

PASSED  
JUN 03 2010  
TABLED  
AMENDED

Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: APR 08 2010

ORDINANCE NO. 277 (2010)

WHEREAS, the Eastern Band of Cherokee Indians is a sovereign entity with the authority and powers to establish and regulate membership and enrollment in the Tribe; and

WHEREAS, in 1995 Tribal Council established Cherokee Code Chapter 49 to govern membership in the Tribe; and

WHEREAS, the current version of Cherokee Code Chapter 49 fails to establish an application deadline in order for new applications to be considered for the June per capita distribution; and

WHEREAS, in furtherance of the protection of the Tribe's membership it would be advantageous to require all applicants for Tribal membership to submit DNA results proving eligibility for membership as part of the application process.

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 Section 49-5 is amended to read as follows:

**Sec. 49-5. Applications for enrollment.**

[Subsection (a) remains unchanged]

(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. There are deadlines for applications to be considered for inclusion in distribution of per capita payments.

(1) ~~However,~~ In order to be considered for the per capita payment to be distributed in December ~~of the current year~~ of any year, applications and all documentation required to establish lineage and blood degree must be received by September 15 ~~of the current year.~~ the same year as the per capita payment.

(2) In order to be considered for the per capita distribution payment to be distributed in June of any year, applications and all documentation required to establish lineage and blood degree must be received by March 15 of the same year as the per capita payment.

(3) Any applications received after September 15 or March 15, or any applications received before September 15 or March 15 without all the required documentation, will be processed for consideration for inclusion on the membership roll to be used for distribution of subsequent per capita 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.
- (12) The results of a DNA test, from a lab acceptable to the Enrollment Committee, establishing the probability of paternity and/or maternity by the parent(s) through whom lineage is claimed for an applicant.

(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 a County certified birth certificate issued by the appropriate governmental entity where the birth occurred, and the certified results of a DNA test establishing the probability of paternity and/or maternity of the applicant from a lab acceptable to the Enrollment Committee.

(1) DNA Testing Requirements:

- (a) Testing must occur directly between the applicant and the alleged mother and father unless the parent is unavailable for testing through no fault of the applicant.
- (b) When a parent of an applicant is unavailable for DNA testing the Enrollment Committee may accept the certified results of a DNA test between the applicant and both of the missing parent's biological parents

(applicant's grandparents) to establish the probability of relatedness to the grandparents.

(c) A certified copy of the test results must be submitted by the testing lab directly to the Enrollment Office.

(d) The applicant is responsible for all fees related to the DNA test.

(2) 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;

(4) The results of DNA test signifying the probability of paternity; and/or

(a) Documentary evidence of an adoption,

(b) 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. In the case of adoptions, DNA testing is not required. 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.

[Subsection (f) remains 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 Enrollment Committee of the Eastern Band of Cherokee Indians.*

Amendments to Ord. No. 277, added on May 6, 2010

1. Page 3, add Subsection (g) entitled "Temporary Cessation of Enrollment Until Determined Appropriate."
2. Subsection g (1) will read as follows: Tribal Enrollment, with the exception of newborns to three years of age, and 18 to 19 year olds, will cease until the enrollment audit process is complete.
3. Subsection g (2) will read as follows: Tribal Enrollment will resume upon completion of enrollment audit process, or within one year or less.
4. Sec. (d) Proof of lineage, (1), add (e) as follows: "(e) DNA testing required for all applicants, including adoptees."
5. Page 3 (e) "Adopted Eastern Band of Cherokee Indians child," delete the following sentence in its entirety: "In the case of adoptions, DNA testing is not required."

## **Sec. 49-9 Loss of membership.**

*(b) Disenrollments. Disenrollment is defined as revoking a person's membership in the Eastern Band of Cherokee Indians when it is found that said person did not meet the eligibility criteria existing at the time of said person's enrollment. Disenrollment prevents an individual from receiving any monetary benefits, education, housing, possessory holdings or any and all other services offered and provided to enrolled members. The following Disenrollment Procedures are adopted to correct mistakes that resulted when tribal membership was mistakenly approved and to provide a process that would allow a fair hearing in the disenrollment procedure.*

*(2) Procedures for disenrollment. The Enrollment Office shall notify the Enrollment Committee of any member who may be subject to disenrollment. The Enrollment Committee initiates the disenrollment process against any member by authorizing, through a majority vote, the Enrollment Office to:*

- A. Provide written notice, by certified mail, return receipt, to the individual to be summoned to appear before the Enrollment Committee. The notice must:
  - i. State that the Enrollment Committee has questions regarding the individual's enrollment and state the nature of the questions and what documentation the individual must provide to the Committee to retain his/her membership.
  - ii. State that the individual has thirty (30) calendar days from the date of receipt of the notice to contact the Enrollment Office and set a date for the individual to appear before the Enrollment Committee.
  - iii. State that if the individual does not contact the Enrollment Office within the prescribed time period, the individual's non-response will be interpreted as his/her choice to be automatically disenrolled and the individual will be disenrolled at the next meeting of the Enrollment Committee. The date of that meeting will be stated in the letter. No further notice will be given to the individual of his/her disenrollment.
  - iv. Members on active duty with the military shall have six (6) calendar months to contact the Enrollment Office.
- B. The individual has the burden to prove his/her eligibility for enrollment at the time of enrollment.
- C. The individual, at his/her own expense, may be represented by legal counsel at the individual's appearance before the Enrollment Committee. The individual, however, must personally appear before the Enrollment Committee and cannot have a legal representative or other agent appear on his/her behalf.
- D. If the individual provides evidence that satisfies the Enrollment Committee, by majority vote, the process is terminated and the individual retains his/her membership.

- E. If the individual does not provide evidence which satisfies the Enrollment Committee, by majority vote, the individual will be disenrolled effective immediately.
- F. The disenrolled individual may file a written appeal of the Enrollment Committee's decision to the Tribal Council within thirty (30) calendar days of the Committee's decision. The written appeal is to be directed to the Tribal Council Chairman and is to request a hearing before the six (6) Tribal Council members who do not comprise the Enrollment Committee. The appeal stays the individual's disenrollment until such time as the appeal is heard and decided.
- G. At the appeal hearing, the Tribal Council only reviews the documentation that the Enrollment Committee reviewed and no new evidence or oral argument is allowed to be presented. The Tribal Council may only determine if the Enrollment Committee failed to follow the steps of the Disenrollment procedure or was negligent in any way. If the Tribal Council finds, by majority vote, there was error or negligence on the part of the Enrollment Committee, the matter is returned to the Enrollment Committee for reevaluation. If the appeal is successful, the individual's membership is restored. The Tribal Council's decision is final.
- H. Any files indicating fraud in the enrollment process shall be forwarded to the Tribal prosecutor for investigation.

*(3) Property.*

- b. Upon receipt of the list of members whose status is subject to review the Council of the EBCI may impose a temporary stop on all property transfers affecting possessory holdings held by members subject to review. All services, monetary and otherwise, will also be placed on hold and held in escrow until the disenrollment process is completed either by reinstatement of membership or disenrollment.
- c. Once an individual is removed from the Tribe's Roll they shall be deemed to hold a life estate in any possessory holding that was in their name prior to disenrollment.
- d. Such life estate shall revert to the Eastern Band of Cherokee Indians upon expiration.
- e. Alternatively, a disenrolled individual may transfer any of their possessory holding held prior to disenrollment to an enrolled member blood relative.

*(4) Policies.*

- f. The Enrollment Committee shall have the authority to develop policies and procedures to consistent with this ordinance.

**Sec. 49-10 11 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)

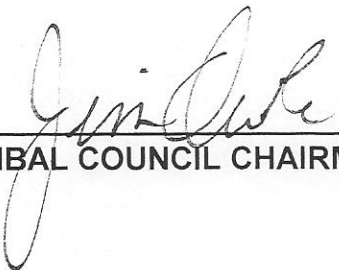
The attached Resolution/Ordinance No. 277 dated April 8, 2010 was:

PASSED ( ☒ )

KILLED ( ☐ )

and ratified in open Council on June 3, 2010 by 100 voting for the act  
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT	TABLE
Teresa McCoy	X				
Perry Shell	X				
Gene Crowe	X				
Mike Parker	X				
David Wolfe	X				
Alan Ensley	X				
Jim Owle	X				
Diamond Brown	X				
Adam Wachacha	X				
Bill Taylor	X				
Terri Henry	X				
Tommye Saunooke	X				
Total:	100	0	0	0	0

  
TRIBAL COUNCIL CHAIRMAN

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
PRINCIPAL CHIEF

APPROVED ( )

VETOED ( )

VETO UPHELD ( ) VETO DENIED ( )

DATE: \_\_\_\_\_

I hereby certify that the foregoing act of the Council was duly:

PASSED ( )

KILLED ( )

and ratified by Council Chairperson, Clerk, and Principal Chief of the Eastern Band of Cherokee Indians.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians. Superintendent, Cherokee Indian Agency.

\_\_\_\_\_  
INTERPRETED ( )

\_\_\_\_\_  
OMITTED ( )