilization and expenditure of all funds collected under the Cherokee Gasoline Tax Ordinance. This chapter shall establish a body to be known as the Cherokee Roads Commission, who shall be solely responsible for the expenditure of all gasoline tax revenues and ensuring that such funds are utilized only in the manner and for the purposes designated by the Cherokee Gas Tax Ordinance and by this chapter.

(Ord. No. 585, 9-14-1989)

### **Sec. 137-2. Definitions.**

The following words, terms and phrases as used in this chapter, shall be defined as follows:

- (a) *Bureau* shall mean the Bureau of Indian Affairs.
- (b) *Chairman* shall mean the Chairman of Cherokee Roads Commission.
- (c) *Commissioner* shall mean a member of the Cherokee Roads Commission.
- (d) *Person* shall mean natural persons, partnerships, firms, associations and corporations.
- (e) *Tax* shall mean the tax revenues collected under the Cherokee Gas Tax Ordinance.

(Ord. No. 585, 9-14-1989)

### **Sec. 137-3. Commission membership.**

The Commission shall consist of 11 members, six of whom shall be Tribal representatives who shall serve two-year terms. Other members of the Commission shall be recommended to Council by the Roads Commission. These members shall serve staggered three-year terms. One of the members appointed shall be an employee of or person familiar with the operations and regulations of the Qualla Housing Authority. One of the members appointed shall be an employee of or a person familiar with the operations of and transportation programs and policies of the Cherokee Boys Club. One of the members appointed shall be an employee of the Cherokee DOT. One of the members appointed shall be an employee of or person familiar with the operations of the Emergency Management System. One of the members appointed shall be an employee of or person familiar with the operations and regulations of Tribal Utilities. All Commissioners shall have authority to vote on issues coming before the Commission.

(Ord. No. 585, 9-14-1989; Ord. No. 76, 2-1-1996; Ord. No. 136, 3-20-1998)

**Sec. 137-4. Authority.**

The Commission is hereby vested with the following authority:

- (a) To adopt a budget for the expenditure of Tribal gasoline tax revenues and state gasoline tax refunds.
- (b) To direct and authorize the expenditure of Tribal gasoline tax revenues and state gasoline tax refunds.
- (c) To establish written policies, priorities and standards for the expenditure of gasoline tax revenues and refunds for road maintenance, upkeep, improvements, construction and safety abatement.
- (d) To utilize Tribal gasoline tax revenues and state gasoline tax refunds as matching funds for programs, grants, and contracts where this will enhance the roadways on Cherokee trust lands and promote transportation safety within Cherokee trust lands.
- (e) To establish financial guidelines for eligibility of persons to participate in programs or receive services or materials funded with Tribal gasoline tax revenues and state gasoline tax refunds.
- (f) To rent or purchase equipment, materials and supplies for use in connection with the maintenance, upkeep, improvement, construction and safety abatement of roadways and highways within Cherokee trust lands.
- (g) To employ or contract with persons and government agencies or departments to provide services for the Tribe in connection with the maintenance, upkeep, improvement, construction and safety abatement of roadways and highways within Cherokee trust lands.
- (h) To assume those duties formerly delegated to the Tribal Council Roads Committee to establish road maintenance and construction priorities for all BIA roads.

(Ord. No. 585, 9-14-1989)

**Sec. 137-5. Duties.**

The Commission shall be charged with the following affirmative duties:

- (a) The Commission shall meet at least once during each quarter of the calendar year.
- (b) The Commission shall adopt an annual budget for the expenditure of Tribal gasoline tax revenues and state gasoline tax refunds during each calendar year.
- (c) The Commission shall approve projects maintenance, upkeep, improvement, construction or safety abatement of roadways and highways prior to the expenditure of any tribal gasoline tax revenues or state gasoline tax refunds.

(d) The Commission shall establish a reserve fund of not less than \$250,000.00 from state gasoline tax refunds. The reserve fund shall be invested in interest bearing accounts with only the interest earnings available for emergency roadway and highway projects which shall be spent only with prior budget authority and approval by the Commission, who shall have sole authority to withdraw funds from the reserve.

(Ord. No. 585, 9-14-1989)

**Sec. 137-6. Effective date.**

Tribal Council Resolution No. 195 (1969) and all other resolutions in conflict with this chapter are hereby rescinded. This chapter shall become effective immediately upon ratification by the Principal Chief.

(Ord. No. 585, 9-14-1989)

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## Chapter 143: Building Codes and Flood Control\*

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**\*Cross references:** Real property, ch. 47; zoning, ch. 61; pollution control and environment, ch. 113A; health and sanitation, ch. 130; signs and billboards, ch. 136; roads and highways, ch. 136A; wastewater discharge, ch. 145.

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### ARTICLE I. IN GENERAL

**Sec. 143-1. Plan review by the Business Committee.**

The Tribal Business Committee shall review and approve all construction, structural alterations and beautification plans for all business enterprises located on the Cherokee Indian Reservation. One copy of plans and specifications shall be filed with the Committee prior to approval.

(a) The Business Committee and the Realty Office of the Cherokee Indian Agency will review and approve or disapprove plans for construction and beautification of business sites. Before any construction or major alteration of business places is done, plans for same must be approved by the Business Committee.

(b) Any person or firm violating the provisions of this chapter shall be subject to a fine of \$500.00.

(Ord. No. 155, 4-19-1990; Ord. No. 290, 7-17-2000)

**Sec. 143-2. Flood control--Standards for modifications.**

Any construction or improvements proposed in a location that has a flood hazard must be designed and carried out in compliance with article II of this chapter.

(Res. No. 32, 10-17-1946; Res. No. 340, 3-3-1977; Ord. No. 290, 7-17-2000)

**Sec. 143-3. Reserved.**

**Editor's note:** Ord. No. 290, adopted July 17, 2000 completely repealed the provisions of § 143-3 which pertained to flood control and the safety of the public and derived from original Code.

**Sec. 143-4. Upgrade of water system in floodplain.**

The Tribal Business Committee shall require new or replacement water systems and sanitation systems be designated to minimize infiltration of floodwater into the systems and discharges from the systems into floodwaters, and require on-site disposal systems be located so as to avoid impairment or contamination during flooding.

(Res. No. 32, 10-17-1946; Res. No. 340, 3-3-1977)

**Sec. 143-5. Reserved.**

**Editor's note:** Ord. No. 290, adopted July 17, 2000 completely repealed the provisions of § 143-5 which pertained to business bathrooms and derived from Res. No. 77, adopted July 1, 1951.

**Sec. 143-6. Building code.**

(a) The Eastern Band of Cherokee Indians adopts the North Carolina State Building Code, which shall apply to all construction on the Cherokee Indian Reservation, as set forth below.

(b) The North Carolina State Building Code provisions apply to:

(1) All commercial construction of any size, cost, type or purpose, regardless of whether it is new construction, addition, or renovation, and regardless of whether humans will occupy it; and

(2) For residential structures, the construction, alteration, repair, use, occupancy, prefabrication, or maintenance of, or any addition to, detached one- and two-family dwellings and one-family townhouses not more than three stories in height, and their accessory structures, provided those accessory structures have any dimension greater than 12 feet.

(c) *Exceptions.* Specific exceptions, to which the North Carolina State Building Code shall not apply, are the following construction activities conducted for residential structures:

(1) Fences;

(2) Structures, such as barns, garages, tool sheds, pre-fabricated buildings, that do not contain sleeping quarters or are not inhabitable by humans,

(3) Additions or renovations that cost under \$5000.00, whether or not habitable by humans;

(4) Driveways and concrete slabs;

(5) Additions, repairs, or maintenance that do not impact on load-bearing walls;

(6) Repairs to roofs;

(7) Prefabricated buildings already bearing evidence of inspection by applicable governmental authorities;

For commercial structures, the North Carolina State Building Code shall not apply to the mere repair or maintenance of an existing commercial building or accessory structure.

(c1) Tribal members shall not be required to obtain an engineering certification for a structure built on pilings, provided that none of the pilings is taller than four feet from the ground to the floor sills, and that the structure is built in compliance with standard specifications developed by the Tribal building inspector in consultation with a certified engineer. The Tribal building inspector is authorized and directed to develop such standard specifications within 90 days of the effective date of this subsection, and make them available to tribal members seeking to build a structure in compliance with this subsection.

(d) Other codes and regulations applicable. All electrical wiring, HVAC and plumbing to any structure, whether residential or commercial, and of any size, cost, type or purpose, is subject to all Tribal, state and federal laws and required inspections relating to wiring, HVAC or plumbing, regardless of whether the North Carolina State Building Code applies.

(e) Building permits. No construction project to which the North Carolina State Building Code applies may begin prior to the issuance of a building permit. Persons proposing projects for which this chapter is applicable shall obtain a permit from the Tribal building inspector. The building inspector is authorized to set requirements and procedures, that are consistent with this chapter and the North Carolina State Building Code, for the issuance of permits. Those requirements and procedures, and any changes thereto, shall be submitted to the Business Committee, which is empowered to approve or reject them based on their reasonableness and adherence to this chapter and the North Carolina State Building Code.

(f) The Tribal Business Committee is empowered to and shall enact, after consultation with the building inspector, a fee schedule establishing charges for the issuance of building permits. The schedule may be revised from time to time at the committee's discretion.

(g) An applicant for a building permit shall provide evidence of the approval of his project by the Business Committee to the building inspector at the time he applies for the permit. No permit application shall be accepted and no permit shall issue prior to Business Committee approval of the project to which the application relates.

(h) Fees established by the Business Committee pursuant to subsection (f) must be paid, and evidence of payment provided to the building inspector's office, prior to issuance of a building permit within the Qualla Boundary. The following categories of projects are exempt from paying the fee, but not from obtaining a permit:

(1) Residential construction projects to which the North Carolina State Building Code applies;

(2) Construction projects of the Tribal government, except for projects of the Tribal Gaming Commission, Tribal Bingo Enterprise, Tribal Casino Gaming Enterprise, Cherokee Boys Club, Tribal Health Enterprise, any other Tribal enterprise, or corporations organized as non-profits under Chapter 55A; or

(3) Fees for Qualla Housing Authority projects are covered by an annual transfer from its budget to the building inspector's office, in an amount to be determined by

the Business Committee after consultation with the building inspector, finance department and Qualla Housing Authority.

(i) Payment of fees. Payment of building permit fees shall be made to and collected by the finance department, which shall provide satisfactory evidence of the payment made, in accordance with its policies, to the payor at the time of payment.

(j) Certificate of occupancy. All Tribal and North Carolina State Building Code requirements shall be met by applicants throughout the building process, and applicants shall make their construction site available to the Tribal building inspector for the 14-step building inspection process administered by the Tribal building inspector. The building inspector shall conduct this inspection on all such residential construction projects, and shall issue a certificate of occupancy to applicants who pass this inspection.

(Res. No. 973, 2-16-1966; Res. No. 38-S, 7-1-1968; Ord. No. 669, 9-7-1999; Ord. No. 290, 7-17-2000; Ord. No. 487, 12-20-2000)

### **Sec. 143-7. Hazardous and condemned structures.**

To meet the special requirements of the Eastern Band of Cherokee Indians for rehabilitation or removal of hazardous or condemned structures, the following provisions are adopted, and to the extent that the North Carolina State Building Code contains provisions inconsistent with the following, those North Carolina provisions are not applicable.

All dwellings, apartment houses, rooming houses or buildings or structures used as such which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relationship to human life, or which in relationship to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment are severely in contemplation of this section, unsafe buildings. No such unsafe building shall be constructed or change ownership or occupancy unless and until such time that the provisions of this Code have been met and appropriate approval obtained for such construction or change in ownership or occupancy from the Tribal building inspector. Failure to obtain said approval shall be a violation of this article and shall make the owner of the dwelling, apartment house, rooming house or building or structure used as such liable to the penalties hereinafter set forth. All such buildings sought to be constructed or as shall become vacant shall be immediately subject to the following procedure:

(a) Prior to constructing or re-occupying any dwelling, the owner-occupant must apply for and obtain permission from the office of the Tribal building inspector. If the person desires to construct a dwelling unit, said permission shall be in the form of a building permit. If the person desires to reoccupy a vacated dwelling or occupy a new dwelling, said permission shall be in the form of a certificate of occupancy.

(b) Reserved.

(c) The "certificate of occupancy" of a vacated building. Prior to a change in the occupancy of any dwelling, the prospective occupant must obtain a certificate of occupancy. Upon application by the prospective occupant for said certificate, the Tribal building inspector shall order an inspection of the appropriate premises for the purpose of assessing what repairs, if any, are necessary to meet the minimum requirements of the Code. The inspection shall be made as soon as practical in order that the interested parties have an opportunity to ascertain whether the dwelling in question is worth the expense of any required repairs. The office of the Tribal

building inspector shall assist the individual in every reasonable way in his inquiry about materials and labor for any required repairs. All repairs must be inspected and approved before a certificate of occupancy may be issued and before the applicant can occupy the dwelling.

(d) Should any individual, once notified, fail to petition for the above described permits or should the office of the Tribal building inspector refuse to issue said permit upon a finding that the building or structure or portion thereof is unsafe, unsanitary or unfit for human habitation, then in that event, the Tribal building inspector shall, in accordance with the established procedure for legal notices, give the owner, agent, or person in control of such building or structure, written notice stating the defects thereof. This notice shall require the owner within a stated time either to complete specified repairs or improvements or to demolish and remove the building or structure or portion thereof.

(e) The Tribal building inspector shall cause to be posted at each entrance to such building a notice:

"THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE TRIBAL BUILDING INSPECTOR."

Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation, or their agents, or other servants, to remove such notice without written permission of the Tribal building inspector, or for any person to enter the building except for the purpose of making the required repairs or of demolishing same.

(f) The owner, agent, or person in control shall have the right, except in cases of emergency, to appeal from the decision of the Tribal building inspector, as provided hereinafter, and to appear before the Tribal Business Committee at a specified time and place to show cause why he should not comply with said notice.

(g) In case the owner, agent or person in control cannot be found within the stated time limit, or, if such owner, agent or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, the Tribal building inspector, after having ascertained the cost, shall cause such building or structure or portion thereof, to be demolished, secured, or required to remain vacant.

(h) Costs incurred under paragraph 103.2(d) shall be charged to the owner of the premises if this person can be located; or this owner may himself cause the repairs or demolition to be carried out, provided that this repair or demolition shall be completed within a period to be stated by the Tribal building inspector. If the owner cannot be located or ascertained within 90 days, the demolition of the structure shall be financed by the Eastern Band of Cherokee Indians.

(Res. No. 38-S, 7-1-1968; Ord. No. 290, 7-17-2000)

#### **Sec. 143-7A. Criminal penalties.**

Whenever in this Code any act is prohibited or the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of any such provision of this Code shall be punishable by a fine of not more than \$50.00 or by imprisonment for not more than

30 days. Each day any violation of this Code continues shall constitute a separate offense. Whenever the penalties of this section are sought to be imposed, the violator shall be brought before the Cherokee court for a speedy trial.

(Res. No. 38-S, 7-1-1968; Ord. No. 290, 7-17-2000)

**Sec. 143-7B. Civil enforcement.**

Willful failure or refusal to comply with this Code shall also constitute grounds for civil penalties, termination of the violator's traders permit or other business license, and/or termination of the violator's lease, after notice and a hearing before the Tribal Business Committee.

(Ord. No. 290, 7-17-2000)

**Sec. 143-8. Electrical code.**

The Eastern Band of Cherokee Indians adopts the National Electrical Code which shall apply to all construction and buildings on the Cherokee Indian Reservation.

(Res. No. 973, 2-16-1966)

**Sec. 143-9. Tribal Inspectors.**

(a) The position of Housing Inspector is hereby created. The duties of the Inspector shall be to inspect all housing and buildings, in accordance with all applicable codes and ordinances and to recommend and seek means whereby housing standards may be upgraded on the Reservation.

(b) The position of Electrical Inspector is hereby created. The duties of the Inspector shall be to inspect the electrical installation and service all housing and buildings in accordance with all applicable codes and ordinances.

(c) The position of Electrical Inspector is hereby authorized to be performed by an individual who performs electrical inspection services for any of the five county governments in which Cherokee trust lands are located, so long as such person or such position has been approved by written contract approved and executed by the Principal Chief for the Tribe. Such contracted individual shall have all powers and authority delegated to the Electrical Inspector by the Tribal Building Code.

(Res. No. 9, 10-26-1967; Res. No. 306, 5-1-1975; Ord. No. 370, 3-4-1993)

**Sec. 143-10. Fire prevention.**

(a) The Eastern Band of Cherokee Indians adopts the Standard Fire Prevention Code (and any amendments), as recommended for North Carolina by the Southern Building Code Congress International and the NFPA 101, Life Safety Code (and any amendments), as recommended by the National Fire Protection Association, which shall apply to all commercial construction and commercial buildings on the Cherokee Indian Reservation.

(b) The community services committee is empowered to consult with the fire marshals and/or fire chief to set a schedule of fines and other civil penalties for violation of the Fire Prevention Code. Such fines may be amended from time to time after further consultation



with the fire marshals and/or fire chief

(c) The fire marshals have full authority to impose fines and other civil penalties by issuing violation tickets in accordance with Tribal law and the schedule of fines then in force. Payments of fines by person(s) or entity(ies) found to be in violation shall be made to the Tribal finance office.

(d) The office of attorney general shall be authorized to collect any fines or civil penalties remaining unpaid after 60-days' notice by civil action in the Cherokee court.

(e) The Tribal Business Committee shall be authorized to terminate a violator's traders permit or other business license based on failure or refusal to pay the assessed fine or civil penalty, after giving notice and an opportunity to be heard.

(Res. No. 973, 2-16-1966; Ord. No. 139, 4-17-2000; Ord. No. 290, 7-17-2000)

### **Sec. 143-11. Mobile homes.**

The following action shall be required before a mobile home may be delivered to the Cherokee Indian Reservation for use as a residence:

(a) The site must be investigated and approved by the Indian Health Service.

(b) The occupant must obtain a permit from the Tribal Business Committee before a mobile home may be brought onto the Reservation or before a mobile home may be relocated within the Reservation. The permit shall include, but not be limited to, requirement of a site evaluation by the Bureau of Indian Affairs, confirmation of ingress and egress by the Roads Commission, review of flood and archaeological status by the Tribal Environmental Office, and obtaining a building permit from the building inspector.

(c) The occupant shall comply with all rules and regulations applicable to installation of water or sewer services by the Indian Health Service.

(d) The Tribal building inspector is empowered to enforce the provisions of this section, including ordering removal of non-compliant mobile homes and/or ordering Tribal utilities to cut off water and/or sewer services to non-compliant mobile homes.

(Res. No. 454, 6-10-1971; Ord. No. 290, 7-17-2000)

## **ARTICLE II. FLOOD DAMAGE PREVENTION**

### **Sec. 143-12. Findings of fact.**

(a) The flood hazard areas of the Cherokee Indian Reservation are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses may be caused by the cumulative effect of obstructions in floodplains and by the occupancy of flood hazard areas.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992)

### **Sec. 143-13. Purposes.**

The purpose of this article is to promote the public health, safety and general welfare and minimize the public and private losses to flood conditions in specific areas by provisions designed to:

- (a) Restrict and prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion, flood heights or velocities;
- (b) Require that land use vulnerable to floods, including facilities, be protected against flood damage at the time of initial construction;
- (c) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;
- (d) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992)

### **Sec. 143-14. Objectives.**

The objectives of this article are:

- (a) To protect human life and health;
- (b) To minimize the expenditure of public money for costly flood control projects;
- (c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) To minimize prolonged business interruptions;
- (e) To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains; and
- (f) To help maintain a stable tax base by providing for the sound use and development of floodprone areas, in such a manner, as to minimize flood blight areas.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992)

### **Sec. 143-15. Definitions.**

Unless specifically defined below, words or phrases used in this article shall be interpreted as their common meaning and to give this article its most reasonable application.

- (a) *Appeal* shall mean a request from a review of the local administrator's interpretation of any provision of this article or a request for a variance.

(b) *Addition to an existing building* shall mean any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire-wall. Any walled and roofed addition which is connected by a fire-wall or is separated by independent perimeter load-bearing walls is new construction.

(c) *Area of shallow flooding* shall mean a designated AO or VO zone on the Tribal Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and intermediate and where velocity flow may be evident.

(d) *Area of special flood hazard* shall mean the land in the floodplain within the Reservation subject to a one percent or greater chance of flooding in any given year.

(e) *Base flood* shall mean the flood having a one percent chance of being equaled or exceeded in any given year.

(f) *Basement* shall mean that lowest level or story which has its floor subgrade on all sides.

(g) *Breakaway wall* shall mean a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires an architect or professional engineer's certificate.

(h) *Building* shall mean any structure built for support, shelter or enclosure for occupancy or storage.

(i) *Development* shall mean any manmade change to real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

(j) *Elevated building* shall mean a nonbasement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, shear walls or breakaway walls.

(k) *Existing manufactured home park or manufactured home subdivision* shall mean a parcel of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed is completed before the effective date of this article (February 5, 1993).

(l) *Flood or flooding* shall mean a general and temporary inundation of normally dry land areas from the overflow of stream waters or the unusual and rapid accumulation or runoff of surface waters from any source.

(m) *Flood hazard boundary map (FHBM)* shall mean the official map issued by the Federal Insurance Administration where the areas of special flood hazard have been designated as zone A.

(n) *Flood insurance rate map (FIRM)* shall mean the official map of the Tribe on which the Federal Emergency Management Agency has delineated both the areas of Special Flood Hazard and the Risk Premium Zones applicable to the Reservation.

(o) *Flood insurance study* shall mean the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the flood base.

(p) *Floodway* shall mean the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(q) *Floor* shall mean the top surface of an enclosed area in a building. The term does not include the floor of a garage used solely for parking vehicles.

(r) *Functionally dependent facility* shall mean a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking facility necessary for the loading and unloading of boats, or marine processing facilities. The term does not include long-term storage, manufacture, sales or service facilities.

(s) *Highest adjacent grade* shall mean the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

(t) *Levee* shall mean a man-made structure, designed and constructed, in accordance, with sound engineering practices to contain or divert the flow of water and protect against temporary flooding.

(u) *Levee system* shall mean a flood protection system of levees which are constructed and operated in accordance with sound engineering practices.

(v) *Lowest floor* shall mean the lowest floor of the enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in an area other than a basement, is not considered a building's lowest floor, provided such enclosure is not built to render the structure in violation of the nonelevation design requirements of this article.

(w) *Manufactured home* shall mean a transportable structure, which is built on a permanent chassis and designed to be used with or without a permanent foundation. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

(x) *Manufactured home park or subdivision* shall mean a parcel of land divided into two or more manufactured home lots for rent or sale.

(y) *Mean sea level* shall mean the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum.

(z) *National Geodetic Vertical Datum (NGVD)*, as corrected in 1929, shall mean a vertical control used as a reference for establishing varying elevations within the floodplain.

(aa) *New construction* shall mean structures for which the start of construction commenced on or after the effective date of this section (April 3, 1992), including any subsequent improvements to such structures.

(bb) *Remedy a violation* shall mean to bring the structure or development into compliance with floodplain management regulations, or if not possible, to reduce the impact of noncompliance. Impact may be reduced by protecting the structure or other affected development from flood damage, implementing the enforcement provisions of this article, deterring future similar violations, or reducing federal financial exposure on the structure or development.

(cc) *Start of construction for other than new construction*, shall include substantial improvement, and means the date the building permit was issued, provided construction, repair or improvement was actually begun within 180 days of the permit date. This means the first placement of permanent construction of a structure, including a manufactured home, on a site beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure.

(dd) *Structure* shall mean a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other manmade facilities.

(ee) *Substantial improvement* shall mean any repair, construction or improvement of a structure, within any 12-month period, where the cost equals or exceeds 50 percent of the market value of the structure, either (1) before the improvement or repair is started, or (2) before the damage occurred if the structure has been damaged and is being restored. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration on any wall, ceiling, floor or other structural part of the building is begun, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for the improvement of a structure to comply with existing health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places.

(ff) [Rescinded. Reserved for future use.]

(gg) *Violation* shall mean the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or development without the elevation certificate, other certifications, or other evidence of compliance in sections 143-24 through 143-33 is presumed to be in violation until such time as that documentation is provided.

(hh) *Expansion to an existing manufacturing home park or subdivision* shall mean the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete streets).

(ii) *Historic structure* shall mean any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places;

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified:

(A) By an approved state program as determined by the Secretary of Interior; or

(B) Directly by the Secretary of Interior in states without approved programs.

(jj) *New manufactured home park or subdivision* shall mean a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is complete on or after the effective date of this section (April 3, 1992).

(kk) *Nonconforming building or use* shall mean any legally existing building or use which fails to comply with the provisions of this article.

(ll) *Recreational vehicle* shall mean a vehicle which is:

(1) Built on a single chassis;

(2) Four hundred square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Living quarters for recreational, camping, travel, or seasonal use.

(mm) *Substantial damage* shall mean damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage

occurred.

(nn) *Substantial improvement* shall mean any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project of improvement of a structure to correct existing violations of local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

(oo) *Variance* is a grant of relief from the requirements of this chapter, under the standards set forth in section 143-28, which permits construction in a manner otherwise prohibited by this chapter, where enforcement would result in unnecessary hardship.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992; Ord. No. 170, 4-17-2000)

#### **Sec. 143-16. Application.**

This article shall apply to all areas of special flood hazard within the jurisdiction of the Eastern Band of Cherokee Indians.

#### **Sec. 143-17. Establishing areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Insurance Administration in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM), with accompanying maps and other supporting data, and any revisions thereto are adopted by reference and declared to be a part of this article.

#### **Sec. 143-18. Development permit.**

A development permit pursuant to section 143-25 shall be required prior to the commencement of any development activities.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992; Ord. No. 290, 7-17-2000)

#### **Sec. 143-19. Compliance.**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

#### **Sec. 143-20. Abrogation and greater restrictions.**

This article is not intended to repeal, abrogate or impair any existing easements, covenants or land use restrictions. However, where this article and another conflict, whichever imposes the more stringent restrictions shall prevail.

### **Sec. 143-21. Interpretation.**

In the interpretation and application of this article, all provisions shall be (1) considered as minimum requirements, (2) liberally construed in favor of the Tribe, and (3) deemed neither to limit or repeal any other powers granted under law.

### **Sec. 143-22. Warning and disclaimer of liability.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods may occur. Flood heights may be increased by man-made or natural causes. This article is not meant to imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Eastern Band of Cherokee Indians or by any officer or employee thereof for any flood damages that result from reliance on this article or any administration decision lawfully made hereunder.

### **Sec. 143-23. Penalties for violation.**

Violation of the provisions of this article or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variance or special exemptions, shall constitute a misdemeanor. Any person subject to the criminal jurisdiction of the Cherokee Court who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Any person not subject to the criminal jurisdiction of the Cherokee Court shall be subject to a civil suit by the Tribe in the Cherokee Court for injunctive or mandamus relief together with a fine of \$50.00 per day for each day of violation after receiving notice of the violation. Nothing herein contained shall prevent the Eastern Band of Cherokee Indians from taking such other lawful action as is necessary to prevent or remedy any violation.

### **Sec. 143-24. Local administrator.**

The Tribal environmental office is hereby appointed and authorized to administer and implement the provisions of this article.

### **Sec. 143-25. Development permit and certification requirements.**

Application for a development permit shall be made to the Tribal environmental office prior to any development activities, on forms furnished by the Tribe. The development permit includes, but shall not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions and elevations of the area in question existing or proposed structures and the location of fill, material storage areas and drainage. The following information is specifically required:

(a) Where base flood elevation data is provided in accordance with section 143-26(j), the application for a development permit within the Zone A on the Flood Insurance Rate Map will show:

(1) The elevation (in relation to Mean Sea Level) of the lowest floor of all new and substantially improved structures; and



(2) If the structure has been floodproofed in accordance with section 143-30(b), the elevation (in relation to Mean Sea Level) to which the structure was floodproofed.

(b) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two feet above the highest adjacent grade.

(c) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.

(d) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in section 143-30(b).

(e) A floor elevation or floodproofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment, of the lowest floor elevation, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Tribal environmental office a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as-built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer and certified by same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Tribal environmental office shall review the flood elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to any other work being performed. Failure to submit the survey or failure to make required corrections shall be cause to issue a stop work order for the project.

#### **Sec. 143-26. Duties and responsibilities of Tribal environmental office.**

Duties of the Tribal environmental office shall include, but not be limited to:

(a) Review all development permits to determine that the permit requirements of this article have been satisfied.

(b) Advise the permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.

(c) Notify adjacent communities and the N.C. Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

- (d) Ensure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (e) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of sections 143-29 through 143-33 are met.
- (f) Obtain the actual elevation (in relation to mean sea level), to which the new or substantially improved structures have been floodproofed, in accordance with section 143-25(e).
- (g) Obtain the actual elevation (in relation to mean sea level) of the lowest floor (including the basement) of all new or substantially improved structures, in accordance with section 143-25(e).
- (h) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with section 143-30(b).
- (i) Make the necessary interpretations where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation, as provided hereafter.
- (j) When base flood elevation data or floodway data has not been provided in accordance with section 143-17, to obtain, review and reasonable utilize any base flood elevation data and floodway data available from a federal, state or other source, including data developed pursuant to section 143-22(d), in order to administer the provisions of this article.
- (k) All records pertaining to the provisions of this article shall be maintained in the office of the Tribal environmental office and shall be open for public inspection.

#### **Sec. 143-27. Administrative procedures.**

- (a) *Inspection of work in progress.* As the work pursuant to a permit progresses, the Tribal environmental office, or their authorized representative, shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Tribal environmental office or their authorized representative, has a right, upon presentation of proper credentials, to enter on any premises within Cherokee trust lands at any reasonable hour for the purposes of inspection or other enforcement action.
- (b) *Stop orders.* Whenever a building or part thereof is being constructed, altered or repaired in violation of this article, the Tribal environmental office may order the work to be immediately stopped. The stop order shall be in writing and directed to the person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop order constitutes a misdemeanor. Violations by persons not subject to the criminal jurisdiction of the Cherokee Court shall be subject to civil injunctive relief or petition to the Tribal environmental office for cancellation of a trader's license.

(c) *Revocation of permits.* The Tribal environmental office may revoke and require the return of the development permit by notifying the permit holder in writing, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans or specifications; for refusal or failure to comply with the requirements of Tribal law; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of a Tribal law may also be revoked.

(d) *Periodic inspections.* The Tribal environmental office and his authorized representatives shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the Tribe at any reasonable hour for the purposes of inspection or other enforcement action.

(e) *Violations to be corrected.* When the Tribal environmental office finds violations of Tribal laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall each immediately remedy the violations of law.

(f) *Actions in event of failure to take corrective action.* If the owner or occupant of a building or property shall fail to take prompt corrective action, the Tribal environmental office shall give him written notice, by certified or registered mail to his last known address or by personal service:

(1) That the building or property is in violation of this flood damage prevention article;

(2) That a hearing will be held before the Tribal Business Committee at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Tribal Business Committee may issue such order to alter, vacate or demolish the building, or to remove or fill as appears appropriate.

(g) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, Tribal Business Committee shall find that the building or development is in violation of this flood damage prevention article, the committee shall make an order in writing to the owner, requiring the owner to remedy the violation, within 60 days; provided that where the Tribal environmental office finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be reasonable.

(h) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the Tribal Business Committee by giving notice of appeal in writing to the Tribal Business Committee within ten days following the issuance of the final order. In the absence of an appeal, the order of the Superintendent shall be final. The Tribal Business Committee shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke an order.

(i) *Failure to comply with order.* If the owner or occupant of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the Tribe following an appeal, he or she shall be guilty of a misdemeanor and shall be punished at the discretion of the court. If the owner or occupant is not subject to the criminal jurisdiction of the Cherokee Court, the court may grant injunctive relief and he or she may be subjected to cancellation of a trader's license.

**Sec. 143-28. Variance procedures.**

(a) The Tribal Business Committee shall hear and decide appeals and requests for variances from the requirements of this chapter.

(b) Any person aggrieved by the decision of the Tribal Business Committee may appeal such decision to the Cherokee Court.

(c) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or listed with the Tribal Historic Preservation Office without regard to the procedures set forth in the remainder of this section.

(d) In passing on such applications, the Business Committee shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use with existing and anticipated development;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(e) Upon consideration of the factors listed above and the purposes of this chapter the Business Committee may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(g) Conditions for variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing Tribal laws.

(3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

(4) Any applicant to whom a variance is granted shall agree in writing to indemnify and hold the Tribe harmless for any and all claims that may be asserted as a result of any flood damage allegedly caused by construction undertaken pursuant to the variance.

(5) The Superintendent of the Cherokee Agency shall maintain the records of all variances and report any variances to the Federal Emergency Management Agency upon request.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992; Ord. No. 170, 4-17-2000)

**Sec. 143-29. General standards for flood hazard reduction.**

In all areas of special flood hazard the following provisions are required:

(a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(b) Manufactured homes shall be anchored to prevent flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable requirements for resisting wind forces.

(c) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(d) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

(e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other

service facilities shall be designed or located to prevent water from entering or accumulating within the components during flooding.

(f) All new and replacement water supply systems shall be designed to minimize or eliminate filtration of floodwaters into the systems and discharges from the systems into floodwaters.

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(i) Any alteration, repair, reconstruction or improvements to a structure, which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article.

(j) Nonconforming buildings or uses may not be enlarged, replaced or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this article or with an approved variance meeting the standards of section 143-28.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992; Ord. No. 170, 4-17-2000)

### **Sec. 143-30. Specific standards for flood hazard reduction.**

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in section 143-17 or 143-26(j) the following provisions are required:

(a) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including the basement, elevated no lower than two feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided.

(b) *Nonresidential construction.* New construction or substantial improvements of any commercial, industrial or nonresidential structure shall have the lowest floor, including the basement, no lower than two feet above the level of the base flood elevation. Structures located in A zones may be floodproofed in lieu of elevation, provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 143-25(e).

(c) *Elevated building.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(A) Provide a minimum of two openings having a total net area of not less than one square inch for every foot of enclosed area subject to flooding;

(B) The bottom of all openings shall be no higher than one foot above grade; and

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

(2) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles or limited storage of maintenance equipment used in connection with the premises or entry to the living area.

(4) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(d) *Floodways*. Located within areas of special flood hazard established in section 143-17, are areas designated as floodway. The floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless certified with supporting technical data, by a registered professional engineer demonstrating that such encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.

(2) If section 143-30(d)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 143-29 through 143-33.

(3) No manufactured home shall be permitted, except in an existing manufactured homes park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of section 143-30(b) and the elevation standards of section 143-30(a) are met.

(e) Manufactured homes.

(1) Manufactured homes that are placed or substantially improved on sites:

(A) Outside a manufactured home park or subdivision;

(B) In a new manufactured home park or subdivision;

(C) In an expansion to an existing manufactured home park or subdivision; or

(D) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of section 143-30(e)(1) of this article must be elevated so that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(3) Manufactured homes shall be anchored to prevent flotation, collapse and lateral movement. For the purposes of this requirement, manufactured homes must be anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement in accordance with the "Regulations for Mobile Homes and Modular Housing," as adopted by the North Carolina Commissioner of Insurance. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the sight, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within floodprone areas. This plan shall be filed with and approved by the local administrator and the local Emergency Management Coordinator.

(f) *Recreational vehicles.* A recreational vehicle is ready for highway use, if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:

(1) Be on site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use; or

(3) Meet the requirements of sections 143-25, 143-29 and 143-30(f).

(g) *Temporary structures.* Prior to the issuance of a development permit, for a temporary structure, the following requirement must be met:



(1) All applicants must submit to the local administrator a plan for the removal of such structures in the event of a hurricane or flash flood notification. The plan must include the following information:

(A) The name, address and phone number of the individual responsible for the removal of the temporary structure;

(B) The time frame prior to the event at which a structure will be removed;

(C) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(D) Designation accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

(2) The above information shall be submitted in writing to the local administrator for review and written approval.

(h) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) with a value of \$3,000.00 or less, are to be placed in the floodplain, the following criteria shall be met:

(1) Accessory structures shall not be used for human habitation.

(2) Accessory structures shall be designed to have low flood damage potential.

(3) Accessory structures shall be firmly anchored in accordance with section 143-29(a).

(4) Service facilities such as electrical and heating equipment shall be elevated in accordance with section 143-29(e).

(Ord. No. 144, 4-3-1992)

**Sec. 143-31. Standards for streams without established base flood elevations or floodways.**

Located within the areas of special flood hazard established in section 143-17, are small streams where no base flood data has been provided or where no floodways have been identified. The following provisions apply within such areas:

(a) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of the stream bank equal to two times the width of the stream at the top of bank or 20 feet each side from top of bank, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided, demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) If section 143-31(a) is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard article provisions of sections 143-29

through 143-33 and shall be elevated or floodproofed in accordance with elevations established in accordance with section 143-26(j). When base flood elevation data is not available, the lowest floor shall be elevated at least two feet above the highest adjacent grade.

**Sec. 143-32. Standards for subdivision proposals.**

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or five acres.

**Sec. 143-33. Standards for areas of shallow flooding (AO zones).**

Located within the areas of special flood hazard established in section 143-17 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and intermediate. The following provisions shall apply within such areas:

(a) All new construction and substantial improvements of residential structures shall have the lowest floor, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor shall be elevated at least two feet above the highest adjacent grade.

(b) All new construction and substantial improvements of nonresidential structures shall:

(1) Have the lowest floor, including the basement, elevated to the depth number specified on the Flood Insurance Rate Map, above the highest adjacent grade. If no depth number is specified, the lowest floor, including the basement, shall be elevated at least two feet above the highest adjacent grade; or

(2) Be completely floodproofed together with attending utility and sanitary facilities to or above the level so that any space below the level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(Ord. No. 90, 2-5-1988; Ord. No. 144, 4-2-1992)

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## Chapter 144: Firearms\*

**\*Cross references:** Criminal law, ch. 14; prohibition of weapons on educational properties

or other assemblies, § 14-34 et seq.

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**Sec. 144-1. Firearm sales.**

The sale of firearms on the Cherokee Reservation shall be lawful from a vendor who possesses a valid Trader's License, together with required federal firearms licenses.

(Res. No. 115, 4-3-1980)

**Sec. 144-2. Handgun sales.**

The sale of handguns on the Cherokee Reservation shall be lawful only upon the issuance of a permit to the purchaser by the Superintendent of the Cherokee Indian Agency. Such permit shall only be issued after certification to the Superintendent that the applicant is of good moral character, has never been convicted of a felony, is not suffering from any mental disorder, and that the weapon is necessary for self-defense or the protection of the house.

(Res. No. 115, 4-3-1980)

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## Chapter 145: Wastewater Discharge\*

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**\*Cross references:** Utilities, ch. 62; pollution control and environment, ch. 113A; health and sanitation, ch. 130; Cherokee water code, ch. 131; building codes and flood control, ch. 143.

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### ARTICLE I. IN GENERAL

**Sec. 145-1. Purpose.**

This wastewater discharge chapter is designed to provide uniform requirements for discharge into the Eastern Band of Cherokee Indians' wastewater collection system and treatment system.

(Ord. No. 133, 4-8-1986)

**Sec. 145-2. Definitions.**

For the purpose of this chapter, the following terms shall have the following meanings:

- (a) *Approving Authority* shall mean the Tribal Council of the Eastern Band of Cherokee Indians.
- (b) *Building sewer* shall mean a sewer conveying wastewater from the premises of a user to a Tribal sewer.
- (c) *Beneficial uses* shall mean uses of the waters of the state that may be protected against quality degradation including domestic, municipal, agricultural and industrial supply, power, generation, recreation, aesthetic enjoyment, navigation and the

preservation and enhancement of fish, wildlife and other aquatic resource or reserves, and other uses, both tangible and intangible as specified by federal or state law.

(d) *Biochemical oxygen demand (BOD)* shall mean the empirical test run in accordance with latest edition of "Standard Methods for Analysis of Water and Wastewater," published by American Public Health Association and Water Pollution Control Federation or "Methods for the Analysis of Water and Wastes," published by EPA to determine the relative oxygen requirements of wastewaters effluents and polluted water. BOD is a measure of the oxygen required to oxidize the organic matter in a sample, through the action of microorganisms in that sample.

(e) *Chemical oxygen demand (COD)* shall mean the quantity of oxygen used in the chemical oxidation or decomposition of organic substance in a sample.

(f) *County* shall mean the County of Swain, North Carolina, or any authorized officials acting on behalf of the Tribe.

(g) *Tribal Council* shall mean the Tribal Council of the Eastern Band of Cherokee Indians.

(h) *Tribal sewer* shall mean a sewer owned and operated by the Eastern Band of Cherokee Indians, tributary to a treatment facility operated by the Tribe.

(i) *Town* shall mean the Town of Cherokee.

(j) *Principal Chief* shall mean the Principal Chief of the Eastern Band of Cherokee Indians.

(k) *Compatible pollutant* shall mean pollutants such as BOD, TSS, pH, oil and grease, Ammonia Nitrogen (NH<sub>3</sub>-N) and fecal coliform bacteria, plus any additional pollutants identified in the Tribe's National Pollutant Discharge Elimination System (NPDES) permit, or any pollutants the Tribe's treatment works was designed to treat. Such pollutants shall be amenable to the Tribe's biological waste treatment process; shall not cause the Tribe to use additional chemicals, extra personnel or cause undue wear or operating expenses; shall not cause the Tribe's wastewater treatment plant to exceed effluent limitation as set forth in the NPDES permit.

(l) *Domestic wastes* shall mean the liquid wastes from bathrooms, toilet rooms, home kitchens and home laundries.

(m) *EPA* shall mean the federal agency named the Environmental Protection Agency.

(n) *Excessive radiation dose* shall mean a dose of radiation in excess of the maximum permissible dose. "Maximum permissible dose" shall mean a dose of radiation to any part of the body, internal and external, or both, that, in the light of current knowledge, is not expected to cause appreciable bodily injury to a person at any time during his lifetime. Application of this section will conform to all federal and other regulations concerning the use of radioactive materials.

(o) *Federal Act* shall mean Public Law 92-500, the Federal Water Pollution Control Act, as amended.

(p) *Garbage* shall mean solid wastes from the domestic end and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(q) *Grease and oils* shall mean a group of substances with similar physical characteristics including hydrocarbons, fatty acids, soaps, waxes, oils and any other material that is extracted with a stated solvent from an acidified sample and that is not volatilized during the test.

(r) *Holding tank waste* shall mean any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

(s) *Incompatible pollutant* shall mean any pollutant which is not a "compatible pollutant," as defined in this section.

(t) *User charge system* shall mean the system developed by EPA that establishes a method for the grant received by the Eastern Band of Cherokee Indians to recover the costs incurred during planning and construction of a treatment works. User charge is the charge that users are required to pay for the right to discharge into the sewage system.

(u) *Industrial wastes* shall mean liquid or water-carried wastes from institutional, commercial and industrial processes and operations, as distinguished from domestic wastes.

(v) *Industrial waste surcharge* shall mean a charge placed on all users who discharge wastewater having characteristics in excess of the limits set by this chapter on compatible pollutants.

(w) *Mass emission rate* shall mean the weight of material discharged to the Tribal sewer system during a given time interval. Unless otherwise specified, the mass emission rate shall mean pounds per day of a particular constituent or combination of constituents.

(x) *pH* shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(y) *Pollution* shall mean an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects such waters for beneficial use or affects the facilities which serve such beneficial uses. Pollution may include contamination.

(z) *Premises* shall mean a parcel of real estate or portion thereof including any improvements thereon which is determined by the town to be a single user for purposes of receiving, using and paying for service.

(aa) *Significant industrial user* shall mean an industry that will contribute greater than five percent of the design flow or designated pollutant loading to the Tribe's sewer system or Eastern Band of Cherokee Indian's treatment works.

(bb) *Storm drain or storm sewer* shall mean a sewer which carries stormwater or surface water, but not sewage or industrial wastes.

(cc) *Total suspended solids (TSS)* shall mean the measure of the solids that either float on the surface or are held in suspension in wastes and which are removable from the liquid by laboratory filtering.

(dd) *Treatment work or plant* shall mean any device and systems used in the storage, treatment, recycling, and reclamation of municipal wastewater or industrial wastes of a liquid nature, including interceptor sewers, outfall sewers, wastewater collection systems, pumping, power and other equipment and appurtenances, extensions, improvements, remodeling, additions or alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well storage facilities, and any work, including site acquisition of the land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal wastes, including stormwater runoff, or industrial and sanitary sewer systems.

(ee) *Waste* shall mean and include sewage and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature prior to, and for purposes of disposal.

(ff) *Wastewater* shall mean wastes and water, whether treated or untreated discharged into a Tribal sewer.

(gg) *Wastewater constituents and characteristics* shall mean the individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality and strength of wastewater.

Other terms used in this chapter, but not defined hereinabove, shall have the meanings set forth in the latest edition of "Standard Methods for Examination of Water and Wastewater," published by the American Public Health Association (APHA), the American Waterworks Association (AWWA) and the Water Pollution Control Federation (WPCF). Unless otherwise expressly stated in this chapter, waste constituents and characteristics shall be measured by methods set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," and/or "Methods of Chemical Analysis of Water and Wastes," published by the Environmental Protection Agency (EPA).  
(Ord. No. 133, 4-8-1986)

## **ARTICLE II. SEWER USE**

### **Sec. 145-3. Use of public sewers required.**

(a) It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within Cherokee Indian Reservation, or in any area under the jurisdiction of the Eastern Band of Cherokee Indians, any human or animal excrement, garbage or other objectionable wastes.

(b) It shall be unlawful to discharge to any natural outlet within the Cherokee Indian Reservation, or in any area under the jurisdiction of the Eastern Band of Cherokee Indians, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable

treatment has been provided in accordance with subsequent provisions of this chapter.

(c) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

(d) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Reservation and abutting any street, alley or right-of-way, and unincorporated areas served by contract or agreement in which there is now located or may in the future be located a public sanitary sewer of the Eastern Band of Cherokee Indians, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided that said public sewer is within 200 feet of the property line and can be reached by gravity flow.

(Ord. No. 133, 4-8-1986)

**Sec. 145-4. Alteration of system requires permit.**

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenances thereof without first obtaining a written permit from the Tribe.

(Ord. No. 133, 4-8-1986)

**Sec. 145-5. Costs to be borne by owner.**

All costs and expenses incident to the connection of the building sewer or the owner's property shall be borne by the owner. The owner shall indemnify the Tribe of any loss or damage that may be directly or indirectly occasioned by the connection of the building sewer. Any connection into the public sewer shall be made by the Tribe, for which the owner shall pay the Tribe a standard sewer tap fee as set by the Committee, copy of said schedule to be kept on file in the Cherokee Water and Sewer Enterprise.

(Ord. No. 133, 4-8-1986)

**Sec. 145-6. Independent sewer for each building; exception.**

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building lot through an adjoining alley, courtyard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(Ord. No. 133, 4-8-1986)

**Sec. 145-7. Old building sewers.**

No old sewers will be excepted. This requirement may be waived by the approving authority after the condition of the sewer has been thoroughly inspected by the same.

(Ord. No. 133, 4-8-1986)

**Sec. 145-8. Minimum standards of sewers.**

The building sewer shall, in all cases, meet the minimum standards of the North Carolina Plumbing and Building Codes and be installed in accordance with all applicable OSHA requirements. Joints shall be watertight. Any part of the building sewer that is located within ten feet of a water service shall be constructed of ferrous metal pipe with joints equivalent to water main standards. Ductile iron with mechanical joints may be required by the Tribe where the building sewer is exposed to damage by tree roots. If installed in filled or unstable ground, the building sewer shall be of ductile iron or cast iron soil, except that nonmetallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the Tribe.

(Ord. No. 133, 4-8-1986)

**Sec. 145-9. Size and slope of sewer.**

The size and slope of the building sewer shall be subject to the approval of the Tribe, but in no event shall the diameter be less than four inches. The slope of each four-inch pipe shall not be less than one-eighth inch per foot.

(Ord. No. 133, 4-8-1986)

**Sec. 145-10. Grades for sewers.**

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any loadbearing wall, which might thereby be weakened. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in the direction shall be made only with properly curved pipes and fittings.

(Ord. No. 133, 4-8-1986)

**Sec. 145-11. Building drains.**

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharged to the building sewer.

(Ord. No. 133, 4-8-1986)

**Sec. 145-12. Excavation and backfill.**

All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the Tribe. Backfill shall not be performed until the work has been inspected by the Office of Environmental Health, IHS.

(Ord. No. 133, 4-8-1986)

**Sec. 145-13. Angle of connection.**

The connection of the building sewer into the public sewer shall be made at an angle of about 45 degrees. A 45-degree well may be used to make such connection, with the spigot



end cut so as not to extend past the inner surface of the public sewer. The invert of the building sewer at the point of connection shall be at the same or at a higher elevation than the invert of the public sewer. A smooth, neat joint shall be made, and the connection made secure and watertight by encasement in concrete. Special fittings may be used for the connection only when approved by the Tribe.

(Ord. No. 133, 4-8-1986)

**Sec. 145-14. Notice to Tribe.**

The applicant for the building sewer permit shall notify the Tribe when the building sewer is ready for inspection and connection to the public sewer.

(Ord. No. 133, 4-8-1986)

**Sec. 145-15. Private sewage disposal.**

(a) Where a public sanitary sewer is not available under the provisions of section 5-2003, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.

(b) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Office of Environmental Health, IHS. The application for such permit shall be made on a form furnished by the IHS, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Office of Environmental Health, IHS.

(c) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the sanitarian. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the sanitarian when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the sanitarian.

(d) The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 12,000 square feet. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet.

(e) At such times as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 145-3, a direct connection shall be made to the public sewer in compliance with this chapter at the first malfunction of the private system; and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(f) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town.

(g) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Indian Health Service.

(Ord. No. 133, 4-8-1986)

**Sec. 145-16. Prohibitions on discharges.**

No person shall discharge wastes to a Tribal sanitary sewer which cause, threaten to cause, or are capable of causing either alone or by interaction with other substances:

- (a) A fire or explosion;
- (b) Obstruction of flow or injury to the collection or treatment works;
- (c) Danger to life or safety of personnel;
- (d) A strong offensive odor that inhibits the effective maintenance or operation of the treatment works;
- (e) Air pollution by the release of toxic or malodorous gases or noxious gas-producing substances;
- (f) Interference with the treatment process;
- (g) The Tribe effluent or any other product of the treatment process, residues, sludge or scums, to be unsuitable for the reclamation and reuse or to interfere with the reclamation process;
- (h) A condition unacceptable to any public agency having regulatory jurisdiction over the final discharge of the Tribal treatment works;
- (i) Conditions at or near the Tribe's treatment works which violate any statute or any lawful rule, regulation or ordinance of any state or federal agency having jurisdiction over the Tribe;
- (j) The Tribe's treatment works to be hydraulically overloaded or cause physical damage or injury to collection system or treatment works;
- (k) The Cherokee Indian Reservation collection system to be hydraulically overloaded or cause damage to the system.

(Ord. No. 133, 4-8-1986)

**Sec. 145-17. Prohibition of storm drainage and groundwater.**

Stormwater, groundwater, rain water, street drainage, subsurface roof or yard drainage shall not be discharged through direct or indirect connection to a Tribal sewer.

(Ord. No. 133, 4-8-1986)

**Sec. 145-18. Prohibition of unpolluted water.**

Unpolluted water, included by way of illusion, but not limited to cooling water, process water or blow-down water from cooling towers or evaporative coolers, shall not be discharged through direct or indirect connection to a Tribal sewer unless a permit is issued by the Eastern Band of Cherokee Indians. Unpolluted water can be discharged to the storm

drain system.

(Ord. No. 133, 4-8-1986)

**Sec. 145-19. Limitations on radioactive wastes.**

No person shall discharge or cause to be discharged any radioactive waste into a Tribal sewer except:

(a) When the person is authorized to use radioactive materials by the Environmental Protection Agency or other government agency empowered to regulate the use of radioactive materials; and

(b) When the waste is discharged in strict conformity with the current North Carolina Radiation Control and Atomic Energy Commission (AEC) regulations and recommendations for safe disposal; and

(c) When the person is in compliance with all lawful rules and regulations of all the applicable regulatory agencies having jurisdiction; and

(d) When several users are discharging radioactive wastes or materials to the public sewer, they shall, upon notification, cooperate in limiting the release of material and shall file with the Eastern Band of Cherokee Indians a statement of their agreed prorated discharges.

If this is not done within a reasonable time after notification, sewer use may be discontinued by the Tribe.

(Ord. No. 133, 4-8-1986)

**Sec. 145-20. Limitations on the use of garbage grinders.**

(a) Waste from garbage shredders and grinders shall not be acceptable for discharge into a Tribal sewer except:

(1) Wastes generated in preparation of food normally consumed on the premises; or

(2) Where the user has obtained permit for that specific use from the Tribe, and agrees to undertake whatever self-monitoring is required to enable the Tribe to determine the waste constituents and characteristics and applicable fees and charges.

(b) Such grinders must shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the Tribe or Tribal sewer. Garbage grinders shall not be used for grinding plastic, paper products, inert materials, or garden refuse.

(Ord. No. 133, 4-8-1986)

**Sec. 145-21. Limitations on point of discharge.**

No person shall discharge any substances directly into a manhole or other opening in a Tribal sewer other than through an approved building sewer, unless he has been issued a permit by the Eastern Band of Cherokee Indians. If a permit is used for such direct discharge, the user shall pay the applicable charges and fees and shall meet such other conditions necessary to properly treat this discharge as required by the Eastern Band of Cherokee Indians.

(Ord. No. 133, 4-8-1986)

**Sec. 145-22. Holding tank wastes.**

(a) No person shall discharge any holding tank waste, including by definition, but not limited to, pumping from septic tanks into a Tribal sewer unless he has been issued a permit by the Eastern Band of Cherokee Indians. Unless otherwise allowed by the Tribe under the terms and conditions of the permit, a separate permit must be secured for each separate discharge. This permit will state the specific location of discharge, the time and day the discharge is to occur, the volume of the discharge and the wastewater constituents and characteristics. If a permit is granted for discharge of such waste into a Tribal sewer, the user shall pay the applicable charges and fees and shall meet such other conditions necessary to properly treat this discharge as required by the Eastern Band of Cherokee Indians. An exception to the above is that no permit will be required for discharge of domestic wastes from recreational motor home holding tanks, provided that such discharges are made into a Tribal approved facility designed to receive such wastes.

(b) Monitoring facilities for holding type wastes such as those described in section 145-22(a) shall be provided by the user when in the judgment of the approving authority they are deemed necessary for monitoring purposes.

(Ord. No. 133, 4-8-1986)

**Sec. 145-23. Limitations on wastewater strength.**

(a) In order that the biological treatment process is not subjected to unacceptable levels of toxic wastes and so that the process can function properly to meet state and federal standards, it shall be unlawful for any person to discharge into the Tribal wastewater collection system, waters (as measured by any sample collected by the Tribe of OE), containing in excess of:

(1) Constituents:

<i>Constituent</i>	<i>Code</i>	<i>Maximum Permissible concentration</i>
Aluminum	Al	5.0 mg/l
Arsenic	As	0.5 mg/l
Barium	Ba	0.5 mg/l
Boron	B	0.5 mg/l
Cadmium	Cd	0.5 mg/l
Cobalt	Co	0.5 mg/l
Copper	Cu	0.5 mg/l
Cyanide	cN	0.1 mg/l
Iron	Fe	35.0 mg/l
Lead	Pb	0.5 mg/l
Manganese	MN	0.5 mg/l
Mercury	Hg	0.5 mg/l
Nickel	No	0.5 mg/l
Silver	Ag	0.5 mg/l
Total Chromium	Cr	0.5 mg/l
Vanadium	V	0.5 mg/l
Zinc	Zn	0.5 mg/l
Chloroform	CHC13	1.0 mg/l

Selenium	Se	0.5 mg/l
Sulfate	S04	500 mg/l
Sulfide	S	2.0 mg/l
Free Acidity		0
Alkalinity	The tribe may require alkalinity up to 7.5 times the NH3-N concentration of the discharge in question.	

Except in cases where one or more of the above constituents are found in the drinking water supply. In such cases, the limits shall be amounts listed plus the amounts found in drinking water. The amount of constituents in the drinking water supply shall be determined on samples caught at the particular industry during a normal operating day. The sample will be caught within the plant at a well used tap after running the tap a suitable length of time to remove water that has been standing in the lines. (15 mm minimum).

- (2) Having an ammonia nitrogen content of more than 40 mg/l.
- (3) Having a five-day BOD of more than 1,000 mg/l.
- (4) Having a TSS content of more than 1,000 mg/l.
- (5) Having a COD of more than 2,500 mg/l.
- (6) Having a pH lower than 6.5.
- (7) Having a pH higher than 9.0.
- (8) Containing more than 100 mg/l (total) of oil and grease on animal or vegetable and of mineral or petroleum origin.
- (9) Containing in excess of 0.02 mg/l total identifiable Chlorinated Hydrocarbons.
- (10) Containing 1.0 mg/phenolic compounds which cannot be removed by the Tribal treatment process.
- (11) Containing any toxic substances or poisonous substances in sufficient quantities to interfere with the biological processes used at the Tribal treatment works.
- (12) Containing strong iron pickling wastes or concentrated plating solutions unless pretreated in such a way as to comply with all other limitations of section 145-23.
- (13) Containing any solid or viscous substance including, but not being limited to: ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, bones, feathers, slurry, lime residues, waxes, asphalt, hair, tar, plastics, wood, paunch manure, butcher's offal, animal viscera, lime or any solid or viscous substances being capable of obstruction of any kind in either the collection system or at any point in the

treatment plant. Also any waste resulting from processes involving textiles, fabrics, wool or other processes containing inert fibrous materials shall undergo evaluation by the County. Some of these processes have been shown to be detrimental to the treatment of waste at the existing waste plant, the evaluation procedure will be concerned with residual fibre within the treatment plant and its discharges. Any process determined by the Tribe to be creating adverse conditions within the treatment plant by the collection of fibrous or inert materials in its basins, clarifiers or discharges, shall not be allowed to continue disposing of its waste into the sanitary sewer collection system of the Tribe, but shall dispose of its waste by alternative means.

(14) Containing any liquid waste or other such substance that contains dyes or other color of such character and quantity as to prevent removal by biological processes employed at the treatment plant.

(15) Containing any liquid or other substance that after normal treatment require excessive amounts of chlorine for pathogenic disinfection. This excess chlorine demand exerted by such waste shall be determined by comparing the chlorine demand of said waste to obtain a free residual of 0.5 mg/l to 15 ppm, which shall be considered to be the maximum use rate for domestic waste to obtain the same residual.

(16) Of the industrial variety with such a volume that the peak hourly flow rate exceeds 200 percent of the average daily flow rate of the industry. In such cases where a peak hourly flow of more than 200 percent is discharged, the Tribe may require the discharger to provide holding facilities of sufficient capacity so as to discharge into the collection system at an assigned rate over a specified period of time. Industrial dischargers which discharge hydraulic volumes equal to or greater than 15 percent of the treatment works design capacity, may be required to provide flow equalization facilities designed in accordance with the current edition of EPA's "Process Manual for Upgrading Existing Wastewater Treatment Plants."

(b) Users in industrial categories subject to effluent guidelines issued under section 304(b) of the Federal Act which are discharging incompatible pollutants to publicly owned treatment works, are required to adopt best practicable control technology currently available, as defined by the administrator pursuant to section 304(b) of the Act. Where the Eastern Band of Cherokee Indians treatment works was designed to and does achieve substantial removal of pollutants other than the four pollutants listed in the definition for compatible pollutants in section 145-2, BOD, TSS, pH and fecal coliform bacteria, the Approving Authority may not require the user to achieve best practicable control technology currently available, since this would lead to an uneconomical duplication of treatment facilities. While the term "substantial removal" is not subject to precise definition, it generally contemplates removal in the order of 80 percent or greater; minor incidental removals in the order of ten to 30 percent are not considered substantial. For some industrial categories it may be necessary to define pretreatment guidelines from problems that may arise as a result of the discharge into the Tribal sewer system. However, any adjustments required for particular industrial categories should be considered in connection with the Tribal requirements rather than in the national pretreatment standard. And in no case shall any user be allowed to exceed the limits stated in section 2-21(a).

(1) Limitations on wastewater strength in this chapter may be supplemented with more stringent limitations pursuant to section 145-28.

(2) If the Tribe determines that the limitations in section 145-23 may not be

sufficient to enable the Tribal treatment works to comply with water quality control standards or effluent limitations specified in the Tribe's National Pollutant Discharge Elimination System (NPDES) permit, or if National Pretreatment Guidelines issued by EPA in the future exhibit lower values than those listed in section 145-23, the Tribe may require additional compliance by reissuance of permits outlined in section 145-28.

(Ord. No. 133, 4-8-1986)

**Sec. 145-24. Disposal of unacceptable waste.**

Waste not permitted to be discharged into the Tribal sewer must be transported to a state-approved disposal site.

(Ord. No. 133, 4-8-1986)

**Sec. 145-25. Special provisions concerning discharges to public sanitary sewers.**

If any waters or wastes (discharged or proposed to be discharged to the public sewers) contain the substances or possess the characteristics enumerated in article II, and which in the judgment of the Approving Authority, may have a deleterious effect upon the wastewater treatment works, processes, equipment or receiving waters, or which create a hazard to life, or constitute a public nuisance, the Approving Authority may reject the wastes.

The Tribe may discontinue water service or sewer service, or both, to any user who violates article II when, in the judgment of the Approving Authority, such action is necessary to protect the wastewater treatment works, processes, equipment or receiving waters from injury or damage, or if necessary to protect life or health.

(Ord. No. 133, 4-8-1986)

**ARTICLE III. WASTEWATER VOLUME DETERMINATION**

**Sec. 145-26. Metered water supply.**

When charges and fees are based upon the water usage, such charges and fees shall be applied against the total amount of water used from all sources, public and/or private, determined by means of the user and approved by the Tribe, adding private sources volume to the metered water consumption.

When unpolluted water is prohibited as per section 145-18 of this chapter, charges and fees will be applied only against the total wastewater discharged to the Tribal sanitary sewer. In such case, volume of wastewater shall be determined by a flow measuring and totalizing device purchased, installed and maintained by the user. The location and type of the devices must be approved by the Approving Authority.

(Ord. No. 133, 4-8-1986)

**ARTICLE IV. DISCHARGE REPORT, WASTEWATER DISCHARGE PERMITS AND ADMINISTRATION**

**Sec. 145-27. Discharge reports.**

The Tribe may require that any person discharging or proposing to discharge wastewater of the industrial variety into a Tribal sewer file a periodic discharge report. The discharge report may include, but not be limited to, nature of process, volume, rates of flow, mass emission rate, production quantities, hours of operation, number and classification of employees or other information which relates to the generation of waste including wastewater discharge. Such reports may also include the chemical constituents and quantity of liquid or gaseous materials stored on site even though they are not normally discharged. Two copies of the report shall be provided to the Eastern Band of Cherokee Indians to allow one copy to be forwarded to the water and sewer department. In addition to discharge reports, the Tribe may require information in the form of wastewater discharge permit applications and self-monitoring reports.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-28. Wastewater discharge permits.**

(a) *Mandatory permit.* Each discharger of industrial wastewaters, if not connected to a Tribal sewer, must obtain a wastewater discharge permit before connecting to or discharging into a Tribal sewer. Each currently connecting industry must obtain a wastewater discharge permit within 90 days after the effective date of this chapter (April 8, 1986).

(b) *Optional permits.* The Tribe may issue a wastewater discharge permit to any user upon application, in accordance with the terms of this section in the following category: any user showing wastewater containing no incompatible waste and whose compatible waste strength is less than the normal range for domestic wastes because of pretreatment, process changes or other reasons.

(c) *Permit applications.* Users seeking a wastewater discharge permit shall complete and file with the water and sewer department, an application in the form prescribed by the Eastern Band of Cherokee Indians, and accompanied by the applicable fees. The application shall be filed with two copies more than the number required by the Eastern Band of Cherokee Indians. A separate check payable to the Tribe shall accompany the application in payment of the applicable fees. The Director of Water and Sewer will submit the permit application to the Tribe, along with recommendations from the Water and Sewer Department and Indian Health Service. The applicant may be required to submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address and Standard Industrial Classification number of applicant.
- (2) Volume of wastewater to be discharged.
- (3) Wastewater constituents and characteristics including, but not limited to, those mentioned in section 145-23, as determined by a laboratory approved by the Tribe. The Tribe will make this determination available to the industry for a fee.
- (4) Time and duration of discharge.
- (5) Average and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all



sewers and appurtenances by size, location and elevation.

(7) Description of activities, facilities and plant processes on the premises including all materials, processes and types of materials which are or could be discharged.

(8) Each product produced by type, amount and rate of production.

(9) Number and type of employees, and hours of work.

(10) Any other information as may be reasonably deemed by the Approving Authority to be necessary to evaluate the permit application.

(d) *Permit conditions.* Permits issued by the Tribe shall not be in force within the Reservation limits of jurisdiction until countersigned by the Principal Chief. Wastewater discharge permits shall be expressly subject to all provisions of this chapter and all other ordinances, regulations, charges and fees established by the Eastern Band of Cherokee Indians. The conditions of wastewater discharge permits shall be uniformly enforced by the Rates Commission in accordance with this chapter, and applicable state and federal regulations. Permits may contain the following:

(1) The unit charge or schedule of charges and fees for the wastewaters to be discharged into a Tribal sewer.

(2) The average and maximum wastewater constituents and characteristics.

(3) Limits on rate and time of discharge or requirements for flow regulations and equalization.

(4) Requirements for installation of inspection and sampling facilities.

(5) Pretreatment requirements.

(6) Specifications for monitoring programs which may include sampling locations, frequency and method of sampling number, types and standards for tests and reporting schedule.

(7) Requirements for maintaining plant records relating to wastewater discharges as specified by the Eastern Band of Cherokee Indians.

(8) Mean and maximum mass emission rates, or other appropriate limits when incompatible pollutants (as defined by section 145-2) are proposed or present in the user's wastewater discharge.

(9) Other conditions as may be reasonably deemed appropriate by the Eastern Band of Cherokee Indians to ensure compliance with this chapter.

(10) Where the Eastern Band of Cherokee Indians has records of previous monitors of wastes of existing industries, this information will be used to determine frequency and methods of sampling, number, type and standards for tests, reports and charges will be set accordingly and included in the permit conditions. Also, where pollutants are discharged which can be accepted but are not surcharged and costs of treatment can be determined, these charges will also be included in the permit.

(e) *Duration of permits.* Wastewater discharge permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period of less than one year

or may be stated to expire on a specific date. If the user is notified by the Tribe, 30 days prior to the expiration of the permit, the permit shall be extended one additional year. The terms and conditions of the permit may be subject to modification and change by the Eastern Band of Cherokee Indians during the life of the permit as limitations or requirements, as identified in section 145-23, are modified and changed. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(f) *Transfer of a permit.* Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or another or changes in operation.

(g) *Suspension of revocation of permit.* Any user who violates the conditions of the wastewater discharge permit, and provisions of this chapter, applicable state and federal regulations, or any of the following is subject to having his permit suspended or revoked:

(1) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;

(2) Failure of the user to report significant changes in operations or wastewater constituents and characteristics;

(3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or

(4) Failure to report a chemical spill or accidental discharge as in section 145-42.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-29. Monitoring facilities.**

(a) Users who propose to discharge, or who in the judgment of the Approving Authority likely could discharge, wastewater with constituents and characteristics different from that produced by a domestic premises, may be required to install a monitoring facility.

(b) When more than one user can discharge into a common building sewer, the Approving Authority may require the installation of a separate monitoring facility for each user. Also, when in the judgment of the Approving Authority there is a significant difference in the wastewater constituents and characteristics produced by different operations of a single user, the Approving Authority may require that separate monitoring facilities be installed for each separate discharge.

(c) Monitoring facilities that are required to be installed shall be constructed, operated and maintained by the user at the user's expense. The purpose of the facility is to enable inspection, sampling and flow measurement of wastewater produced by a user. If sampling or metering equipment is required by the Tribe, it shall be provided, installed and operated at the user's expense. The monitoring facility will normally be required to be located on the user's premises outside the building. However, the Tribe may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area with the approval of the public agency having jurisdiction over that street or sidewalk, and located so that it will not be obstructed by landscaping or parked vehicles.

(d) If the monitoring facility is inside the user's fence, there shall be accommodations to allow safe and immediate access for Tribal personnel, such as a gate secured with a Tribal lock. There will be ample room in or near such facility to allow accurate sampling and composition of samples for analysis. The entire facility and the sampling and measuring equipment shall or may be supplied by the user, at his expense.

(e) Whether on public or private property, the monitoring facilities shall be constructed in accordance with the Tribe's requirements and all applicable and local Tribal construction standards and specifications. When in the judgment of the Tribe the existing user is required to have a monitoring facility, the user will be so notified in writing. Construction must be completed within 90 days following a written notification unless a time extension is otherwise granted by the Eastern Band of Cherokee Indians.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-30. Inspection and sampling.**

The Tribe may inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the Eastern Band of Cherokee Indians, or its representatives, ready access at all reasonable times to all parts of the premises for purposes of inspection or sampling or in performance of any of their duties. The Tribe shall have the right to set up on the user's property such devices as are necessary to conduct sampling or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into the premises, the user shall make necessary arrangements with their security guards so that upon the presentation of suitable identification, personnel from the Tribe will be permitted to enter without delay for the purposes of performing their specific responsibilities.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-31. Pretreatment.**

Users shall make wastewater acceptable under the limitations established herein before discharging into any Tribal sewer. Any facilities required to pretreat wastewater to a level acceptable to the Tribe shall be provided and maintained at the user's expense. Pretreatment facilities shall be operated continuously during periods of wastewater discharge to the Tribal sewer in such a manner as to produce a pretreated discharge acceptable to the Tribe as defined in sections 145-22, 145-26, 145-27, 145-28 and 145-34. Detailed plans showing the pretreatment facility and operating procedures shall be submitted to the Eastern Band of Cherokee Indians before construction of the facility. The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent complying with the provisions of this chapter. Any subsequent changes in the pretreatment facility or method of operation shall be reported to and be approved by the Approving Authority.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-32. Protection from accidental discharge.**

(a) Each user shall provide protection from accidental discharge of prohibited materials or

other wastes regulated by this chapter. Facilities to prevent actual discharge of prohibited materials shall be provided and maintained at the user's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Tribe for review, and shall be approved by the Tribe before construction of the facility.

(b) The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to provide the protection necessary to meet the requirements of this chapter.

(Ord. No. 133, 4-8-1986)

**Sec. 145-33. Control manhole.**

A control manhole shall be provided downstream from any building, treatment, storage tank or any other approved works to facilitate monitoring of industrial waste. The discharger shall provide and maintain the control manhole pursuant to section 145-29. Any and all users may be required by the Tribe to construct a control manhole. The user who has constructed a monitoring facility, section 145-29, may be waived of the requirement of a control manhole by the Approving Authority.

(Ord. No. 133, 4-8-1986)

**Sec. 145-34. Flow control measuring equipment.**

Where preliminary treatment, flow-equalizing facilities, or flow monitoring facilities are provided for any water or wastes, they shall be maintained continuously in satisfactory and effective operation by the property owner at his expense. All flow control equipment including, but not limited to, pumps, nozzles, weirs, gates, valves, and flumes shall be subject to the approval of the Approving Authority.

(Ord. No. 133, 4-8-1986)

**ARTICLE V. WASTEWATER CHARGES AND FEES**

**Sec. 145-35. Schedule of charges and fees.**

A schedule of charges and fees shall be adopted by the Tribe which will enable it to comply with the revenue requirements of the State Clean Water Grant Program and Public Law 92-500, and said charges and fees shall be as shown on the attached rate schedule. These rates shall be in effect for all users, and shall take precedence over any terms or conditions of agreements, or contracts between the Tribe and the users. All industries using the Tribal collection works are subject to industrial waste surcharges on discharges whose characteristics exceed the limits set in section 145-36 for certain pollutants.

(Ord. No. 133, 4-8-1986)

**Sec. 145-36. Types of charges and fees.**

The charges and fees as established in the Tribal schedules of charges and fees, may include, but not be limited to:

- (a) User classification charges.

(b) Fees for extra monitoring; i.e., that which require costs above the average cost of assessing an average or representative analysis.

(c) Fees for permit applications (include regular monitoring charges on permits).

(d) Appeal fees.

(e) Charges and fees based on wastewater constituents and characteristics.

(f) Ad valorem tax.

(g) Industrial waste surcharges.

(h) User charge payments.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-37. Basis for determination of surcharges.**

(a) Charges and fees shall be based upon a minimum basic charge for each premises, computed on the basis of wastewater from a domestic premises with the following characteristics:

BOD	250 mg/l
TSS	150 mg/l
Oil and grease (total)	40 mg/l
COD	625 mg/l
Ammonia Nitrogen	15 mg/l

(b) The charges and fees established for permit users shall be based upon the measured or estimated constituents and characteristics of the wastewater discharge of that user which may include, but not be limited to, BOD, COD, ammonia, oil and grease, chlorine demand and volume.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-38. Method of determining surcharges.**

The charges for excesses of the constituents listed in section 145-36 will be based upon the "mass emission rate" of those constituents and determined as follows:

(a) Mass Emission Rate, MER ( ) = MG X C X 8.34 where:

**MER** is the mass emission rate in pounds of a particular constituent.

**MG** is the millions of gallons of wastewater discharged; and

**C** is the concentration in mg/l of the particular constituency being charged for (as an example) BOD, COD, etc. and 8.34 is equal to the number of lbs./one gallon of water.

(b) The amount of the charge in dollars will be calculated as follows:  $Ao = R \times MER$  ( ) where:

**AO** is equal to the amount of the charge in dollars; and

**R** is equal to the rate of charge per lb. of constituents; and

**MER ( )** is equal to the lbs. of a constituent.

(c) Where a single discharge is such that more than one constituent is excessive and subject to surcharge, the actual surcharge will be based on the most costly constituent rather than on the total of excessive constituents.

An Example of Surcharge:

"X" Corporation is a producer of canned food. They discharged 1,000,000 gallons of wastewater in the month of January. Analysis found that the wastewater had the following characteristics: BOD - 400 mg/l; TSS - 950 mg/l. There were no other limitations exceeded in this example. There were 100 employees employed at the cannery. The limits of BOD and TSS are 250 mg.

The MER of BOD is equal to:

$$\begin{aligned} \text{MER}_{\text{BOD}} &= (400-250) \times 8.34 \times 1 \text{ MG} \\ &= (150) \times 8.34 \times 1 \\ &= 1251 \text{ lbs. Of BOD or } 1.212 \text{ thousand lbs. BOD} \end{aligned}$$

If the charge for BOD is  $R = \$70.00/1,000 \text{ lbs. BOD}$ , the total charge for BOD is equal to, as . . .

$$\begin{aligned} \text{AO} &= R \times \text{MER} \\ \text{AO} &= \$70.00 \times 1.121 \\ \text{AO} &= \$78.47 \end{aligned}$$

For TSS, the charge would be computed as follows:

$$\text{MERTSS} = (950-250) \times 8.34 \times 1 \text{ MG} = 700 \times 8.34 \times 1 = 5838 \text{ lbs. TSS or } 5.838 \text{ thousand lbs. TSS.}$$

At a charge of  $\$70.00/\text{thousand lbs.}$ , the charge for TSS -  $5.838 \times \$70.00 = \$408.66$ .

Total charges for January -

$$\begin{aligned} \text{BOD Charge} &- \$ 78.47 \\ \text{TSS Charge} &- \$378.66 = \\ \text{The higher charge} &= \$378.66 \end{aligned}$$

(Ord. No. 133, 4-8-1986)

### **Sec. 145-39. Method of determining charge rates.**

(a) The Utility Commission will annually review the actual cost of operation, maintenance, and Tribal Treatment Charges and adjust the surcharge rates and the User charge rate (per 100 cubic feet) to reflect the true cost of constituent treatment. The adjustments, if any, will become effective 30 days following the adjustment of Tribal Treatment Charges. The Tribal Utility Commission may review these rates and adjust them accordingly at any time it deems adjustments are in the best interest of the Tribe, but the Commission must review these rates at least every two years. In addition, the Commission shall make notification to each user at least annually in conjunction with the regular billing process, of the rate and that portion of the user charge which is attributable to the wastewater treatment.

The Formula for the setting of the user charge rate is as follows:

Base Rate (Minimum payment) based on 400 cubic feet of usage  
CU + Administrative Overhead calculated by Commission

$$\begin{aligned} \text{CU} &= \text{Ct} & \text{Ct} &= \text{Total operation \& Maintenance cost.} \\ & \text{Vt} & \text{VT} &= \text{total volume.} \\ \text{CU} &= \text{Cost per 100 cubic feet treated.} \end{aligned}$$

(b) The Tribal Utility Commission does hereby set the following surcharge rates effective from the date of this chapter (April 8, 1986):

COD	-\$70.00 per 1,000 lbs. in excess of 625 mg/l
BOD5	-\$70.00 per 1,000 lbs. In excess of 250 mg/l
TSS	-\$70.00 per 1,000 lbs. In excess of 250 mg/l
Total oil and grease	-\$70.00 per 1,000 lbs. In excess of 40 mg/l

(Ord. No. 133, 4-8-1986)

#### **Sec. 145-40. Sampling procedures and analysis.**

(a) All samples and determinations of wastewater characteristics shall be as representative of the waste discharge as possible. The costs of regular sampling and analysis will be included in the permit or class type. The Tribe may take additional samples after a significant process change which significantly affects the quantity or strength of the wastewater discharges. The frequency of sampling shall be as follows:

<i>Daily Average Flow Gallons Per Day</i>	<i>Thousand Minimum Required Frequency of Tests of Surcharge Parameters*</i>
0-10	0-1 per year
10-20	1 per year
20-30	1 per six months
30-40	1 per three months
40-50	1 per month
Over 50	2 per month

\* More frequent sampling may be done at any time at the option of the Tribe for any industry where pretreatment is required or that has discharged incompatible wastes in the past.

(b) Upon request by the person concerned, the Tribe shall make available split samples of the composite sample collected. If the person feels the results are not representative of their wastes, the Tribe may re-sample at a cost to the person of the actual cost to the Tribe, which will include sampling and analysis for BOD, TSS, COD, Ph, chlorine demand and oil and grease or heavy metals, if necessary.

(Ord. No. 133, 4-8-1986)

#### **Sec. 145-41. Sampling small industries.**

Small industries with inadequate sampling facilities may, in the event that waste characteristics do not vary more than 25 percent, be charged an estimated or average surcharge for that industry.

(Ord. No. 133, 4-8-1986)

## **ARTICLE VI. ENFORCEMENT**

### **Sec. 145-42. Duties of user upon unlawful discharges.**

(a) Any user who discharges wastes in violation of this chapter shall, upon discovery thereof, immediately notify the Tribe so that the Tribe may take necessary countermeasures to minimize the damage to the Tribal sewer, treatment facilities, treatment process and receiving waters. The user shall immediately correct the source of the violation. In addition, such user shall, within 15 days of such occurrence deliver to the Tribe, a written detailed report describing the cause of such discharge and the measures taken or to be taken to prevent a reoccurrence in the future.

(b) Any user who has an accidental discharge which violates this chapter and who gives notice and report provided for in the preceding paragraph shall be relieved from any civil or criminal penalties unless the violations continue or reoccur. In no case shall the user be relieved from liability to the Tribe for any expenses, loss or damage to the Tribal sewer system, treatment facility, treatment processes or receiving waters, nor from liability for any fines imposed upon the Tribe: by the Environmental Protection Agency, under any applicable federal law or regulation, or the Tribe under the wastewater discharge chapter nor from termination of service, suspension or revocation of any discharge permit or injunctive relief if the measures taken or to be taken to prevent a reoccurrence are not adequate.

(c) Any user or individual who causes malicious damage to the treatment works and or appurtenances shall have civil or criminal actions taken against them.

(Ord. No. 133, 4-8-1986)

### **Sec. 145-43. Penalties for violation of chapter.**

(a) Any person, including any responsible officer or employee of a corporate violator, who willfully or negligently violates any provisions of this chapter, or falsifies any information or data in any application, report or other document given to the Tribe under this chapter, shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to imprisonment of 60 days or a fine of \$500.00, or both. Persons who are not subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to punishment in the North Carolina or United States Courts, as appropriate, under the provisions of N.C.G.S. 14-4.

(b) Any person, including any corporation, who violates any provisions of this chapter shall be subject to the imposition by the Tribal Utilities Commission of a civil penalty not to exceed \$5,000.00 for each violation, and, in addition, shall reimburse the Tribe, upon demand for any expenses, loss or damage actually sustained by the Tribe to its sewer system, treatment plant, treatment process or receiving waters as a result of such violation and for the amount of any fine or penalty imposed upon the Tribe by any state or federal regulatory agency as a result of such violation. A civil penalty shall be assessed only after the Tribe shall have given the alleged violator notice of contemplated Board action, and hearing if requested. If the offender fails to pay the civil penalty so assessed within 15 days after written notice of final assessment thereof, then said penalty may be recovered by the Tribe in a civil action in the nature of debt.

(Ord. No. 133, 4-8-1986)



**Sec. 145-44. Injunction and abatement.**

The violation of this chapter is hereby declared to be a public nuisance, and this chapter may be enforced by injunction and order of abatement. Such actions may be commenced in the Cherokee Indian Court against all persons subject to its jurisdiction while those not subject to the jurisdiction of the Cherokee Court may be subjected to the provisions of NCGS 160A-175 in the North Carolina Courts or the United States Courts, as may be appropriate.

(Ord. No. 133, 4-8-1986)

**Sec. 145-45. Termination of service; revocation of permits; issuance of cease and desist orders.**

If any person violates any provision of this chapter, the Tribe may:

- (a) Terminate water or sewer service, or both, to the property in or upon which such violation occurred;
- (b) Suspend for a specified period of time or permanently revoke any permit granted to such user under any provisions of this chapter; or
- (c) Issue a cease and desist order directing such user to:
  - (1) Comply with this chapter forthwith;
  - (2) Comply with this chapter in accordance with a time schedule set forth by the Tribe; or
  - (3) Take appropriate remedial or preventative action; or
  - (4) A combination of sections (2) and (3) above.

(Ord. No. 133, 4-8-1986)

**Sec. 145-46. Notice and hearing.**

Water and sewer service shall be terminated, cease and desist orders shall be issued and permits shall be denied, suspended or revoked by the Principal Chief only after the Tribe shall have given notice to the user of contemplated action and a hearing, if requested; provided, however, the provisions of this paragraph shall not be held, temporarily suspend water or sewer service, or both, to any user if, in the considered opinion of the Approving Authority, an emergency exists or is imminent which threatens the public health, or is likely to cause severe injury or damage to or interruption of the Tribal sewer system, treatment plant, treatment process or threatens the lives or severe injury to Tribal employees, agents or other authorized personnel.

(Ord. No. 133, 4-8-1986)

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## Chapter 153: Cherokee Community Antenna Television Franchise

**Sec. 153-1. Short title.**

This chapter shall be known and may be cited as the "Cherokee Community Antenna Television Franchise Renewal Ordinance."

(Ord. of 7-21-1979; Ord. No. 114, 2-28-2000)

### **Sec. 153-2. Definitions.**

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

*Cable television system, community antenna television system or CATV system* means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television service which includes programming and other lawful communications services and which is provided to multiple subscribers within the franchise area.

*Franchise or franchise ordinance* means an initial authorization or renewal thereof, issued by the grantor, whether such authorization is designated as a franchise, permit, license, ordinance, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable television system.

*Franchise area* means the physical area within the geographical limits of the grantor over which the governing authority has exclusive jurisdiction and authority to control and to grant franchises: the Qualla Boundary and the 3,200 acre tract of the Cherokee Indian Reservation.

*Governing authority* means the governing body of the grantor and includes all successors in office and is specifically the Tribal Council of the Eastern Band of Cherokee Indians.

*Grantor* means the Eastern Band of Cherokee Indians.

*Grantee* means the corporation to whom the rights and privileges under this franchise chapter is granted and includes the assignees and successors of said corporation and is specifically Cherokee Cablevision.

*Original franchise ordinance* means the ordinance entitled Cherokee Community Antenna Television Franchise Ordinance passed by the governing authority on June 21, 1979.

(Ord. Of 7-21-1979; Ord. No. 114, 2-28-2000)

### **Sec. 153-3. Franchise grant and conditions.**

By this chapter, grantor hereby grants to grantee the right and privilege to install, construct, erect, repair, rebuild, reconstruct, replace, maintain, retain and operate cables, fiber optic lines, underground conduits, microwave relay systems, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable television system in, on, over, under, upon, along and across the streets, alleys, public ways and public places now laid out or dedicated and all future extensions thereof and thereto in the franchise area. The franchise hereby granted shall be subject to the following conditions:

(1) The right to use and occupy the said streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive, and the grantor reserves the right to grant a similar use of said streets, alleys, public ways and places to any person at any time during the period of this franchise for purposes other than the operation and maintenance of a community antenna television system.

(2) The grantee and its employees and agents shall not require nor attempt to direct its subscribers to patronize any particular firm or person in regard to sale, service, rental or leasing of television receivers, radio receivers, or television or; radio parts and accessories.

(3) The grantee shall carry a minimum of nine television channels. One channel of the nine may be signals of a FCC licenses non-commercial educational television station.

(4) The grantee shall operate its system so that there will be no interference with television or radio reception through individually owned receiving antennas.

(5) The grantor shall have the right to inspect, by a qualified electronics engineer, the construction, operation and maintenance of the system by the grantee to insure proper performance with the terms of this franchise and with applicable FCC regulations.

(6) The grantee shall file with the governing authority copies of such rules, regulation, permits, licenses and agreements relating to the construction, maintenance and operation of the grantee's business and a map showing the area of the franchise area being served by the grantee on or before the 31st day of December of each year; provided, that upon completion of construction, the said map may be amended once each year, with all and any addition until such time that all subscribers of the franchise area are covered, through 60 days before the date for filing being noted thereon; and, provided further, that nothing herein shall require the disclosure of any of the private financial or other records of the grantee.

(7) If the grantee shall fail to comply with any of the provisions of this franchise, or default in any of its obligations hereunder, except for causes beyond its reasonable control, and shall fail within sixty (60) days after written notice from the grantor to commence and, within a reasonable time, to complete the correction of such default or non-compliance to the satisfaction of the governing authority, the governing authority shall have the right to revoke this special privilege and all rights to the grantee hereunder.

In the event the grantee shall be adjudicated bankrupt or placed in receivership, the grantor may declare the special privilege herein granted forfeited and terminated.

In the event this franchise is revoked or forfeited as herein provided, or the grantee fails to renew this franchise at the termination of the franchise period, all property of the grantee used in connection with the operation under this franchise shall remain the property of the grantee. The grantee shall offer said property for sale at current market value and the grantor shall have first option of refusal on the purchase of the system; said offer of sale will be on reasonable terms and conditions at the prevailing current market value for such property.

(8) The grantee shall, unless additional time is granted by all appropriate authorities,

accomplish significant construction within 18 months after approval of this franchise and shall have 25 percent of the franchise area receiving cable television service on a regular basis within said time.

(9) The grantee shall secure such consents from the federal and state government or other authorities or from owners or lessees of property necessary to construct, maintain and operate facilities on or at the locations of poles in the franchise area which it desires to use.

(10) In consideration for the grantor providing this franchise extension without increasing the franchise fee rate, grantee shall provide the following services:

- a. Within two years, install a new fiberoptic-based core system, consisting of approximately 70 miles of cable on the Qualla Boundary to upgrade the system and improve picture quality for subscribers;
- b. Provide and maintain a full time government access channel for use by the grantor to broadcast of its official meetings, without charge;
- c. Provide the grantor with access to the fiberoptic-based system, to connect grantor's own equipment for its intranet system, without charge;
- d. Provide pay-per-view broadcasting service and cable modem service at a reasonable charge to the public over the fiberoptic-based system, if financially viable;
- e. Conduct a survey of subscribers within six months of the effective date of this chapter [February 28, 2000], and no less than every three years thereafter, to determine priorities for changing or adding channels to basic and premium services; and
- f. Carry a minimum personal injury liability insurance coverage of not less than \$1,000,000.00 per occurrence and in the aggregate, including grantor as a named insured, subject to increase by the grantor after 10 years;
- g. Provide the grantor with an audit, certified by a certified public accountant, of grantee's revenues and expenses annually.

(Ord. Of 7-21-1979; Ord. No. 114, 2-28-2000)

#### **Sec. 153-4. Regulations.**

The grantee shall, at all times during the term of this franchise, be subject to such reasonable regulations as the grantor shall hereafter by ordinance provide, and shall comply with the rules and regulations, as the same may be amended from time to time, of the Federal Communications Commissions and other regulatory bodies of the United States of America and statutes, including amendments, of the United States of America. The grantee is hereby empowered, subject always to approval, if necessary, of regulatory bodies having jurisdiction, to use proper practices and procedures within the spirit of this franchise and appropriate to the service within the franchise area.

(Ord. Of 7-21-1979)

#### **Sec. 153-5. Insurance and indemnity agreement.**

It is expressly understood and agreed by and between grantor and grantee that the grantee shall indemnify, hold harmless and defend the grantor, at all times during the term of this franchise, from and against all claims for injury or death of person, or physical damage to property, both real and personal, alleged to have resulted from the negligence of the grantee, its employees, or assigns in the construction, erection, operation, or maintenance of any structure, equipment, appurtenances or product authorized or used pursuant to authority of this franchise.

(1) The grantee shall carry and pay the costs of the following liability insurance, in the form and with such companies as shall be approved by the governing authority or its attorney. The amounts of such insurance shall be at least as indicated below for such type, covering injury to or death of person and injury to or destruction of property as a result of any accident or negligence arising out of the conduct of business or use of the premises or any operations which are necessary or incidental thereto, the same to protect the grantor and to include the grantor as a names insured:

*Personal injury liability insurance:*

One Person, one accident . . . \$1,000,000.00  
More than one person, one accident . . . \$1,000,000.00

*Property damage liability insurance:*

One accident . . . \$1,000,000.00

(2) A certificate showing that such coverage has been obtained, and is currently in force and effect, shall be filed with the governing authority prior to the commencement of construction by the grantee and within 30 days of the anniversary date of the policy in each and every year.

(3) The grantee, upon notice in writing from the grantor, shall defend or cause to be defended, at its own expense, any action or proceeding against the grantor in which the grantor is a defendant or joint defendant, any action or proceedings in which any property, equipment, actions, or activities of the grantee in any matter whatsoever, are alleged as a cause of injury, whether it be for death claims, compensation for injuries, damages or any or all of the above stated reasons, provided, however, that such notice shall be given to the grantee within a reasonable time after knowledge of same is had by the grantor; and provided further, that the grantor shall cooperate and assist fully in the defense of any such action or proceeding.

(4) The grantee shall provide at its own expense, any further insurance, for any purpose whatsoever, required by other regulatory bodies or by other firms or companies with whom the grantee has agreements for the use of equipment, poles, and other television facilities. Certification of such insurance coverage must be set forth in subparagraph (2) hereof; provided, that the grantor need not, but may, be named as an insured therein.

(Ord. Of 7-21-1979; Ord. No. 114, 2-28-2000)

**Sec. 153-6. Construction and maintenance of system.**

(a) Construction, maintenance and operation of the transmission and distribution system

(CATV system), including connections made to the system to provide service to subscribers, shall be in accordance with any and all ordinances and regulations of the grantor, the National Electric Code as prepared by the National Bureau of Standards or any successor thereto, and the National Electric Code of the National Board of Fire Underwriters or any successor thereto; the construction, maintenance and operation of said system shall also conform to any and all rules and regulations of the Federal Communications Commission (FCC) applicable thereto or which may become applicable thereto in the future.

(b) Permission to erect poles, and/or excavate: The grantee is hereby granted the right and privilege to erect poles and to excavate upon the streets, public ways, public places, alleys, avenues and public grounds as shall be reasonably necessary for the construction, maintenance and operation of the CATV system in the franchise area without the necessity of obtaining prior permission from the governing authority; provided, however, that the grantee shall be required to obtain normal building permits under applicable regulations now existing or as shall exist when such permits are applied for.

(c) Use: All transmission and distribution structures, lines and equipment of any kind or type whatsoever erected by the grantee under this franchise, shall be so located as to cause minimum interference with the proper use of the streets, alleys, avenues and other public ways and places.

(d) Restoration of pavement: Where the business of the grantee necessitates disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own expense, replace and restore the same according to standards and specifications set forth by the grantor and such work shall be completed as promptly as may be.

(e) Place of fixture: The grantee shall not place poles or other fixtures where the same will interfere with any existing utility facilities in the franchise area.

(f) Use of poles: The poles used for the transmission and distribution system shall be those of the grantee unless a mutually satisfactory agreement can be entered into with utility companies operating within the franchise area and whose poles are in place prior to the effective date of this franchise; provided, however, that the grantee shall, insofar as practicable, attempt to make use of the situs of existing poles, either by using the existing poles or by replacing said existing poles; provided, further, that if by lack of permission or impracticability of using such situs, new or additional poles must be installed upon obtaining the required building permits.

(g) Underground facilities: The grantee shall, in all areas where other similar utilities provide their services through underground means, use such cables and equipment as shall be necessary to provide its service by underground means.

(h) Construction conditions: The construction, maintenance, and operation of the transmission and distribution system in the streets, alleys, traverses, bridges, and other public ways and places and the new construction and/or addition to the system shall proceed so as to cause the least inconvenience to the general public. No opening or obstruction in the streets or other public places made in the course of the operation of the CATV System shall be made without the grantee obtaining the required building permit prior to the making of such opening or obstruction; provided, that the grantee shall not unreasonably withhold the issuance of such permits, and; provided, further, that the grantee shall be notified of any reasons for withholding any such permits. Nothing contained hereinabove shall require the grantee to obtain such permits for emergency repair work, when the delay in obtaining such permit could cause harm to any person, thing or property,

or could cause harm and damage to the CATV system itself; provided, however, that the grantee must report said emergency and the underlying circumstances thereof to the grantor within forty-eight (48) hours after said emergency repair work is commenced and shall make application for the required building permit at such time, said permit, when issued, to be effective from the date and time such emergency repairs were commenced. The grantee further agrees with the grantor to suspend such repair work, upon receiving written notice that a permit will not be issued for same.

(i) Guarding construction areas: Any opening or obstruction made by the grantee for the purposes specified hereinbefore, shall be properly guarded and protected at all times by the grantee by the placement of adequate barriers, fences or guarding and adequate warning signs or devices.

Restoration of excavations, openings and obstructions: Where excavations, openings or obstructions are made, and the surfacing thereof removed or obstructions placed, the grantee shall fill in such excavation or opening or shall remove such obstruction within 48 hours after completion of the work performed, removing excess dirt and debris, and shall fill in such place. If there should be any evidence of settlement of the refilled excavation or opening or other damage caused by same, within 30 days of the refilling or removal thereof, the grantee shall immediately repair same. Upon failure of the grantee to make such correction within same time, it is hereby agreed and the grantee does hereby give its consent that the grantor may make such correction as is advisable and necessary for the use of the public without further notice to the grantee, and the grantor will charge reasonable rates to the grantee for this service. The restoration, repair or correction mentioned above shall include the removal of excess dirt and debris.

The grantee shall, at all times, comply with any and all rules and regulations which the grantor has made or may make which apply to the public generally with reference to the removal of or replacement of pavement and which apply to excavations in streets and other public places, not inconsistent with the rights and privileges specifically given in this franchise.

Inspection: The grantor reserves the right to inspect each new installation of the grantee on its poles in the vicinity of its lines or appliances or equipment and to make periodic inspections as conditions may warrant. Such inspections, or the lack thereof, shall not operate to relieve the grantee of any responsibility, obligation or liability assumed under this franchise.

(Ord. Of 7-21-1979)

#### **Sec. 153-7. Complaints.**

The grantee shall resolve all subscriber complaints within 15 days after received notice thereof. The grantee shall report any unresolved complaints to the grantor within 30 days thereafter. The governing authority shall then take action under this franchise to resolve said complaint in a reasonable manner. The grantee shall be required to maintain a local business office for this purpose. The grantee shall report annually all complaints and the resolution thereof to the grantor.

(Ord. Of 7-21-1979)

#### **Sec. 153-8. Transfer.**

The grantee shall not sell or transfer its plant or system to any other, nor transfer any rights under this franchise to another without prior formal approval of the governing authority; no such sale or transfer shall in any event be effective until the vendee, assignee, or lessee has filed in the office of the governing authority and instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions hereof.

Provided, however, that the company may pledge or mortgage or place in trust its plant, system and/or equipment to any person or firm for the purpose of raising capital or for the purpose of securing any debts of the grantee, without the necessity of obtaining the aforesaid prior formal approval.

The grantee agrees and shall furnish to the grantor detailed information concerning the transfers or assignments under the latter provision within 15 days after such occurrence.

(Ord. Of 7-21-1979)

**Sec. 153-9. Enforcement.**

Failure to enforce or insist upon compliance with any of the terms or conditions of this franchise shall not operate as or constitute a general waiver or relinquishment of any of such terms or conditions, but the same shall be and remain at all times in full force and effect.

(Ord. Of 7-21-1979)

**Sec. 153-10. Automatic amendment.**

If any section, sentence, clause, phrase or regulation of this chapter is contrary to Tribal or federal law or to rules and regulations of the Federal Communications Commission (FCC) or other applicable Tribal or federal regulatory agency, presently in effect or hereafter placed in effect, then such section, sentence, clause, phrase, or regulation of this chapter is hereby amended to conform therewith; provided that this franchise chapter may be amended to conform with applicable FCC regulations at any time, but in no event later than one year from the issuance and promulgation thereof.

(Ord. Of 7-21-1979)

**Sec. 153-11. Severability.**

If any section, sentence, clause, phrase, word or regulation of this chapter is for any reason held illegal, invalid, unconstitutional, or void, all other sections, sentences, clauses, phrases, words or regulations not so held shall be and remain in full force and effect.

(Ord. Of 7-21-1979)

**Sec. 153-12. Term.**

The term of the franchise hereby granted shall be for 20 years, commencing with the effective date of Ordinance No. 114 (2000) [February 28, 2000].

(Ord. Of 7-21-1979; Ord. No. 114, 2-28-2000)



**Sec. 153-13. Subsequent regulation.**

The right is hereby reserved in the grantor, by ordinance, to adopt in addition to the provisions herein contained and in addition to other existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

(Ord. Of 7-21-1979)

**Sec. 153-14. Quality of service.**

During the term of this franchise, the grantee shall furnish to all persons desiring the service offered (subject only to the specifications in this chapter); and paying for same, a wire service capable of producing as good a quality of television picture or reception as may be practicable from time to time, and essentially of the same quality as received at the antenna site. The grantee shall make all reasonable and practicable betterment of said services as improvements in the science of the carrying of television signals shall warrant as well as in the elimination of objectionable radio interferences.

(Ord. Of 7-21-1979)

**Sec. 153-15. Area of service coverage and extensions.**

The grantee shall extend regular CATV service to 20 percent of the franchise area and the inhabitants thereof each year until the total franchise area is receiving service on a regular basis. At least 30 days prior to the anniversary date of this franchise in each and every year, the grantee shall file a written report to the governing authority, showing the extension of service during the previous year, the proposed extension of service during the succeeding year, the name sand addresses of all persons applying for service by the grantee who were not served in the previous year and the reasons why service was not extended to such persons.

The governing authority shall then approve or disapprove the proposed extension of service and, if disapproved, shall give the reasons therefore. The grantee may thereafter submit proposals in the same manner until the governing authority shall approve same; provided, however, that this provision shall not require the grantee to supply service to person who are so located as to make it economically impossible to supply such service to them or in areas of repeated vandalism or interference.

(Ord. Of 7-21-1979)

**Sec. 153-16. Rates.**

All provisions set forth in Section XVI of the Original Franchise Ordinance are hereby repealed. As of the effective date of this chapter, all regulation of grantee's rates by grantor will be in accordance with the standards set forth in 47 C.F.R. Part 76.

(Ord. Of 7-21-1979; Ord. No. 114, 2-28-2000)

**Sec. 153-17. Franchise fee.**

During the term of this franchise, and for the privilege of operating hereunder, the grantee shall pay to the grantor one percent of gross revenues accruing from fees collected from

monthly subscribers for basic cable T.V. or radio service rendered to its subscribers within the franchise area for the first three years of operation, and three percent thereafter. Installation fees and revenues collected for satellite services shall be excluded. Sales taxes and other taxes levied directly on a per subscription basis shall be excluded from the gross revenues in computing sums due the grantor. Payments due the grantor under the terms of this chapter shall be paid annually within 90 days after the expiration of the grantee's fiscal year, and the payment shall be accompanied by a statement certified to by a public accountant or attorney of the amount of gross revenues and such payments shall not be in lieu of business licenses. Reasonable inspection by the grantor of the books of the grantee hereunder, to the extent necessary to check the correctness of the report of revenues as above defined, shall be permitted, upon notice duly given the grantee.

(Ord. Of 7-21-1979)

**Sec. 153-18. Additional conditions.**

(a) *Failure to comply:* If the grantee shall fail to comply with the provisions of the franchise, in part or in whole, or default in any of its obligations hereunder, except for causes beyond the control of the grantee, and shall fail within 30 days after receipt of written notice from the grantor to correct such defaults or noncompliance, the governing authority shall have the right to revoke this franchise and all rights of the grantee hereunder.

(b) *Annexed territory:* Upon the addition of any land to the Cherokee Indian Reservation, the portion of such television system that may be located within such added lands and upon the streets, alleys, traverses, bridges, and public grounds thereof shall thereafter be subject to all the terms of this chapter as though it were an extension made thereunder.

(c) *Taxes:* It is expressly understood that the property of said grantee situated within the franchise area of the grantor shall be exempt from taxes and special assessments by the grantor except as set forth in this chapter.

(d) *Medical use:* Notwithstanding the contrary hereinbefore stated, nothing in this franchise shall be construed to limit or restrain the use of cable television, if needed, for the medical treatment of the sick and ill.

(Ord. Of 7-21-1979)

**Sec. 153-19. Effective date.**

This chapter shall become effective upon passage by the governing authority according to the law.

(Ord. Of 7-21-1979; Ord. No. 114, 2-28-2000)

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## Chapter 160: Vagrancy

**Sec. 160-1. Definitions.**

The following terms and phrases, when used in this chapter, shall have these meanings ascribed to them.

(a) *Apparent means of support* shall mean readily available proof of adequate financial resources to provide a person with food, shelter and clothing for a reasonable period of time.

(b) *Employment* shall mean having a job within the Cherokee Indian Reservation.

(c) *Reside on the Reservation* shall mean to actually occupy a home or residence within the Reservation.

(d) *Relatives on the Reservation* shall mean relatives by blood or marriage who themselves have a permanent residence within the Reservation.

(e) *Registered with a commercial hotel or motel* shall mean be registered and actually occupying a room in such establishment within the Reservation or campground.

(Ord. No. 194, 5-11-1984)

### **Sec. 160-2. Persons subject to removal.**

A person who is on the Cherokee Indian Reservation who is not employed on the Reservation or is without apparent means of support, who does not reside on the Reservation, or is not residing temporarily with relatives on the Reservation, or is not registered in a commercial hotel or motel on the Reservation, may be removed from the Cherokee Indian Reservation when they loiter or congregate on or about Tribal, federal government or public facilities, or disrupt the ability of persons to peaceably enjoy these facilities or their place of business or their residence.

(Ord. No. 194, 5-11-1984)

### **Sec. 160-3. Procedure for removal.**

(a) Whenever any person meets the criteria set forth in section 160-2, they may be removed from the Reservation by the Cherokee Police upon filing of a complaint and presenting the complaint and the person complained of before a judge or magistrate of the Cherokee Court.

(b) Complaints shall be made to the Cherokee Police Department. Such complaints may be oral but the officer must complete a written complaint form. The officer shall file the written complaint form with the Clerk of Court who shall schedule an immediate appearance before a judge or magistrate. The officer shall take the complaining party and the person complained of, together with any necessary witnesses, before the judge or magistrate. If the complaint is made after normal work hours or on weekends, the officer need not file the complaint with the Clerk of Court but shall schedule a hearing before the judge or magistrate at the earliest available time.

(c) At such hearing, the party complained of shall have the burden of affirmatively showing their employment and residence on the Reservation as defined by this chapter. The complaining party shall have the burden of establishing that the presence of or conduct of the person has interfered with the operation or rights of peaceful enjoyment and privacy of the complaining party.

(d) If the court, after a hearing, finds the criteria of section 160-2 is satisfied, it shall order

the officer to immediately transport the person to the exterior boundary of the Reservation. If the criteria is not met, the court shall dismiss the complaint.

(Ord. No. 194, 5-11-1984)

**Sec. 160-4. Civil remedy.**

This chapter shall be construed by the court as a civil remedy and the issuance of a complaint or an order by the Cherokee Court shall not constitute a criminal action on behalf of or by the Eastern Band of Cherokee Indians.

(Ord. No. 194, 5-11-1984)

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## Chapter 161: Elections\*

**\*Cross references:** Tribal government, ch. 117.

### ARTICLE I. OFFICES

**Sec. 161-1. Election dates.**

(a) The Cherokee General Election shall be held on the first Thursday in September 1999, and each two years thereafter.

(b) The Primary Election for the office of Principal Chief and Vice-Chief shall be held on the first Thursday in June 1999, and each four years thereafter.

(c) The Primary Election for the offices of Tribal Council shall be held on the first Thursday in June 1999, and each two years thereafter.

(d) A Primary Election run-off shall be held on the third Thursday in June 1999, and each two years thereafter, if necessary.

(e) A General Election run-off shall be held on the third Thursday in September 1999, and each two years thereafter, if necessary.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-2. Tribal offices.**

(a) The Principal Chief and Vice-Chief shall hold office for terms of four years.

(b) The representatives elected to the Tribal Council shall hold office for terms of two years. The Tribal Council will consist of 12 members as follows: from Big Cove Township, two members; from Birdtown Township, two members; from Wolfetown Township, two members; from Yellowhill Township, two members; from Painttown Township, two members; from Cherokee and Graham Counties constituting one township, two members.

(c) The members of the Cherokee School Board shall be elected to hold terms of office for four years. The terms of office shall be staggered, with one representative elected from

Birdtown, Wolfetown, and Big Cove in 2001, and each four years thereafter, and one representative elected from Yellowhill, Painttown, and from Big Y Community in 1999, and each four years thereafter.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-3. Filing for office.**

(a) All persons filing for election to the offices of Principal Chief, Vice-Chief, Tribal Council, or School Board must file with the Tribal Finance Office between March 15 and April 15 of the year of the election. All candidates must complete a filing form to establish that they meet the qualifications of the office for which they file.

(b) The Board of Elections shall review all applications and shall certify each applicant as either eligible or ineligible and notify the applicant of its decision within five calendar days of the date of filing.

(c) Simultaneously with the filing of an application, each candidate must deposit a filing fee with the Tribal Finance Office. Candidates for the office of Principal Chief and Vice-Chief shall deposit a filing fee of \$500.00. Candidates for the Tribal Council shall deposit a filing fee of \$300.00. Candidates for the School Board shall deposit a filing fee of \$150.00.

(d) No candidate shall have their name placed on any official ballot unless they have been both certified by the Board of Elections and have deposited the proper filing fees with the Board of Elections.

(e) Candidates who are denied certification shall have the right to request a hearing before the Board of Elections. Such hearing may be obtained only by filing a written request with the Chairman of the Board of Elections within ten calendar days of the adverse ruling by the Board of Elections and shall be heard within five calendar days after filing of the request. At such hearing, any person denied certification shall have the right to present written or oral testimony and evidence to establish their qualification for the particular office. The Board shall issue a written decision to the candidate stating whether they satisfy the requirements for such office within 48 hours after the conclusion of the hearing. If the candidate is deemed not to meet the qualification for the office, the reasons for denial shall be stated by the Board in its written decision. Proof of receipt is a return receipt from the United States Postal Service or a return of service from the Cherokee Police Department.

(f) No write-in candidate will be seated if he/she does not meet the Cherokee Election Guidelines adopted by the Tribal Council.

(g) The filing fee shall not be refunded to any candidate after it has been deposited with the Board.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-4. Qualification for offices.**

(a) In order to run for or serve as the Principal Chief or Vice-Chief, a candidate must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 35 years of age by the date of the General Election; and

(3) Have resided on Cherokee trust land continuously for a least two years immediately preceding the date of the General Election; and

(4) Continue to reside on Cherokee trust land during their term of office; and

(5) Be a registered voter with the Tribal Election Board.

(b) In order to run or serve as a member of the Tribal Council, a candidate must:

(1) Be an enrolled of the Eastern Band of Cherokee Indians; and

(2) Be at least 18 years of age by the date of the General Election; and

(3) Have resided in the township which he or she is to represent for at least 90 days immediately preceding the date of the General Election; and

(4) Continue to reside in the township in which they were elected during their term of office; and:

(a) Persons who move their residence from the township which they were elected to represent shall be removed from office by the Board of Elections, if a petition is filed with the Board by a majority of Tribal members registered in that township from which the person was elected; and

(b) Sitting Tribal Council members whose residence is challenged after their election shall have the right to a hearing by the Board of Elections at which they may present evidence and testimony on their own behalf. The decision of the Board of Elections shall be final and not subject to appeal or review by the Cherokee Court or Tribal Council.

(5) Be a registered voter with the Tribal Election Board.

(c) In order to run for or serve as a member of the Cherokee School Board, a candidate must:

(1) Reside in the community they represent for at least one year immediately preceding the date of the General Election and continue to reside in the community they represent during the term of office; and

(2) Be at least 21 years of age by the date of the General Election; and

(3) Have received a high school diploma or the equivalent prior to the date of the Primary Election; and

(4) Not be an employee or student of the primary or secondary education program of the Cherokee School System; and:

(a) Persons who move their residence from the Township which they were elected to represent shall be removed from office by the Board of Elections, if a petition is filed with the Board by a majority of Tribal members registered in that Township; and

(b) Sitting school board members whose residence is challenged after their election shall have the right to a hearing by the Board of Elections at which

they may present evidence and testimony in their own behalf. The decision of the Board of Elections shall be final and not subject to appeal or review by the Cherokee Court or Tribal Council.

(5) Be a registered voter with the Tribal Election Board.

(d) No person shall ever be eligible to file for or serve in any of the above Tribal offices if:

(1) They have been convicted of a felony; or

(2) They have aided, abetted, counseled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians; or

(3) They have been impeached by the Tribal Council or found guilty in any other jurisdiction to have violated section 17 of the Charter and Governing Document of the Eastern Band of Cherokee Indians; or

(4) They have resigned from office while under investigation or under pending charges for fraud, violation of the Tribal Charter, or Tribal law.

(e) No person may file for, run for or hold more than one Tribal elective office at any one time. However, a person may run for Tribal elected office while holding a different Tribal office, so long as the term of the office they currently hold will expire prior to or at the same time as they would assume office if elected to the new office.

(f) No person may be eligible to hold the office of Principal Chief, Vice-Chief or Tribal Council member while simultaneously being a Tribal employee.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

#### **Sec. 161-5. Primary Elections.**

(a) The purpose of the Primary Election shall be to reduce the number of candidates for the General Election to two candidates for each office.

(b) The two candidates receiving the most votes for the office of Principal Chief and Vice-Chief and the four candidates receiving the most votes for the two Tribal Council seats in each township shall be certified by the Board of Elections, and their names shall be placed on the ballot for the General Election.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

#### **Sec. 161-6. Run-off elections.**

(a) In the event two candidates running for seats on the Tribal Council receive the same number of votes in the General Election which votes represent the largest vote total by any individual candidate for that Township, the two candidates shall be deemed elected to the two seats on the Council for that Township.

(b) In the event two or more candidates running for seats on the Tribal Council receive the same number of votes in the Primary Election, which votes represent the second largest vote total by any individual candidate for that Township, the Board shall conduct a run-off election between such candidates. The candidate receiving the greatest number of votes in

the run-off election shall be deemed eligible to stand for the General Election.

(c) In the event two or more candidates running for seats on the Tribal Council receive the same number of votes in the General Election, which votes represent the second largest vote total by any individual candidate for that Township, the Board shall conduct a run-off election between such candidates. The candidate receiving the greatest number of votes in the run-off election shall be deemed elected to the second seat on the council for that Township.

(d) In the event two or more candidates running for a seat on the School Board receive the same number of votes in that community in the General Election, the Board shall conduct a run-off election between such candidates. The candidate receiving the greatest number of votes cast in the run-off election shall be deemed elected to a seat on the School Board.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

#### **Sec. 161-7. Recounts.**

(a) In the event the vote count in any Tribal election results in a tie, the Board of Elections shall conduct a recount of all ballots cast for that particular office or seat. Such recount shall be conducted by the Board of Elections within 48 hours after the closing of the polls for that election. The recount shall be performed by the members of the Board of Elections.

(b) In the event any unsuccessful candidate in any Tribal election is defeated by no more than two percent of the total number of votes cast for that particular office or seat, such candidate may request a recount by filing a written request with the Chairman of the Board of Elections within 48 hours after the closing of the polls for that election. The recount shall be conducted by the members of the Board of Elections within 72 hours of the filing of the request by the unsuccessful candidate.

(c) At the conclusion of any such recount, the Board of Elections shall certify the tally and results of the recount, which shall become the final and official tally for that office.

(d) Any candidate on a ballot subjected to a recount by the Board of Elections may designate a person to observe the recount. Such representation must be designated in writing, with such written appointment delivered to the Chairman of the Board of Elections prior to the commencement of the recount. Such observers shall not participate in or interfere with the recount activities of the Board of Elections and may be ejected by the Chairman if they interfere with or disrupt the recount process.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

#### **Sec. 161-8. Special elections.**

(a) In case of death, resignation or disability of the Principal Chief, the Vice-Chief shall become the Principal Chief and shall serve the balance of the elected term of office until removal or disability or his or her successor is elected.

(b) In case of death, resignation or disability of the Vice-Chief, the Council may elect a successor who shall serve until removal or disability or his successor is elected.

(c) In the event the offices of both the Principal Chief and Vice-Chief become vacant simultaneously, and the Chairman of the Tribal Council does not meet the qualifications for



the office of Principal Chief, the vacancy shall be filled under rules established by the Tribal Council. The office of Vice-Chief shall be filled through election by the Tribal Council. The Board of Elections shall give public notice of a period of 15 days during which qualified persons may file for the office of Principal Chief. A special election shall be held 30 days after the last filing date. The individual receiving a majority of votes cast in such election shall be deemed elected to the office of Principal Chief. If no candidate receives a majority in such special election, the Board shall conduct a run-off election between the two candidates receiving the most votes in the special election, with the run-off election to be held two weeks after the special election.

(d) In the event of a vacancy on the Tribal Council by reason of resignation, removal or death with more than 90 days remaining in the elected term, the Board of Elections shall schedule a special election within 45 days of such vacancy. The Board of Elections shall give public notice of a period of 15 days during which qualified persons may file for the vacant Tribal Council seat. The candidate receiving the most votes in the special election shall be deemed elected to the vacant Tribal Council seat. If there are less than 90 days remaining in the term of the vacated member, the seat shall remain vacant until the next regular election.

(e) In the event of a vacancy on the School Board by reason of resignation, removal or death of a Board member, with more than 90 days remaining in their elected term, the Board of Elections shall schedule a special election within 45 days of such vacancy. The Board of Elections shall give public notice of a period of 15 days during which qualified persons may file for the vacant School Board seat. The candidate receiving the most votes in the special election shall be deemed elected to the vacant School Board seat. If there are less than 90 days remaining the term of the vacated member, the seat shall remain vacant until the next regular election.

(f) When filling vacated elected offices, candidates must meet all qualifications for office set forth in this chapter.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

## **ARTICLE II. VOTERS**

### **Sec. 161-9. Qualifications.**

(a) Eligibility for voting in a Cherokee Tribal General Election shall be restrict to those individuals meeting the following requirements:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be 18 years of age by the date of the General Election; and
- (3) Be registered with the Cherokee Board of Elections for the Township in which they reside.

(b) Eligibility for voting in a Cherokee Tribal Primary Election shall be restricted to individuals meeting the following requirements:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be 18 years of age by the date of the Primary Election; and

(3) Be registered with the Cherokee Board of Elections for the Township in which they reside.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-10. Registration.**

(a) Voter registration shall be conducted in such offices as may be designated by the Board of Elections. The office shall be open for registration on all regular business days. All registration shall only be made in person or by United States mail with a certified and verified Voter Registration Card.

(b) The Board of Elections may conduct special registrations within any precinct if it is deemed advisable. All such special registrations shall be published at least one week in advance in the Cherokee One Feather, Cherokee Scout, and Graham Star.

(c) Voters may register in the Township in which they currently reside. Tribal members not living on Cherokee trust lands shall register in the Township in which they or their enrolled parents last resided. Voters moving from one Township to another must reregister in the new Township pursuant to subsection (g).

(d) Once a person is registered by the Board of Elections, they shall remain registered.

(e) The Board of Elections shall only purge its lists of deceased voters during January of every year.

(f) The Board of Elections shall close the voter registration books 30 calendar days prior to the Primary Election. Tribal members who are not registered to vote on or prior to the closing of the registration books shall not be eligible to vote in the Primary Election.

(g) The Board of Elections shall open voter registration books for ten calendar days following the Primary Election to allow voters to register and/or reregister for the General Election.

(h) Commencing with the 1997 election, the Board of Elections shall prepare a computer listing of all persons registered to vote in each Township. The Board of Elections shall cross-check registered voters between Townships prior to each Tribal election.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-11. Polling places.**

(a) All designated polling sites will be determined by the Board of Elections; and

(b) All polling places shall be located on trust land only.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-12. Election officials.**

(a) *Qualifications.* In order to serve as an Election Official individuals must:

(1) Be enrolled members of the Eastern Band of Cherokee Indians; and

- (2) Be at least 18 years of age by the date of the election; and
- (3) Be able to read and write the English language; and
- (4) Be a registered voter with the Tribal Election Board; and
- (5) Not be a candidate or immediately related to any candidate running in the precinct they serve.

(b) *Election Judges.*

- (1) Two Election Judges shall be appointed by the Board of Elections for each precinct no later than April 30 of each election year, one of whom shall be designated by the Board of Elections as Chief Judge.
- (2) The Chief Judge shall be responsible for the overall conduct of the election at the precinct level. He shall be responsible for obtaining the ballot box, tally sheets and registration books from the Board of Elections on election day and for returning them to the Board at the close of the election. The Chief Judge shall supervise the election process by determining the eligibility of individual voters, by observing the marking of ballots for those individuals seeking assistance in marking of their ballot, and by ensuring that the voting process is conducted in accordance with the law.
- (3) After the polls are closed, the Judges shall be responsible for counting the ballots in their respective precincts. They shall certify the count by signing the tally sheet. They shall then return the ballot box, all unused ballots, tally sheets and registration book to the Board of Elections. Each Judge shall then sign a sworn statement confirming the results of the election in their precinct.

(c) *Election Clerks.*

- (1) One Election Clerk shall be appointed by the Board of Elections for each precinct no later than April 30 of each election year.
- (2) The Clerk shall assist the Judges in recording the name of each voter as they cast their ballot. The Clerk shall assist individual voters who seek assistance in marking ballots. The Clerk shall assist the Judges in counting the votes after the polls are closed.

(d) *Door Marshals.*

- (1) One Door Marshal shall be appointed by the Board of Elections for each precinct no later than April 30 of each election year.
- (2) The Door Marshal shall ensure that there is an orderly flow of voters in and out of the polling place and control the entrance of voters so that the election process shall not be compromised. The Door Marshal shall ensure that no candidate or their workers are within 250 yards of the polling place except to cast their own ballots. The Door Marshal shall ensure that there is no loitering, electioneering, intimidation of voters or use of alcoholic beverages in and around the polling place.

(e) *Alternates.*

- (1) One Alternate shall be appointed by the Board of Elections for each precinct no later than April 30 of each election year.
- (2) The Alternate shall be empowered to perform all the duties enumerated above.

(f) *Certification.*

(1) All election officials shall be appointed and certified by the Board of Elections as being eligible to serve in their respective capacities, prior to the election.

(2) In the event of a vacancy in any of the Election Official offices prior to an election, the Board of Elections shall have authority to appoint and certify a replacement.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-13. Voting procedures.**

(a) When a Tribal member appears at the polling place to vote, a Judge shall first determine if the name appears on the official list of registered voters furnished by the Board of Elections. If the name does not appear on the list, the Judge shall not permit that member to vote. If the name appears on the list, the Clerk shall record the name in a record book maintained for that purpose. A Judge shall then give the member an unmarked ballot.

(b) The voter shall mark the ballot in a private area within the polling place. After voting the voter shall then place the marked ballot into the ballot box and leave the polling place.

(c) If a voter seeks assistance in marking the ballot, the Clerk shall mark the ballot as requested by the voter, and both Judges shall witness the marking. The Clerk shall initial the ballot before the voter places the ballot in the ballot box.

(d) In the event any elderly, handicapped, or infirm person is unable to enter the polling place, they shall be permitted to vote from or in a motorized vehicle at the polling place. Such elderly, handicapped, or infirm voter shall be permitted to vote by having any two of the four election officials personally deliver the ballot to such voter, witness the marking of the ballot by the voter according to their directions and then immediately return the ballot to the polling place and deposit the ballot in the ballot box.

(e) After the polls are opened, under no circumstances shall a ballot box be opened until the polls are closed. Key-operated locks shall be installed on the ballot boxes with the keys under the sole control of the Board of Elections. The keys shall be delivered to the Chief Judges from the Board of Elections only at the closing of the polls.

(f) Any voting irregularities observed by the Election Officials must be reported by the Chief Judge to the Board of Elections when they occur, but no later than the time when the ballot boxes are returned to the Board of Elections. At the request of the Board of Elections the Chief Judge must submit a report of such violation in writing immediately.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-14. Absentee voting.**

(a) The Board of Elections shall prepare and administer a separate ballot for absentee voting. The absentee ballot shall be identical to the regular ballot except that it shall be printed on paper of a different color.

(b) All enrolled members of the Eastern Band of Cherokee Indians who are registered to vote in Tribal elections shall be eligible to vote by absentee ballot.

(c) Persons desiring to vote by absentee ballot must request such ballot within the time period designated by this chapter. Absentee ballots must be requested either by the person seeking to vote or by an immediate relation. No absentee ballot shall be provided unless the person seeking to vote or an immediate relation completes an Absentee Ballot Request Form and returns it to the Board of Elections.

(d) Absentee ballots shall be mailed to the prospective voter by the Board of Elections beginning on May 1 for the Primary Election and on August 1 for the General Election, together with instructions and an official self-addressed return envelope. Absentee ballots must be witnessed, returned to and received by the Board of Elections on or before 4:30 p.m. on the Friday before the Primary Election or on or before 4:30 p.m. on the Friday before the General Election. All absentee ballots shall be counted by the Board of Elections on election day.

(e) The Board of Elections shall prepare a list of an absentee ballots returned to the Board of Elections and shall make such a list available to the Chief Election Judge in each polling place on the day of election. Election officials shall not permit any person to cast a ballot whose name appears on the absentee voters list.

(f) The Board of Elections shall print on the face of each application for absentee ballots the following legend with the blank space in the legend to be completed.

"This application is issued for the absentee ballots to be voted in the \_\_\_\_\_ (General Election, Primary Election, Referendum) to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_."

(g) Application for absentee ballots shall be issued only by mail or in person to the voter or an immediate relative or verifiable legal guardian authorized to make such application.

(h) The Board of Elections shall not provide absentee ballots for Run-off Elections.

(i) No later than May 1 for a Primary Election and August 1 for a General Election, the Board of Elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the Board of Elections. Each return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be printed an identified application number of the voter and the following statement which shall be certified by one member of the Board of Elections:

*"Certification of Election Board Member"*

The undersigned election Board member does by his hand certify that \_\_\_\_\_ is a registered and qualified voter of \_\_\_\_\_ Township and has made proper application to vote under the laws of the Eastern Band of Cherokee Indians.

\_\_\_\_\_  
Chairman/Member

(2) On the other side shall be printed the return address of the Board of Elections and the following certification:

*"Certification of Absentee Voter"*

State of: \_\_\_\_\_.

County of: \_\_\_\_\_.

I, \_\_\_\_\_, do certify that I am a registered voter in \_\_\_\_\_  
Township of the Eastern Band of Cherokee Indians; that on the day of an election  
\_\_\_\_\_, 20\_\_\_\_\_ I shall be absent from Cherokee Trust Land.

I further certify that I made application for absentee ballots and that I marked the  
ballots enclosed herein, or that they were marked for me in my presence and  
according to my instructions. I understand it is a criminal offense to falsely sign this  
certificate.

\_\_\_\_\_  
Signature of Voter

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

(j) On or before May 1 for a Primary Election and August 1st for a General Election, the Board of Elections shall prepare and print a sufficient number instructions sheets on how voters are to prepare absentee ballots and return them to the Board of Elections.

(k) The procedure to be followed in receiving applications for absentee ballots, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) *Record of applications received and ballots issued.* Upon receipt of a voter's written application for absentee ballots, the Board of Elections shall promptly enter in the register of absentee ballots issued so much of the following information as has not already entered:

(a) Name of voter applying for absentee ballots and, if applicable, the name and address of the voter's nearest relative who applied for the absentee ballot.

(b) Number assigned to voter's application when issued.

(c) Township in which applicant is registered.

(d) Address to which ballots are to be mailed, or that the voter voted.

(e) The date the application for ballots was received by the Chairman.

(2) *Determination of validity of application for absentee ballots.* The Board of Elections shall constitute the official body to pass upon the validity of all applications for absentee ballots received. This function shall not be performed by the Chairman or any other single individual member of the Board of Elections, individually.

(a) *Record of Board of Elections' determination; decisions final.* At the time the Board of Elections makes its decision on an application for absentee ballots, the Chairman shall enter in the appropriate column in the register of the absentee ballot application and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved."

(3) *Delivery of absentee ballots and container; return envelopes to applicant.* When the Board of Elections approves an application for absentee ballots, it shall promptly issue and transmit the ballots to the voter only, not to his relative, in accordance with the following instructions:

(a) On the top margin of each ballot the applicant is entitled to vote, the Board of Elections shall write or type the words "Absentee Ballot No. \_\_\_\_\_" and insert in the blank space the number assigned applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type or print any other matter upon the ballots transmitted to the absentee voter.

(b) The Board shall fold and place the ballots in a container-return envelope and write or type in the appropriate blanks thereon the absentee voter's name, his/her application number and the designation of the Township in which the voter is registered. The Board of Elections shall leave the container-return envelope holding the ballots unsealed.

(c) The Board of Elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post office address stated in his/her application; seal the envelope, and mail it at the expense of the Board of Elections.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

#### **Sec. 161-15. Certification of election results.**

(a) The Board of Elections shall have the responsibility of certifying the results of the Tribal election to the Tribal Council. If an irregularity is reported, the Board of Elections may, at its discretion, perform a recount of those precincts involved. At the meeting of the Tribal Council on the first Monday of October following a regular election, or the first meeting of the Tribal Council following a special or Primary Election, the Board of Elections shall report the results of the election to the Tribal Council. Unless a formal protest is filed with the Council, the newly elected Tribal officials shall thereupon be seated into their respective elective offices and take the oath of office from the properly designated official.

(b) A protest to irregularities in the conduct of the election must be made in writing to the Board of Elections no later than ten calendar days after the close of the polls. The Board of Elections shall conduct an investigation within ten calendar days of receiving the written protest. Parties dissatisfied with the decision of the Board of Elections may challenge the irregularities legally. Any such challenge must be established, by a preponderance of the evidence, that the alleged irregularities unfairly and improperly or illegally affected the actual outcome of election or that but for the alleged irregularities, the outcome of the election would have been different. Any such challenge must be filed by an interested party within ten calendar days after issuance of the written decision by the Board of Elections. Persons filing suit shall be limited to equitable relief in the form of a declaratory judgment or writ of mandamus from the court. No person shall be entitled to receive actual damages or recover their legal expense from the Board of Elections or the Tribe, in the event of a favorable decision by the Cherokee Court.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

#### **Sec. 161-16. Definitions.**

The terms defined in this section shall, for all purposes of these Election Rules, have the meanings specified below:

(a) *Immediately related*. Immediate relationship shall include: husband, wife, father, mother, brother, sister, daughter, son, aunt, uncle, grandfather, grandmother, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, and son-in-law.

(b) *Township*. Those established communities recognized by the Tribal Council: Big Cove, Birdtown (including 3200 Acre Tract), Painttown, Yellowhill, Wolfetown (including Big Y), Graham and Cherokee Counties together, Tribal property only.

(c) *Trust land*. Land held in trust by the United States government for the benefit of the members of the Eastern Band of Cherokee Indians.

(d) *Precinct*. The polling place in each voting township, referring specifically to trust land.

(e) *Residence*. Any grammatical form of the word "residence" shall refer to the actual physical presence of a person in a particular locality.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-17. Prosecution.**

Any voting irregularities will be dealt with and prosecuted according to appropriate laws including, but not limited to, 25 C.F.R. § 11.426.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-18. Effective date.**

This chapter shall be effective upon ratification by the Principal Chief.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**Sec. 161-19. Repeal of inconsistent law.**

Any ordinances or resolutions in conflict with this chapter are hereby rescinded.

(Ord. No. 479, 3-6-1997; Ord. No. 403, 12-3-1998)

**ARTICLE III. BOARD OF ELECTIONS**

**Sec. 161-20. Board established.**

The Board of Elections shall be composed of six members. Each member of the Board shall be appointed by the Tribal Council effective September 1 in non-election years, with the term of each member to run for two years from that date. Board members shall be enrolled members of the Eastern Band of Cherokee Indians, twenty-one years of age on the date of appointment, and reside on Cherokee trust lands. No Election Board member shall be a candidate for any tribal office or actively support any candidate for tribal office during the



term for which he is appointed to the Board.

(Ord. No. 672, 4-6-2001)

**Sec. 161-21. Vacancies.**

A vacancy on the Board, whether by death or resignation, shall be filled by appointment of a replacement by the Tribal Council at the next regular Council session after the vacancy occurs. Such appointee shall serve the remaining term of the Board member being replaced.

(Ord. No. 672, 4-6-2001)

**Sec. 161-22. Duties of the Board.**

(a) The Board shall be responsible for conducting registration of all eligible Cherokee voters and maintaining a permanent list of such registration for each township as set forth in Article II of this Chapter.

(b) The Board shall appoint all election officials necessary for the proper supervision of tribal elections as set forth in Article II of this Chapter.

(c) The Board shall provide to the election officials at each precinct an accurate list of registered voters for their respective precincts.

(d) The Board shall be responsible for the preparation of the official ballots to be used in each of the election precincts for all tribal elections-and shall furnish such ballots to the election officials in each precinct on the morning of the election.

(e) The Board shall accept filings and collect filing fees for all candidates for tribal office, and shall be responsible for certifying each applicant as eligible or ineligible, notifying each applicant of its decision, an holding appeal hearings as set forth in Article 1. The Board shall make public the names of candidates certified as eligible for each tribal office no later than May 10 for the primary election and August 10 for the general election.

(f) The Board, together with the election officials from each precinct shall conduct all ballot counts after the closing of the polls. The Board shall thereafter make abstracts of election returns and issue certificates of election.

(g) The Board shall investigate irregularities and nonperformance of duty and violation of tribal election rules and regulations by election officials or other persons. The Board may hold hearings in the course of such investigations.

(h) The Board shall have access to all ballot boxes and their contents, all voting machines and their contents, all registration records, an all enrollment records in the Tribal Enrollment Office in order to carry out its duties under this Chapter.

(i) *Reserved.*

(j) The Board shall conduct an instructional meeting for precinct officials before each election no later than one week prior to the election.

(k) The Board shall keep a tape or written record of all Board meetings.

(l) The Board shall prepare and submit to the Tribal Council a budget request, which shall include all anticipated tribal election expenses for the coming fiscal year. The request should include payment of all persons working with elections and all known registration costs.

(m) The Board shall carry out all other duties set forth in this Chapter.

(Ord. No. 672, 4-6-2001)

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## Chapter 166: Emergency Management\*

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\***Cross references:** Tribal government, ch. 117.

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### ARTICLE I. IN GENERAL

#### Sec. 166-1. Intent and purpose.

(a) It is the intent and purpose of this chapter to establish an office to ensure the efficient utilization of all Tribal resources to combat disasters as defined by this chapter.

(b) The Tribal Office of Emergency Management shall be the coordinating agency for all activity in connection with Emergency Management; it shall be the instrument through which the Tribal Council and the Executive Committee may exercise the authority and discharge the responsibilities vested in them during disaster emergencies.

(c) This chapter will not relieve any Tribal Department or Agency of responsibilities or authority granted by the Tribal Charter or by Tribal ordinances, nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies.

(Ord. No. 87, 3-5-1992)

#### Sec. 166-2. Definitions.

The following definitions shall apply in the interpretation of this chapter:

(1) *Attack* shall mean direct or indirect assault against Cherokee Indian trust lands, the Tribal government, its environs, or of the United States by the forces of a hostile nation or the agents thereof, including assault by bombing; conventional, nuclear, chemical or biological warfare; terrorism or sabotage.

(2) *Coordinator* shall mean the Coordinator of the Tribe's Emergency Management Agency, appointed as prescribed in this chapter.

(3) *Disaster* includes, but is not limited to, actual or threatened enemy attack, sabotage, extraordinary fire, flood, storm, epidemic, accident, chemical spills or other impending or actual calamity endangering or threatening to endanger health, life or property of constituted government.

(4) *Emergency management* is the basic government function of maintaining the public peace, health and safety during an emergency. This term shall include plans

and preparations for protection and relief, recovery and rehabilitation from effects of an attack by the forces of an enemy nation or the agents thereof, or a disaster as defined herein. It shall not, however, include any activity that is the primary responsibility of the military forces of the United States.

(5) *Emergency management forces* shall mean the employees, equipment and facilities of all Tribal departments, boards, councils, institutions and commissions; and, in addition, it shall include all volunteer personnel, equipment and facilities contributed by, or obtained from, volunteer persons or agencies.

(6) *Emergency management volunteer* shall mean any person duly registered, identified and appointed by the coordinator of the Tribe's Emergency Management Agency and assigned to participate in Emergency Management activities.

(7) *Regulations* shall include plans, programs, and other emergency procedures deemed essential to emergency management.

(8) *Volunteer* shall mean contributing a service, equipment or facilities to the Emergency Management Agency without remuneration.

(Ord. No. 87, 3-5-1992)

### **Sec. 166-3. Organization and appointments.**

(a) The organization shall consist of the following:

(1) An agency of Emergency Management within the Executive Department of the Tribal government under the direction of the Tribal Executive Committee. The agency head of the Tribal Emergency Management Agency shall be known as the Coordinator, and such assistants and other employees as are deemed necessary for the proper functioning of the agency will be appointed.

(2) The employees and resources of all Tribal departments, boards, institutions and councils shall participate in the Emergency Management activities. Duties assigned to Tribal departments shall be the same as or similar to the normal duties of the department, where possible.

(3) Volunteer personnel and agencies offering service to and accepted by the Tribe.

(b) The Executive Committee of the Tribe shall appoint a Coordinator of the Tribal Emergency Management Agency who shall be a person well versed and trained in planning operations involving the activities of many different agencies which will operate to protect the public health, safety and welfare in the event of danger from enemy attack or disaster as defined in this chapter.

(c) The Coordinator shall designate and appoint Deputy Coordinators to assume the emergency duties of the Coordinator in the event of his or her absence or inability to act.

(Ord. No. 87, 3-5-1992)

### **Sec. 166-4. Day-to-day duties and responsibilities of the Coordinator.**

(a) The Coordinator shall be responsible to the Tribal Executive Committee with respect to all phases of Emergency Management activity. The Coordinator shall be responsible for the planning, coordination and operation of the Emergency Management activities within all

Cherokee Indian trust lands. The Coordinator shall maintain liaison with state and federal authorities and the authorities of nearby political subdivisions so as to ensure the most effective operations of the Emergency Management plans. The Coordinator's duties shall include, but not be limited to, the following:

- (1) Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Tribe for Emergency Management purposes.
- (2) Development and coordination of plans for the immediate use of all facilities, equipment, manpower and other resources of the Tribe for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring governmental services and public utilities for the public health, safety and welfare.
- (3) Negotiating and concluding agreements with owners or persons in control of buildings or other property for use of such buildings or other property for the Emergency Management purposes and designating suitable buildings as public shelters.
- (4) Through public informational programs, educating the populace as to actions necessary and required for the protection of their persons and property in case of enemy attack or disaster as defined herein, either impending or present.
- (5) Conducting public practice alerts to insure the efficient operation of the Emergency Management Forces and to familiarize residents with Emergency Management regulations, procedures and operations.
- (6) Coordinating the activity of all other public and private agencies engaged in any Emergency Management activities.

(Ord. No. 87, 3-5-1992)

#### **Sec. 166-5. Emergency Management plans.**

(a) Comprehensive Emergency Management plans shall be adopted and maintained by resolution of the Tribal Council. In the preparation of these plans as it pertains to Tribal organizations, it is intended that the services, equipment and facilities and personnel of all existing departments and agencies shall be utilized to the fullest extent. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by these plans and to maintain their portions of the plans in a current state of readiness at all times. These plans shall have the effect of law whenever a disaster, as defined in this chapter, has been proclaimed.

(b) The Coordinator shall prescribe in the emergency plans those positions within the disaster organization, in addition to his own, for which lines of succession are necessary. In each instance, the responsible person will designate and keep on file with the Coordinator a current list of three persons as successors to his position. The list will be in order of succession and will nearly as possible designate persons best capable of carrying out all assigned duties and functions.

(c) Each service chief and department head assigned responsibility in the Plans shall be responsible for carrying out all duties and functions assigned therein. Duties will include the organization and training of assigned employees and volunteers where needed. Each chief shall formulate the Standing Operating Procedure to implement the plans for his service.

(d) Amendments to these Plans shall be submitted to the Coordinator. If approved, the Coordinator will then submit the amendments to the Tribal Council with his recommendation for their approval. Such amendments shall take effect 30 days from the date of approval.

(e) When a required competency or skill for a disaster function is not available within government, the Coordinator is authorized to seek assistance from persons outside of government. The assignment of duties, when of a supervisory nature, shall also include the granting of authority for the persons so assigned to carry out such duties prior to, during and after the occurrence of a disaster. Such services from persons outside of government may be accepted by local government on a volunteer basis. Such citizens shall be enrolled as Emergency Management volunteers.

(Ord. No. 87, 3-5-1992)

**Sec. 166-6. No municipal or private liability.**

(a) This chapter is an exercise by the Tribe of its governmental functions for the protection of the public peace, health and safety, and neither the Tribe nor agents and representatives of same, or any individual, receiver, firm, partnership, corporation, association or trustee, or any of the agents thereof in good faith carrying out, complying with or attempting to comply with any order, rule or regulation promulgated pursuant to the provisions of this chapter, shall be liable for any damage sustained to persons or property as the result of said activity.

(b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the Tribe the right to inspect, designate and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice disaster situation shall not be civilly liable for the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission; or for loss of, or damage to, the property of such person.

(Ord. No. 87, 3-5-1992)

**Sec. 166-7. Violations.**

(a) It shall be a criminal offense for any person to violate any of the provisions of this chapter or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the Emergency Management organization as herein defined in the enforcement of the provisions of this chapter or any plan issued thereunder.

(b) Violators subject to the criminal jurisdiction of the Cherokee Court shall be punished by imprisonment of up to 30 days and a fine of up to \$50.00. Violators not subject to jurisdiction in the Cherokee Court shall be prosecuted in the North Carolina courts under applicable law.

(Ord. No. 87, 3-5-1992)

**Sec. 166-8. Conflicting ordinances, orders, rules and regulations suspended.**

At all times when the orders, rules and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

(Ord. No. 87, 3-5-1992)

## **ARTICLE II. STATES OF EMERGENCY**

### **Sec. 166-9. State of Emergency: restrictions authorized.**

(a) A State of Emergency shall be deemed to exist whenever during times of public crises, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities are unable to maintain public order or afford adequate protection for lives, safety or property, or whenever the occurrence of any such condition is imminent.

(b) In the event of an existing or threatened State of Emergency endangering the lives, safety, health and welfare of the people within the Cherokee Indian trust lands or any part thereof, or threatening damages to or destruction of property, the Principal Chief is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the Cherokee Indian trust lands, to place in effect any or all of the restrictions hereinafter authorized.

(c) The Principal Chief is hereby authorized and empowered to limit by proclamation the application of all or any part of such restrictions to any area specifically designated or described within Cherokee Indian trust lands and to specific hours of the day or night; and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firemen and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of people within Cherokee Indian trust lands.

(Ord. No. 105, 3-5-1992)

### **Sec. 166-10. Proclamation imposing prohibitions and restrictions.**

(a) The Principal Chief by proclamation may impose prohibitions and restrictions specified in sections 166-13 through 166-18 of this article in the manner described in those sections. The Principal Chief may impose as many of those specified prohibitions and restrictions as he finds are necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property. The Principal Chief shall recite his findings in the proclamation.

(b) The proclamation shall be in writing. The Principal Chief shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in the Tribal Council House. The Principal Chief shall send reports of the substance of the proclamation to the mass communications media which serves the affected area. The Principal Chief shall retain a text of the proclamation and furnish upon request certified copies of it.

(Ord. No. 105, 3-5-1992)

### **Sec. 166-11. Evacuation.**

The Principal Chief may direct and compel the evacuation of all or part of the population of Cherokee Indian trust lands, to prescribe routes, modes of transportation, and destination in connection with the evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein. Details of the evacuation may be set forth or amended in a subsequent proclamation which shall be well publicized.

(Ord. No. 105, 3-5-1992)

### **Sec. 166-12. Curfew.**

(a) The proclamation may impose a curfew prohibiting in certain areas and during certain periods the appearance in public of anyone who is not a member of an exempted class. The proclamation shall specify the geographical area or areas and the period during each 24-hour day to which the curfew applies. The Principal Chief may exempt from some or all of the curfew restrictions from which each is exempted.

(b) Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the Principal Chief by proclamation removes the curfew.

(Ord. No. 105, 3-5-1992)

### **Sec. 166-13. Restrictions on possession, consumption or transfer of alcoholic beverages.**

The proclamation may prohibit the possession or consumption of any alcoholic beverage, including beer, wine and spirituous liquor other than on one's own premises; and may prohibit the transfer, transportation, sale or purchase of any alcoholic beverage within Cherokee Indian trust lands described in the proclamation. The prohibition, if imposed, may apply to transfers of alcoholic beverages by employees of the Alcoholic Beverage Control stores as well as by anyone else in the geographical area described.

(Ord. No. 105, 3-5-1992)

### **Sec. 166-14. Restrictions on possession, transportation, and transfer of dangerous weapons and substances.**

(a) The proclamation may prohibit the transportation or possession off one's own premises, or the sale or purchase of any dangerous weapon or substance. The Principal Chief may exempt from some or all of the restrictions classes of people whose possession, transfer or transportation of certain dangerous weapons or substances is necessary to the preservation of the public's health, safety or welfare. The proclamation shall state the exempted classes and the restrictions which each is exempted.

(b) "Dangerous weapon or substance" means:

- (1) Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device as defined in N.C.G.S. 14-288.8(c)(5), gasoline or other instrument or substance designed for use that carries a threat of serious bodily injury or destruction of property.

(2) Any other instrument or substance that is capable of being used to inflict serious bodily injury or destruction of property, when the circumstances indicate that there is some probability that such instrument or substance will be so used.

(3) Any part or ingredient in any instrument or substance included above when the circumstances indicate a probability that such part or ingredient will be so used.

(c) If imposed, the restriction shall apply throughout Cherokee Indian trust lands or such part thereof as designated in the proclamation.

(d) A violation of this section shall be punishable by imprisonment of up to 30 days and a fine of up to \$50.00 for those persons subject to the criminal penalties of the Cherokee Court. Persons not subject to Cherokee criminal jurisdiction shall be referred to North Carolina courts and punished as provided in NCGS 14-228.7.

(Ord. No. 105, 3-5-1992)

**Sec. 166-15. Restrictions on access to areas.**

(a) The proclamation may prohibit obtaining access or attempting to obtain access to any area, designated in the manner described in this section, in violation of any order, clearly posted notice or barricade indicating that access is denied or restricted.

(b) Areas to which access is denied or restricted shall be designated by the Chief of Police and his subordinates or other law enforcement officers when directed in the proclamation to do so by the Principal Chief. When acting under this authority, the Chief of Police and his subordinates may restrict or deny access to any area, street, highway or location within Cherokee Indian trust lands if that restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

(Ord. No. 105, 3-5-1992)

**Sec. 166-16. Application of proclamation.**

The proclamation may prohibit or restrict:

(a) Movement of people in public places;

(b) The operation of offices, business establishments and other places to or from which people may travel or at which they may congregate; and

(c) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the State of Emergency, within the area designated in the proclamation.

(Ord. No. 105, 3-5-1992)

**Sec. 166-17. Removal of prohibitions and restrictions.**

The Principal Chief shall by proclamation terminate the entire declaration of emergency or remove any of the prohibitions and restrictions when the emergency no longer requires them, or when directed to do so by the Tribal Council.



(Ord. No. 105, 3-5-1992)

**Sec. 166-18. Superseding and amendatory proclamations.**

The Principal Chief in his discretion may invoke the restrictions authorized by this article in separate proclamations, and may amend the proclamations by means of a superseding proclamation in accordance with the procedures set forth in section 166-11.

(Ord. No. 105, 3-5-1992)

**Sec. 166-19. Termination and proclamation.**

Any proclamation issued under this article shall expire five days after its last imposition unless sooner terminated in writing under the same procedures set forth in section 166-11.

(Ord. No. 105, 3-5-1992)

**Sec. 166-20. Absence or disability of Principal Chief.**

In case of absence or disability of the Principal Chief, the Vice-Chief, or such other person as may be designated by the Tribal Council, shall have and exercise all of the powers herein given to the Principal Chief.

(Ord. No. 105, 3-5-1992)

**Sec. 166-21. Penalty for violation.**

Except as provided in section 166-15, any person violating any prohibition or restriction imposed by a proclamation authorized by this article shall be guilty of a misdemeanor, punishable, upon conviction, by a fine not exceeding \$50.00 or imprisonment not exceeding 30 days.

(Ord. No. 105, 3-5-1992)

**Sec. 166-22. Repeal of conflicting ordinances.**

All ordinances or resolutions in conflict with the provisions of this article are hereby repealed.

(Ord. No. 105, 3-5-1992)

**Sec. 166-23. Territorial applicability.**

This article shall apply within and throughout Cherokee Indian trust lands and to the extent allowable by federal law and regulation.

(Ord. No. 105, 3-5-1992)

**ARTICLE III. HAZARDOUS MATERIALS**

**Sec. 166-30. Hazardous materials emergencies.**

(a) *Authority.* Pursuant to the inherent sovereign authority of the Eastern Band of Cherokee Indians and to NCGS Ch. 166A, the Emergency Management Act, the general powers granted to the Department of Environment Health and Natural Resources to abate public health nuisances shall be delegated to the Eastern Band Of Cherokee Indians Emergency Management Office. During the pendency of any memorandum of understanding or similar agreement with the State of North Carolina, the Cherokee Emergency Management Office shall assume EBCIs duties and rights thereunder.

(b) *Purpose and intent.* The duties of the Cherokee Emergency Management Office shall include controlling and eliminating the threat to public health that hazardous materials/waste emergencies pose, which include, but are not limited to, spills, accidents, illegal dumping and other releases of hazardous materials into the environment. Because of the unusual risks posed by hazardous materials, it will be the exclusive authority of the Cherokee Emergency Management Office to determine what constitutes a hazardous materials emergency, how it is managed, and when it no longer exists. The Emergency Management Office shall have the authority to assume control over persons and property in the area on and around which a hazardous material emergency is found, and to summarily remove, abate, or remedy hazardous material emergencies within the jurisdiction of the Qualla Boundary that are a threat to public safety. The expense of such action shall be borne by the party in default.

(c) *Charges.* Liability for an incident which threatens public health lies with the owner or agent of the hazardous materials who shall be liable for all containment and removal costs, including the Eastern Band of Cherokee's response fee, and for the use of any other equipment and materials necessary to abate the threat to public safety. Listed below are charges, payable to the Emergency Management Office, to recover Eastern Band of Cherokee's costs:

<i>Service</i>	<i>Fees</i>
Emergency management vehicle (EM)	\$250.00/hour
Pumper response fee (FD)	\$250.00/hour
Ladder response fee (FD)	\$250.00/hour
Police fee (PD)	\$250.00/hour
Supplies	Cost plus 15%
Overtime for nonexempt employees	1-1/2 times hourly rate

(Ord. No. 268, 6-21-2000)