

TABLED

Cherokee Council House
Cherokee, North Carolina

APR 08 2010

Date

ORDINANCE NO. 275 (2010)

WHEREAS, Chapter 92 of the Cherokee Code governs Tribal Business Preference Law; and

WHEREAS, this chapter should be amended to reflect the growing needs of Indian owned businesses; and

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council Assembled, at which a quorum is present that the Tribal Council of the Eastern Band of Cherokee Indians amend the Cherokee Code to read as follows:

Chapter 92
TRIBAL BUSINESS PREFERENCE LAW

Article I. Policy, Application, Definitions

Sec. 92-1. Short title.

This act shall be known and may be cited as the Tribal Business Preference Law.
(Ord. No. 280, 4-29-2002)

Sec. 92-2. Declaration of policy.

The Eastern Band of Cherokee Indians has the sovereign authority to make and enforce laws governing employment rights for its members and members of other Tribes within the territory of the Eastern Band. This chapter is enacted to establish a program to give a hiring preference to qualified Indian contractors and subcontractors, who are members of the Eastern Band and other federally recognized Indian Tribes, when the Eastern Band puts contracts and subcontracts out for bid. By providing a hiring and contracting preference, this chapter is intended to increase employment of members of the Eastern Band and other tribes, to promote the growth and professionalism of Indian owned businesses, to increase contracting opportunities for those businesses, and to reduce discrimination against Indians.

(Ord. No. 280, 4-29-2002)

Sec. 92-3. Application of chapter.

- (a) This chapter applies to contracts offered by the Eastern Band of Cherokee Indians and all of its divisions, programs, offices, subdivisions and enterprises, and subcontracts offered pursuant thereto. It does not apply to private business arrangements in which the Eastern Band, or any division, program, office, subdivision or enterprise of the Eastern Band, is not involved.
- (b) Except as provided in subsection (a), this chapter is binding on all economic entities operating within the territory of the Tribe, whether or not they are doing so at that time this chapter is implemented.
- (Ord. No. 280, 4-29-2002)

Sec. 92-4. Definitions.

Buisness formation minimal legal structure:

<u>Bus ness Formation</u>	<u>Easiness/Cost</u>	<u>Liability</u>	<u>Taxes</u>
<u>Sole Proprietorship</u>	<u>Easiest and least expensive</u>	<u>Unlimited liability, owner personally liable for business debts and court judgments against the business.</u>	<u>Owner reports expenses, and profile/loss as part of his or her personal tax return. Losses can be used to offset any income earned from other sources.</u>
<u>Partnership</u>	<u>Relatively easy and inexpensive</u>	<u>Unlimited liability, partners are personally liable for business debts and court judgments against the business.</u>	<u>Although the partnership files a separate tax return, generally there's no income tax due. A partner reports his or her share of the partnership's income or loss on his or her tax return. Losses can be used to offset any income earned from other sources.</u>
<u>Corporation</u>	<u>Most complex and expensive</u>	<u>Limited liability, stockholders are not personally liable for claims against the corporation. Their losses are limited to the amount they paid for the stocks.</u>	<u>Double taxation, taxes are levied on corporation profits when they entity files its own return. The stockholders will be taxed again when dividends are distributed to them. Shareholders cannot deduct any loss of the corporation.</u>

Certified means the approval given by the Tribal Employment Rights Commission to an economic entity that has applied to, and is found to be qualified, by the Commission to receive a preference in bidding and contracting under this chapter.

Certified vendor means an economic entity that is 51% owned and controlled by a member of the EBCI or married couple in which one spouse is a member of the EBCI, is located within the service area and has been certified by the Tribal Employment Rights Commission to be qualified to receive preference in bidding and contracting under this chapter.

Commission means the Tribal Employment Rights Commission.

Competitive bidding means bids which are submitted in response to a formal invitation to bid or price quotes provided in response to an informal solicitation (such as by requesting quotes by letter, telephone or fax) provided to more than one economic entity.

Complaint means a written notification submitted to the manager of the Tribal Employment Rights Office in matters relating to the certification of economic entities, the compliance efforts of contractors, subcontractors and the Tribe, actions of the manager or the Commission, and the interpretation of this chapter and rules, regulations and guidelines adopted by the Commission.

Economic entity means any person sole proprietorship, partnership, company, corporation, association, joint venture, organization, government, enterprise or other legal commercial entity, whether operated for profit or not-for-profit. The term is intended to be as broad as possible to ensure this chapter's coverage of all contract activities within the Tribe's jurisdiction, and the term shall be so interpreted by the Commission and the courts.

Federally recognized Indian tribe means a tribe named on the list of Indian tribes published annually by the Secretary of the Interior pursuant to 25 U.S.C. 479a-1 and therein recognized to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Formal notice of noncompliance means a written communication from the manager to any economic entity specifying areas of noncompliance with this chapter and actions needed to comply, and/or to provide notice of hearing.

Front means a certified economic entity that associates with another economic entity and serves to conceal the true identity or activity of the other economic entity, or to conceal that the other economic entity owns or controls the majority of the activities and/or financial or beneficial interest of the certified economic entity.

Immediate family means mother, father, husband, wife, brother, sister, son, daughter, step-brother, step-sister, half-brother, half-sister, or mother, father, brother, sister, son or daughter by adoption, and any person who resides in the same household and family relationships such as between wife/husband, parent/child, sibling, mother-in-law father-in-law, brother-in-law, sister-in-law, grandparent/grandchild, step-parent, step-child, foster parent/foster child, and aunt, uncle/niece/nephew.

Joint venture means a certified economic entity working with another economic entity in which the TERO-certified economic entity receives substantial labor, capital or other assets or assistance from the another other economic entity in a specific project but not for the purpose of establishing a business.

Lowest responsible bidder means a bidder who has the lowest price conforming to contract specifications and who is financially able and competent to complete the work as determined by the body awarding the contract.

Manager means the manager of the Tribal Employment Rights Office.

Priority 1 firm means an economic entity that has its principal place of business within the territory of the Tribe, that is ~~100%~~51% owned and controlled by an enrolled member of the Tribe, is located within the service area, and that is qualified in this chapter to receive the first priority to be awarded a contract with the ability to re-bid.

Priority 2 firm means an economic entity that has its principal place of business outside the territory ~~service area~~ of the Tribe ~~and within the service area,~~ and that is 51% owned and controlled by a member of the Tribe or any firm owned and controlled by a member of any other federally recognized Indian tribe that recognizes blood quantum equal to or greater than EBCI ~~any other federally recognized Indian tribe,~~ and that is qualified in this chapter to receive the second priority to be awarded a contract but cannot re-bid.

Procuring entity means the Tribe, its administrative divisions, programs, offices, and enterprises, and any corporate entity in which the Tribe has a majority interest or ownership, and contractors and subcontractors working under contract thereof.

Service Area means the following five North Carolina counties: Jackson, Swain, Graham, Macon and Cherokee.

Territory means all lands held by the United States in trust for the Tribe or its members, and all other lands owned or acquired by the Tribe that are on or near lands held in trust for the Tribe, notwithstanding the issuance of any right-of-way.

TERO means the Tribal Employment Rights Office.

Trade means a distinct business or occupation, as determined by the Commission. For example, the trade of "mason" may include bricklaying, block work and stone work, but may not include heavy equipment operation or other activities requiring unique skills.

Tribe or Tribal means the Eastern Band of Cherokee Indians and includes all of its divisions, programs, offices, enterprises and subdivisions.

Tribal member or member means an enrolled member of the Tribe.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Article II. TERO Commission and Office

Sec. 92-5. Tribal Employment Rights Commission.

- (a) There is hereby created the Tribal Employment Rights Commission.
- (b) The Commission shall have seven members, all of whom shall be members of the Tribe chosen to serve as follows:
 - (1) Two members shall be appointed by the Principal Chief to serve four-year terms concurrently with the term of the Principal Chief who appoints them;
 - (2) Two members shall be appointed by the Tribal Council to serve two-year terms;
 - (3) One member shall be appointed by the Tribal Planning Board to serve three-year terms; and
 - (4) Two members shall be elected by TERO certified economic entities under rules adopted by the Commission to serve three-year terms.
- (c) Tribal Council representatives may not serve as Commissioners during their tenure on the Tribal Council. The Principal Chief, Vice Chief, executive directors of divisions and program managers may not serve as Commissioners during their tenure in those offices.
 - (d) (1) Commissioners may not serve more than two consecutive terms.
 - (2) Commissioners shall serve until their terms expire, until they resign if before expiration of their term, until removed by their appointing authority, or until replaced by their duly appointed successor Commissioners. Commissioners may only be replaced by their appointing authority, but may be replaced for any reason at any time.
 - (3) Paragraph (1) does not apply to interim commissioners temporarily appointed under Resolution No. 189 (2002). Their interim appointment lasts only until their successors are appointed after the ratification date of this ordinance. The interim commissioners may be re-appointed to the permanent commission.
- (e) The Commissioners shall, by majority vote, choose one of their own members to serve as chairperson.
- (f) Commissioners shall be paid a monthly amount to be established by the Principal Chief and Tribal Council in the annual budget process.
- (g) The Commission shall meet at least once a month and minutes of each meeting shall be maintained.
- (h) The Commission shall act by majority vote. A majority of the Commission constitutes a quorum to transact business. If a commissioner leaves a meeting and his absence destroys the quorum, then no business may be transacted until a quorum is re-

established. When a position on the Commission is vacant, the remaining members may exercise the powers of the Commission until the vacancy is filled.

(i) Commission meetings shall be open to the public. However, the Commission may meet in executive session if the Commission determines such a session is necessary to protect the confidences of the parties or to serve the best interests of the Tribe.

(j) Commissioners may be removed for cause by their appointing authority. Cause includes, but is not limited to, being absent for three consecutive meetings without reasonable excuse.

(Ord. No. 280, 4-29-2002; Ord. No. 327, 9-13-2004; Ord. No. 627, 4-7-2005)

Sec. 92-6. Powers of the Commission.

The Commission shall perform all acts necessary to accomplish the examinations, certifications and other actions authorized in this chapter, and to that end may:

(1) Adopt, amend and repeal rules, regulations, procedures and guidelines necessary to carry out this chapter, provided, however that:

a. Unless an emergency exists, the Commission shall provide the public with a reasonable time for comment before adopting final rules, regulations, procedures and guidelines.

b. Rules, regulations, procedures and guidelines adopted by the Commission are encouraged to be designed to promote qualification of certified economic entities as Disadvantaged Business Enterprises as described by the federal Small Business Administration pursuant to 13 C.F.R. 124, or similar programs.

(2) Suggest changes to this chapter to the Tribal Council.

(3) Require economic entities to submit to the Commission acceptable plans indicating how they will comply with this chapter, and to submit business development plans and other plans.

(4) Impose contract and subcontract preference requirements, as set forth in this chapter, and establish and operate a system for certifying economic entities eligible for Indian preference.

(5) Impose limits on the certification of an economic entity restricting the entity to bidding or performing on jobs of a limited type, size or value, according to the certified economic entity's size, history, experience, capabilities and other factors deemed appropriate by the Commission.

(6) Enforce this chapter and rules, regulations, guidelines and orders adopted by the Commission, conduct hearings in accord with rules, regulations and guidelines and order adopted by the Commission, order relief or sanctions as set forth in this chapter, and petition the Cherokee Court for orders that are necessary and appropriate to enforce the decisions of the Commission or manager and sanctions they impose.

(7) Establish procedures for the suspension or termination of certification of economic entities that do not abide by the requirements of this chapter or rules, regulations, guidelines or orders of the Commission.

(Ord. No. 280, 4-29-2002)

Sec. 92-7. Tribal Employment Rights Office.

- (a) There is hereby created the Tribal Employment Rights Office (TERO). The TERO shall operate as a program ~~within a division~~ of Tribal government, and its budget and employees shall be governed by Tribal law and policy.
- (b) The purpose of the TERO is to conduct the day-to-day business of the Commission, as delegated by the Commission, and to administer the rules, regulations, procedures, guidelines and orders adopted by the Commission.
- (c) The manager of the TERO may expend funds appropriated by the Tribal Council, and obtain and expend funding from federal, state or other sources to carry out the purposes of the Commission.
- (d) The TERO shall maintain a source list or "TERO list" which will serve as the official list of certified economic entities entitled to a preference under this chapter. The list shall be updated regularly. (Ord. No. 280, 4-29-2002)

Sec. 92-8. Delegation of authority.

The Commission delegates to the manager the authority to carry out the day-to-day operations of the Commission and other authority that is convenient or necessary for the efficient administration of this chapter. However, the Commission may not delegate its authority to:

- (1) Approve or deny an economic entity's application for certification or impose disciplinary action against a certified economic entity or procuring entity;
 - (2) Adopt, amend or repeal rules, regulations, procedures and guidelines; and
 - (3) Conduct hearings or impose relief or sanctions pursuant to this chapter.
- (Ord. No. 280, 4-29-2002)

Sec. 92-9. Conflicts of interest prohibited.

- (a) A Commissioner or TERO employee may not participate in any action or decision which presents a conflict of interest. "Conflict of interest" means a situation in which one's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with their public duties and responsibilities. A conflict of interest is a concern whether the conflict is real or only perceived.
- (b) A Commissioner or TERO employee may not participate in any action or decision by the Commission or TERO if the Commissioner or employee has a direct personal or financial interest in the outcome of the matter.
- (c) A Commissioner or TERO employee may not participate in any action or decision by the Commission or TERO directly involving himself, or a member of his immediate family, or an economic entity of which he or a member of his immediate family is an employee, or an economic entity 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.
- (d) A Commissioner or TERO employee shall recuse himself from any action or decision by the Commission or TERO in which he has a conflict of interest or when the Commissioner or TERO employee believes that he cannot act fairly or without bias.
- (e) The Commissioners may, by majority vote, determine that a Commissioner or TERO employee has a conflict of interest and may preclude that Commissioner or TERO employee from participating in the decision or circumstance at issue.

(f) This section does not preclude a Commissioner or TERO employee from participating in an action or decision by the Commission or TERO which generally affects a class of persons, regardless of whether the Commissioner, TERO employee, or immediate family is a member of the affected class.

(Ord. No. 280, 4-29-2002)

Article III. Certification

Sec. 92-10. Certification requirements.

(a) To be certified as an Indian owned economic entity entitled to a preference under this chapter the following requirements shall be met.

(1) The economic entity shall be at least 51 percent unconditionally owned and controlled by a member of a federally recognized Indian tribe that recognizes blood quantum equal to or greater than EBCI or a married couple in which one spouse is a member of the Tribe and be able to provide documentary evidence of that ownership.

(2) The economic entity shall maintain a valid, current trader's license.

(3) The economic entity or persons within the entity, whichever is appropriate, shall at all relevant times maintain the professional licenses, registrations and certifications required by applicable law.

~~(4) The economic entity shall show proof that it is bondable and at all relevant times shall maintain that ability. What constitutes adequate proof shall be determined by the Commission.~~

(5) The economic entity shall have a business plan.

(6) The economic entity shall at all relevant times maintain adequate capital to sustain its operations and carry out its business plan.

(7) The economic entity shall have a record of successful performance on contracts in the trade for which it wants to be certified.

(8) The economic entity shall have at least three verifiable references from persons for whom it has performed work in each trade in which it wants to be certified.

(9) The economic entity shall have, for each specific trade for which it wants to be certified, the capacity to perform 50 percent of any job it is awarded with its own personnel, equipment and facilities and the ability to timely obtain, as "timely" is defined by the procuring entity, additional necessary personnel, equipment and facilities to perform contracts if awarded certification.

(10) The economic entity and its principals shall submit to and pay for the following background checks, which may be requested or performed by the Commission upon submission of an application to the Commission or at any time after certification:

a. Licensing history.

b. Criminal history.

c. Debt and credit history.

d. Litigation involving the economic entity and/or principals as defendants.

Such background checks shall be completed by entities acceptable to TERO as set out in its policies and procedures.

(11) An economic entity shall have been operational ~~in Cherokee/Western North~~ for at least two years in the trade in which the economic entity wants to be certified. ~~If the economic entity has not been operational for at least two years, it shall obtain a waiver of~~

the two-year requirement from the Commission by meeting all of the following conditions:

a. ~~The principal(s) of the economic entity shall have a minimum of two years of recent experience in each trade in which he/she wants the entity to be certified. A degree earned by the principal(s) in a field of relevant education may substitute for the required two years of experience, as may licensing, certification or registration in the appropriate field by the state or the United States government. Relevant education or licensing, certification or registration shall be held by the appropriate person, as determined by the Commission.~~

b. ~~The persons upon whom eligibility is based shall have a level of business management experience, as determined by the Commission, to present a reasonable chance for success of the business.~~

e. ~~The economic entity shall demonstrate the expertise to carry out its business plan with a potential for success. The Commission will measure "potential for success" by evaluating the following:~~

1. ~~The technical and managerial experience of the managers of the economic entity;~~

2. ~~The economic entity's operating history, and the credit history of the entity and its principal;~~

3. ~~The ability of the economic entity to access credit and capital;~~

4. ~~The economic entity's financial capacity;~~

5. ~~The economic entity's record of performance; and~~

6. ~~Professional licensing, registration and certifications required in subsection (a)(3) of this section.~~

(12) The economic entity shall have the following minimum insurance:

a. Workers compensation insurance as required by law in the State of North Carolina.

b. General liability insurance sufficient to cover the economic entity's expected exposure;

c. Vehicle insurance;

d. At the time of ~~entering a contract with the Tribe~~ applying for certification, the economic entity shall show proof of insurance coverage sufficient to meet Tribal contracting requirements; and

e. The Commission may require more or additional insurance including, but not limited to, professional liability or malpractice insurance.

(13) The economic entity shall be inspected by an official of the TERO to ensure that the economic entity possesses, has leased or has the ability to lease the material, equipment, tools and/or personnel required to perform the economic entity's daily business functions.

(14) The principals of the economic entity shall attend a business development seminar approved by the ~~Tribal Employment Rights Office~~ TERO and a training session hosted by TERO.

(b) If, at any time, an economic entity fails to meet the requirements imposed in this section the Commission shall, after a hearing, suspend the economic entity's certification and give it an opportunity to meet the requirements. Repeated failure to meet requirements will result in termination of certification.

(Ord. No. 280, 4-29-2002)

Sec. 92-11. Indian ownership required.

(a) To be certified under this chapter, an economic entity shall be at least 51 percent directly and unconditionally owned and controlled by a member of ~~Eastern Band~~EBCI or another federally recognized Indian tribe that recognizes the same blood quantum as EBCI or more or a married couple in which one spouse is a member of the tribe.

(b) Control is not the same as ownership. Control means the power to direct management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management, finance and operations. Control shall be real, substantial and continuing, not just a matter of form. It shall be exemplified by possession of the requisite knowledge and expertise to operate the particular business. It goes beyond simple ownership and does not include absentee ownership.

(c) An economic entity shall be managed by one or more Indians or tribes and such person(s) shall have managerial or technical experience and competency directly related to the trade in which the applicant wants to be certified. In addition, for those trades requiring professional licensing, the economic entity or individuals employed by it shall hold the requisite licenses.

(d) The Indian individual(s) who owns and controls the economic entity does not have to have the technical expertise and hold the critical license in order to demonstrate that he or she controls and manages the economic entity. However, the Indian individual(s) owning and controlling the economic entity shall have management experience to the extent and of the complexity necessary to run the economic entity. The Indian individual shall demonstrate that he has the ultimate managerial and supervisory control over those in the economic entity with the technical or licensing expertise. If the critical license is held by a non-Indian individual who has an equity interest in the economic entity, the Commission may find that the non-Indian individual controls the economic entity and may deny certification.

(Ord. No. 280, 4-29-2002)

Sec. 92-12. Fronts are prohibited.

(a) In addition to the requirements of section 92-11, and to limit the formation of fronts, the Commission shall evaluate an economic entity using the following general criteria:

(1) Is the economic entity structured in a manner consistent with sound and prudent management principles?

(2) Would the economic entity have been structured in the manner it is if there were no Indian preference program?

(3) Would the Indian owners have been given the amount of ownership and control they have been given if there were no Indian preference program?

(4) Do the Indian owners bring something of value, such as managerial or technical expertise, capital and equipment or marketing opportunities? The ability to qualify for Indian preference is not considered such a marketing opportunity.

(b) Additionally, the following requirements shall be met:

(1) An Indian owner shall serve as Chief Executive Officer or President and have the experience or expertise in the trade the economic entity is engaged in (or management experience generally) such that his or her position at a senior level is legitimate.

(2) The Indian owner shall have sufficient knowledge about the economic entity and its projects to be accountable for the entity's activities.

(c) Non-Indians may be involved in the ownership and management of an economic entity as partners, directors, officers, shareholders, or limited liability members.

However, non-Indians may not:

(1) Exercise actual control or have the power to control the economic entity or retain disproportionate responsibility for the management or operation of the economic entity;

(2) Be a former employer or principal of a former employer of an Indian person who owns and controls the economic entity;

(3) Control the formation of a quorum for the purpose of holding a board meeting or directly or indirectly control the voting at board meetings;

(d) Non-Indians having an equity interest in an economic entity and who provide critical financing, bonding or a critical license may be found to be a front.

(e) If, based upon the elements expressed in subsections (a) through (d), the Commission reasonably determines that the economic entity has been structured managerially or financially in a manner that is convoluted or inconsistent with sound business practice in order to qualify for Indian preference, the economic entity will be denied certification, even if it satisfies other specific criteria expressed in other sections of this chapter.

Sec. 92-12A. Brokers are prohibited.

Brokers shall not be certified. In this chapter, "broker" means one who solicits a manufacturer or marketer to prospective customers or engages in effecting transactions for the benefit of others and receives a commission from the transaction. Brokers do not purchase products, warehouse merchandise or resell merchandise but are mere representatives for other manufacturers or marketers.

Sec. 92-12B. Certification is prohibited if it promotes violating Tribal law.

Certification is prohibited if it would promote violation of Tribal law including, but not limited to, violations of Sec. 117-45, Cherokee Code, which prohibits elected officials, program directors, executive staff employees and immediate family members from participating in the award of or benefiting from contracts with the Tribe.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-13. Partnerships, corporations and joint ventures.

(a) If an applicant for certification is a partnership, 51 percent of the partnership shall be directly and unconditionally owned and controlled by a person who is a member of Eastern Band or another federally recognized Indian tribe. Such unconditional ownership shall be reflected in the partnership agreement.

(b) If an applicant for certification is a corporation, 51 percent of each class of voting stock and 51 percent of the aggregate of all outstanding voting stock shall be directly and unconditionally owned and controlled by a person who is a member of Eastern Band or another federally recognized Indian tribe.

(1) The Indians upon whom eligibility is based shall receive at least 51 percent of the annual distribution of dividends paid on the voting stock of a corporate applicant.

- (2) If the stock is sold, the Indians upon whom eligibility is based shall be entitled to receive 100 percent of the value of each share of stock in his or her possession; and
- (3) If the corporation dissolves, the Indians upon whom eligibility is based shall be entitled to receive at least 51 percent of the retained earnings for the concern and 100 percent for the value of each share of stock in his or her possession.
- (4) A promissory note from an Indian to purchase his or her shares will not be considered real value if the ultimate creditor is the non-Indian owner of the economic entity unless it can be demonstrated by clear and convincing evidence that the Indian owner brought such special skills, marketing connections, or similar benefit to the firm that there is good reason to believe such arrangement would have been entered into even if there were not a Indian preference program in existence.
- (c) If a certified economic entity or an applicant for certification enters into a joint venture with another economic entity in which the certified economic entity or applicant receives substantial labor, capital or other assets or assistance from the other economic entity, the following minimum requirements apply:
 - (1) Twenty-five percent of the work performed on a job awarded pursuant to this chapter shall be performed by enrolled members of the Tribe.
 - (2) Twenty-five percent of the work shall be performed by the employees of the certified economic entity or applicant.
 - (3) The percentages expressed in this subsection may be waived by the Commission for good cause.
 - (4) The certified economic entity shall provide to the TERO, upon request, payroll records on a weekly or biweekly basis to confirm that labor is performed by enrolled members of the Tribe.
 - (5) Proof of legal formation of a joint venture, evidenced by ~~registration as such with a state government agency~~contract, and proof of joint insurance, shall be submitted to the TERO.
 - ~~(6) In a joint venture, each individual economic entity shall have the financial capacity and competency to perform individually the jobs it seeks as a joint venture.~~
 - (7) If joint ventures to be formed, the Tribe encourages certified economic entities to form joint ventures or other group business arrangements with other certified economic entities.

Sec. 92-13A. Subcontracting with non-certified entities.

A certified economic entity shall perform any job it is awarded under this chapter with enough of the entity's own workforce, or by subcontracting with another certified economic entity, that it, or another certified economic entity, will retain 60% of the contract price~~a majority (51% or more) of the work of any contract awarded under this chapter with the entity's own workforce or by subcontracting with another certified economic entity.~~ Subcontracting with an entity that is not certified is prohibited if all certified economic entities have not been given the opportunity to perform the work and the majority of the work is not performed by the certified economic entity awarded the general contract.

Sec. 92-13B. If a certified entity is sold or assets transferred.

If a certified economic entity is sold or if the ownership or majority of assets are transferred, the original certification ends and the entity must submit an application for certification as a new business and pay the appropriate certification fee.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-14. Ownership by trusts is allowed.

An economic entity may be owned by a trust but only if all of the following requirements are met:

- (1) The trust is revocable;
- (2) An Indian individual is the grantor of the trust;
- (3) An Indian individual is a trustee of the trust; and,
- (4) An Indian individual is the sole current beneficiary of the trust.

(Ord. No. 280, 4-29-2002)

Sec. 92-15. Certification shall be denied due to bad character.

The economic entity and all its principals shall have good character. An otherwise qualified Indian economic entity shall be denied certification or have its certification suspended or terminated for reasons of bad character. The commission may determine that bad character is demonstrated by any one of the following circumstances:

- (1) Adverse information regarding possible violations of tribal, state or federal law which, as determined by the Commission, bears negatively on the ability of the economic entity or its principals to satisfy the requirements and intent of this chapter;
- (2) Violations of this chapter or rules, regulations, guidelines or orders of the Commission;
- (3) Serious disciplinary action by licensing bodies;
- (4) Lack of business integrity as demonstrated by information related to an indictment or guilty plea, conviction, civil judgment, or settlement or previous negative business or employment experience with the Tribe;
- (5) Principals of the economic entity are, at the time of application for certification or while certified, charged with a crime, under indictment, incarcerated or on parole or probation; or
- (6) Evidence that the economic entity knowingly submitted false information to the Commission, TERO, or a procuring entity.
- (7) Evidence that a procuring entity has unresolved issue regarding past performance with the economic entity.

This list is not comprehensive and other circumstances may exist that demonstrate bad character sufficient to deny, suspend or terminate certification.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-16. Failure to pay debts to Tribe.

If an economic entity or any of its principals is past due on any personal or business debt owed to the Tribe, it shall not be certified, or its certification may be suspended until those debts are paid in full. This section does not apply to debts that are de minimus, as defined by the Commission. The Commission and the Budget and Finance Office shall

coordinate a method for the timely exchange of information regarding certified and uncertified firms that are past due on business and personal debts owed to the Tribe. (Ord. No. 280, 4-29-2002)

Sec. 92-17. Certification of Craft Vendors and Tribal Programs.

(a) ~~Economic entities producing or selling crafts~~Crafters (“craft vendors”) are exempt from ~~certain trader’s license certification requirements of this article, if the craft vendor employs fewer than three persons. However, craft vendors shall pay the appropriate licensing fee and, maintain a current trader’s license, and shall satisfy other requirements as may be required by the Commission.~~

(b) Tribal programs and entities shall not be certified under this Ordinance.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Article IV. Applications

Sec. 92-18. Applications and fees.

(a) Applications for certification shall be presented in a form prescribed by the Commission.

(b) Applicants shall pay an application fee of \$175100.00 for each trade for which they want to be newly certified. If and when an applicant is approved, the vodnor shall pay a subsequent \$100.00 certification fee. \$ 50.00 shall be due when application is submitted.

(c) Applicants applying to be certified as craft vendors shall pay a fee of \$20.00 for new certification in that trade.

(d) Applicants for re-certification shall pay a fee of \$15075.00 for each trade for which they want to be re-certified. Certified craft vendors applying to be re-certified shall pay a fee of \$15.00 for recertification in that field.

(e) Application fees are not refundable.

(f) Applications made under this chapter are continuing applications and the applicant is responsible for notifying the Commission of changes that may affect the applicant's ability to become or remain certified.

(g) If the business or a principal of the business has had its certification removed in the past, the application fee is \$500.00.

(h) General contractors shall pay a fee of \$500.00 for certification annually.

(Ord. No. 280, 4-29-2002)

Sec. 92-19. Processing applications.

(a) The Commission shall adopt rules, procedures and guidelines for processing applications.

(b) Applications determined to be complete by the Commission shall be examined and a decision made on the application within a reasonable time.

(c) The Commission may approve or deny applications, may request more information, and may take other actions necessary to ensure a complete evaluation of an applicant's fitness for certification. Notice of approval or denial of applications shall be provided in writing.

(d) If an application is approved, the Commission may impose limits on the contracts for which the applicant may bid and perform as a certified economic entity, and shall re-examine limitations at reasonable intervals.

- (e) The Commission shall impose a probation period of one year after initial certification.
(Ord. No. 280, 4-29-2002)

Sec. 92-20. Appeal of a denied application.

(a) If the Commission denies an application for certification, *only* the affected economic entity *may* appeal the decision. An appeal shall be in writing and shall be submitted within 30 calendar days after receiving notice that the application was declined. The applicant has the burden of overcoming each reason cited in the Commission's decision to decline the application. During the appeal process, the applicant shall provide any additional information and documentation necessary to overcome the reason(s) for the decision. If an application is denied after appeal, the Commission may decide not to accept a subsequent application from the applicant for a reasonable period (not to exceed six months) after the date of its decision on appeal.

(b) Any party may appeal the approval of an application. The appeal must be written and filed within 30 calendar days of the date of approval. The burden is on the appellant to establish that the Commission's approval was contrary to this chapter.

(c) The decision of the Commission is final. The Cherokee Court has no subject matter jurisdiction to hear an appeal on this issue from the Commission.
(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-21. Annual review required.

(a) The Commission shall annually review certified economic entities for compliance with this chapter and rules, regulations, guidelines and orders. As part of an annual review, each certified economic entity shall submit the following certifications to the Commission:

- (1) That it meets applicable eligibility requirements;
- (2) That Indian individuals maintain ownership, and full-time day-to-day management and control of the economic entity;
- (3) That there has been no change in ownership or business structure, management or control. If there has been a change in any of these attributes, a complete description of the change with supporting documentation shall be provided;
- (4) The extent to which non-Indian persons or economic entities participate in the management of the economic entity;
- (5) Financial information indicating whether the economic entity is solvent, and the number of owners, principals, and employees, including the percentage of those persons who are members of the Tribe and other Tribes;
- (6) Information as to whether the economic entity or its owners or principals are past due on any business or personal debt to the tribe, and the amount of the debt;
- (7) A brief description of contracts performed during the year, identifying the contracting party, including fundamental contact information, and whether the contracts were successfully completed; and
- (8) Other information the Commission may request.

(b) If a certified economic entity fails or refuses to provide true and accurate information required for annual review or a Compliance Officer finds poor business practices, the Commission may suspend or terminate the economic entity's certification. (Ord. No. 280, 4-29-2002)

Sec. 92-22. Effect of denial of certification.

If an economic entity is denied certification, the Tribe, the Commission, or the TERO shall not be held liable for the decision. The economic entity may continue to participate in the bidding process; however, the entity may not use the designation and qualify for any preference as a certified economic entity. (Ord. No. 280, 4-29-2002)

Article V. Preferences

Sec. 92-23. Procuring entities shall give preference.

(a) All procuring entities shall give preference in contracting and subcontracting to certified economic entities.

(b) When a procuring entity, 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) Establishes 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.

(Ord. No. 280, 4-29-2002)

Sec. 92-24. Reserved. Order of preference.

~~Priority for preference in contracting and subcontracting shall be given as described in this section.~~

~~(1) The first priority shall be given to Priority 1 firms; provided, that if federal law prohibits preference based on tribal affiliation, the first priority shall be given 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 territory of the Tribe.~~

~~(2) The second priority shall be given to Priority 2 firms.~~

~~(3) All others get no priority. JB: I got lost in this section, please make changes!~~

~~(Ord. No. 280, 4-29-2002)~~

Sec. 92-25. Procedures for providing preference.

(a) When presented with a need to contract or subcontract, the procuring entity shall communicate with the TERO to determine if there are any economic entities certified to perform the work in the contract.

(b) If there is more than one economic entity certified to perform the work, then the procuring entity shall provide for competitive bidding, as defined in this chapter, by giving notice and an opportunity to bid to the certified economic entities and, except as limited in subsection (c), to a sufficient number of non-certified economic entities. What

is a “sufficient number” shall be determined by the procuring entity. Notice and opportunity to bid shall be provided in a timely manner.

(c) If there is a group of five or more certified economic entities within the TERO defined trade category to which bid requests or solicitations should be provided, the request or solicitations shall not be made outside of that group.

(d) If there is only one economic entity certified to perform the work, the procuring entity may negotiate with that certified economic entity as the sole source of the work, if otherwise allowed by law and Tribal policy.

(e) If there are no certified economic entities that can perform the work sought in the contract this chapter does not apply.

(f) If a certified economic entity submits a bid in response to a notice of competitive bidding, preferences shall be provided as follows:

(1) If a Priority 1 certified economic entity is the lowest responsible bidder, then the contracts shall be awarded to it.

(2) If a Priority 2 certified economic entity is the lowest responsible bidder, then the three Priority 1 economic entities closest to the low bid shall be given a chance to re-bid. Upon re-bid, the Priority 1 certified economic entity that is within five percent (5%) of the lowest responsible bid shall be awarded the contract.

(23) (i) If a certified economic entity is not the lowest responsible bidder, then the three, Priority 1, certified economic entities closest to the low bid shall be given a chance to re-bid. Upon re-bid, the certified economic entity that is within five percent (5%) of the lowest responsible bid shall be awarded the contract.

(ii) Paragraph (2)(i) does not prohibit the contracting party from soliciting price quotes and other responses that shall not be considered a formal bid for which a contract is awarded, but a basis to begin negotiation which may or may not result in the award of a contract.

(g) Procuring entities shall adhere to these bidding requirements. In the event of an emergency bidding, requirements shall be waived although certified economic entities shall be used as-if feasible.

(h) Procuring entities are responsible for sufficiently estimating their contract costs so that any extra cost incurred because a contract is awarded to a certified economic entity that does not submit the lowest responsible bid, but that is within the required percentage of the lowest responsible bid, is covered by the procuring entity.

(i) 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.

(j) Certified economic entities shall have all applicable licenses, registrations and certifications necessary to perform the contract.

(k) No blanket certifications, which would allow a certified economic entity preference in any business endeavor at its discretion, may be given.

(l) A certified economic entity that is found to be in violation of this chapter may not be awarded a contract.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-26. Exemption--Tribal entities procuring from other Tribal entities.

If the procuring entity is a Tribal division, program, enterprise or subdivision and can obtain the work from another tribal division, program, enterprise or subdivision, without profit, then the procuring entity may negotiate that arrangement and in that situation is exempt from the requirements of this chapter. (Ord. No. 280, 4-29-2002)

Sec. 92-27. Fair bidding and deadlines.

- (a) Bids solicited under this chapter shall be solicited fairly and objectively.
 - (b) Bids, ~~price quotes, etc.,~~ shall be submitted before expiration of the bidding period. Bid deadlines are final and shall not be extended.
 - (c) If a certified economic entity receives an opportunity to submit a revised bid, the revised bid shall be submitted within 72 hours (excluding weekends and holidays) of notice of the opportunity.
 - (d) Notice of formal bid openings shall be provided to the TERO at least 72 hours before the opening.
- (Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-28. Procuring entity determines qualifications and performance.

Certification of an economic entity by the Commission indicates that the economic entity has met minimum standards for Indian ownership, experience in a trade and conduct in business. Certification does not establish that a certified economic entity is financially capable or competent to successfully perform the contracts for which the entity may submit bids and win the opportunity to perform. For these reasons, the procuring entity has the final decision as to a certified economic entity's competence and ability to perform a specific contract. The procuring entity must submit in writing the reason for not using the certified economic entity and submit it to a Compliance officer. If a Compliance officer determines that the decision is not made in good faith, the Compliance officer may choose to reject it as a good faith reason. This section does not limit the ability of any economic entity or procuring entity to seek redress for a violation of this chapter. Neither the Tribe nor TERO or any officers or employees are liable for the performance of a certified economic entity under a contract awarded pursuant to this chapter.

Sec. 92-28A. Procuring entities to report poor performance.

Procuring entities shall report poor performance by certified economic entities to the TERO compliance officer or manager in a timely manner if the performance will be used as a reason for not awarding subsequent contracts to the certified economic entity. The reports must be in writing and must be submitted before denying the certified economic entity an opportunity to bid on a contract.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Article VI. Enforcement and Sanctions

Sec. 92-29. Complaints.

- (a) Before filing a complaint, parties shall attempt to resolve differences informally. The manager and the Commission may refuse to hear a complaint if the parties have not made

a good faith effort to resolve differences and may order mediation or other steps to attempt to resolve the issues.

(b) If a resolution is not forthcoming pursuant to actions taken under subsection (a), a complaint may be filed by any person who believes any certified economic entity, procuring entity, the manager or the Commission has violated this chapter or the rules, regulations, guidelines or orders issued pursuant to this chapter; or any person who has received unsatisfactory services or goods from a certified economic entity in a contract awarded under this chapter.

(c) Complaints shall be in writing. Oral complaints shall not be considered.

(d) Complaints shall provide the name, address and telephone number of the person making the complaint, and sufficient information to enable the manager to carry out the investigation, including at a minimum, the date, time, and location of the actions complained of, the procuring entity involved, the certified economic entity involved, and the grounds for the complaint. The compliance officer may withhold the name(s) of the complaining party if the compliance officer has reason to believe the party would be subject to retaliation.

(e) If a complaint is made against a Tribal division, program, enterprise or entity, the ~~manager~~ Compliance officer shall provide notice to the executive director, program manager and other appropriate person of actions taken pursuant to this section.

(f) Upon receipt of a complaint, the ~~manager or his designee~~ Compliance Officer shall investigate the allegations of the complaint within a reasonable time and shall provide a response to the complaining party within a reasonable time.

(g) If, upon investigation, the ~~manager~~ Compliance officer has reason to believe that the complaint is grounded in fact and represents a violation of this chapter or rules, regulations or guidelines adopted pursuant to this chapter, or a contract or subcontract under which a certified economic entity performed, then the manager shall take appropriate action as provided in this chapter.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-30. Investigations.

On his own initiative or pursuant to a written complaint, the manager or his designee shall perform investigations within the territory of the Tribe as he or the Commission deems necessary to determine whether a procuring entity or economic entity has violated this chapter. The manager or his designee may enter, during business hours, the place of business or employment of any economic entity or procuring entity for the purpose of the investigations, and may require the economic entity or procuring entity to submit reports the manager or designee deems necessary to monitor compliance with this chapter. The Commission shall establish procedures for investigations which will identify how to handle confidential materials, time frames, and other procedures necessary to provide a fair and comprehensive investigation.

(Ord. No. 280, 4-29-2002)

Sec. 92-31. Power to require testimony.

(a) For investigations or hearings which, in the opinion of the Commission, are necessary and proper for the enforcement of this chapter, the Commission 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 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 chapter and used in an investigation, compliance hearing or subsequent appeal to the Cherokee Court, shall be kept confidential and shall not be opened by the Commission to public inspection.

(Ord. No. 280, 4-29-2002)

Sec. 92-32. Enforcement.

(a) If, after conducting an investigation the manager has reason to believe that a violation of this chapter or rules, procedures, guidelines or orders issued pursuant to this chapter has occurred, the manager shall notify the alleged violator of the alleged violations. However, the manager may withhold the name(s) of the complaining party if the manager has reason to believe the party would be subject to retaliation. If the investigation was prompted by a written complaint, notice shall also be provided to the complaining party.

(b) ~~The manager~~ Compliance officer shall, within a reasonable time, attempt to informally settle the matter presented by the violation.

(c) If the Compliance officer ~~manager~~ is unable to informally settle the issue within a reasonable time or an informal settlement is not possible, the compliance officer~~manager~~ shall issue, in writing, a formal notice of noncompliance, which shall also advise the alleged violator of its right to request a hearing.

(d) The Commission shall develop procedures for holding a hearing if a hearing is requested pursuant to this section. The procedures shall be designed to protect the due process rights of the parties and shall, at a minimum, specify the following:

(1) The time within which the alleged violator shall respond to the formal notice.

(2) The time within which the alleged violator may request a hearing with the Commission.

(3) The circumstances under which the alleged violator 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 Cherokee Court may be petitioned for injunctive relief.

(e) Hearings held pursuant to this section shall be conducted by the Commission. The Commission may consider evidence it deems relevant to the hearing, under rules of practice and procedure 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, may invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission. No stenographic record of the proceeding and testimony is required except upon arrangement by, and at the cost of the party charged with the violation.

(Ord. No. 280, 4-29-2002)

Sec. 92-33. Sanctions.

(a) If, after a hearing is held, or if no hearing is requested by the alleged violator, and the Commission determines that the alleged violation occurred and that the violator has

no adequate defense in law or fact, the Commission may impose the sanctions described in this section.

(b) If the violator is a certified economic entity the Commission may suspend or terminate the certification of the economic entity. If multiple complaints are received, the following provisions apply:

(1) If a certified economic entity receives three complaints within any 12 month period, and if it the Commission determines that the complaints accurately reflect a substantial impairment of the contract, or the goods or services provided under the contract, then the Commission shall suspend the economic entity's certification for one year.

(2) A second accumulation of three complaints within a 12-month period shall result in suspension of certification for three years.

(3) A third accumulation of three complaints within a 12-month period shall result in permanent termination of certification for all trades and professions for which the economic entity is certified, and the violator will be forever precluded from being certified in any trade or profession.

(4) The Commission may recommend to the Tribal Business Committee that the violator's Trader's License be suspended or terminated.

(c) In addition to sanctions described in subsection (b), if the violator is a certified economic entity or a procuring entity the Commission may:

(1) Deny the procuring entity the privilege to commence operations within the territory of the Tribe.

(2) Suspend or terminate the procuring entity's operation within the territory of the Tribe.

(3) Deny the procuring entity the privilege of conducting future operations within the territory of the Tribe.

(4) Impose a civil fine calculated as a percentage of the contract, per offense.

(5) Order the violator to pay damages to the injured party.

(6) Order the violator to take other action 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).

(7) Recommend to the appropriate supervisor that Tribal employees found to be deliberately violating or deliberately not complying with this chapter be subject to disciplinary action in accord with the Tribal Personnel Policy.

(8) Impose other sanctions the Commission determines are appropriate.

(d) If the violator's failure to immediately comply with the Commission's orders will cause irreparable harm, the Commission may petition the Cherokee Court for injunctive relief necessary to preserve the rights of the beneficiaries of this chapter, pending the party's appeal or expiration of the time for appeal.

(e) The Commission's decision shall be in writing, and shall be provided in writing to the violator no later than 30 days after the close of the hearing.

(f) The Commission may sanction a party to a complaint for failure to respond in a timely manner to requests of the compliance officer, manager or Commission for documents and information.

(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-34. Suspension or termination of certification.

The Commission shall, after performing an investigation establishing that a violation occurred and that the violator has no adequate defense in law or fact, suspend or terminate the certification of an economic entity. Following is an illustrative list of violations. Other grounds for suspending or terminating certification may exist and may be used by the Commission.

- (1) Submitting false information to the Commission or TERO, knowing the information to be false, regardless of whether correct information was given in accompanying documents or by other means.
- (2) Failure by the economic entity to maintain its eligibility for certification.
- (3) Operation as a front for a non-Indian economic entity.
- (4) Failure by the economic entity for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, full-time day-to-day management, and control by Indian individuals.
- (5) Failure by the economic entity to disclose the extent to which non-Indian persons or non-Indian economic entities participate in the management of the certified economic entity.
- (6) Failure by the economic entity or one or more of its principals to maintain good character.
- (7) A pattern of failure to make required submissions or responses to the TERO in a timely manner.
- (8) Cessation of business operations by the economic entity.
- (9) Failure by the economic entity to pursue competitive and commercial business, or failure in other ways to make reasonable efforts to develop and achieve competitive viability.
- (10) A pattern of inadequate performance on awarded contracts.
- (11) Failure by the economic entity to pay financial obligations owed to the Tribe or other governmental entities.
- (12) Failure by the economic entity to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the entity.
- (13) Conduct by the economic entity, or any of its principals, indicating a lack of business integrity. Such conduct may be demonstrated by information related to a criminal indictment or guilty plea, a criminal conviction, or a judgment or settlement in a civil case.
- (14) Willful failure by the economic entity to comply with applicable laws, insurance requirements, labor standards and obligations.
- (15) Willful violation by an entity, or any of its principals, of this chapter or any rule, procedure, guideline or order adopted by the Commission, if the violation pertains to material issues.

(Ord. No. 280, 4-29-2002)

Sec. 92-35. Appeal from action on complaint.

- (a) Except as provided in Sec. 92-38, an appeal to the Cherokee Court may be taken from any final order of the Commission by a party adversely affected by the final order.

The appeal shall be filed with the Court no later than 20 days after the party receives formal notice of the Commission's decision.

(b) The Cherokee Court shall uphold the decision of the Commission unless the appellant proves 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 Cherokee Court, with a copy to the manager, within 20 days after the date of the entry of the order of the Commission. 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 subsection (b), the order of the Commission shall abate pending the determination of the Cherokee Court. However, the manager 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 expressly and specifically direct the Commission as to further action ordered by the Court 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. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

Sec. 92-36. 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 Cherokee Court, so 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 other relief necessary and appropriate to protect the rights of the Commission and 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 this chapter.

(Ord. No. 280, 4-29-2002)

Sec. 92-37. Orders of police.

- (a) The Cherokee Police Department shall enforce cease and desist and related orders as may be properly issued by the Commission or manager.
 - (b) The orders do not require a judicial decree or order to render them enforceable. The Cherokee Police Department shall not be civilly liable for enforcing the orders so long as the order is signed by the manager and the Commission.
 - (c) Notwithstanding subsection (b), the Cherokee Police Department shall not enforce an order of the manager or Commission ordering the removal of a certified economic entity or procuring entity from the territory of the Tribe or attachment of property unless the order is accompanied by a judicial decree by the Cherokee Court.
- (Ord. No. 280, 4-29-2002)

Sec. 92-38. Exceptions for the Tribe as a procuring entity.

The following sections do not apply to complaints against the Tribe or entities owned by the Tribe: section 92-32(d) (petition for injunctive relief); section 92-35 (appeal from action on complaint), 92-36 (attachment of property), and 92-37 (orders of police); in such cases, the Principal Chief shall be responsible for appeals from, and enforcement of, decisions by the Commission.

(Ord. No. 280, 4-29-2002)

Sec. 92-39. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, it is to that extent deemed omitted, and the balance of the agreement remains enforceable.

(Ord. No. 280, 4-29-2002)

Sec. 92-40. Prior inconsistent law rescinded.

All prior ordinances that are inconsistent with this chapter are rescinded.

(Ord. No. 280, 4-29-2002)

Sec. 92-41. Effective date--Previously certified entities.

This ordinance shall be effective on April 15, 2002. All economic entities certified before that date have until July 4, 2002, to become re-certified under this ordinance. Certifications issued before April 15, 2002 shall be void on July 4, 2002.

(Ord. No. 280, 4-29-2002)

BE IT FINALLY ORDAINED that all ordinances inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.

Submitted by: TERO and the Office of the Attorney General

TABLED

ORDINANCE NO. 160 (2010)

FEB 04 2010

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: February _____, 2010

WHEREAS, Section 106-50 to govern the regulation of Business Background Checks on Tribal Land; and

WHEREAS, Tribal Council amended Cherokee Code Section 106-50 on July 9, 2009 when it passed Ordinance No. 801 (2009).

WHEREAS, In order to facilitate business transactions on Tribal Land, 106-50 needs to be further amended so that Business Background checks should only be performed when required by Business Committee.

NOW THEREFORE BE IT ORDAINED by the Annual Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Cherokee Code Section 106-50 is amended to read as follows:

Sec. 106-50. Business background checks.

- (a) ~~Any person or entity who is not a member of the Eastern Band of Cherokee Indians who enters into a contract or lease with services or receipts of more than Twenty Five Thousand Dollars (\$25,000.00) with the Tribe or Tribal Entity must obtain a permit, license or lease to operate a business located on tribal trust land is subject to a background check.~~
- (b) This section applies regardless of whether the person or entity is conducts operations for-profit or not-for-profit, and regardless of their legal formation or lack thereof. If a new corporation, the principals thereof are subject to the background check. If the corporation is not new, that is, it has existed for more than two years in its current corporate formation, the corporation is subject to the background check.
- (c) Business background checks shall be performed by the respective Tribal Entity and in the manner identified by the Business Committee.
- (d) The person or entity subject to the background check must pay for the background check.

(e) (a) The Business Committee may require that a background check be performed and a favorable report be received before the ~~permit, license contract~~ or lease to ~~conduct a business~~ is approved, or may allow receipt within 30 days after approval of the ~~permit, license contract~~ or lease, or may waive the requirement if the applicant has:

(1) An established record of successful business operation on the Tribe's trust land, including consistent and timely payments of Tribal levy, rent, wages and other assessments; and

(2) Has not committed any criminal activity.

~~(f) Persons and entities that were issued a Trader's License through the BIA before January 1, 2006, are not subject to this section so long as the Trader's License is not suspended or revoked on or after that date.~~

(g) (e) This section is effective upon approval January 1, in 2006~~10~~.

(Ord. No. 622, 3-30-2005), Ord. No. 801, 7-09-2009)

[Subsections (b),(c), (d), (e) remain unchanged]

BE IT FURTHER ORDAINED that this amendment shall be effective upon ratification by the Principal Chief, and all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by the Office of Finance and Budget and the Office of the Attorney General