

Highway.

The Tribe recently acquired a y-acre parcel of land located contiguous to the Reservation (the Acquired Property) that the Tribe expects will also be held in trust for the Tribe by the Federal government.

The Tribe plans to develop the Acquired Property and further develop the Reservation in the near future. On the Acquired Property, the Tribe plans to construct an emergency services building, a government office building, a small number of residential houses, and a vineyard. The Tribe expects construction to begin on the government office building within three years and on the emergency services building within two years. The vineyard should be completed within the next year. On the Reservation, the Tribe proposes to construct a cultural center and museum, with construction beginning within the next three years. The Tribe also plans to improve the infrastructure on the Acquired Property and the Reservation (together, the Tribal Land). Improvements to the infrastructure will precede construction of the proposed buildings. The Tribe expects that it will meet the requirements of § 1.148-2(e)(2) of the Income Tax Regulations, including the requirement that completion of the proposed projects and the allocation of the net sale proceeds of the issue to expenditures will proceed with due diligence.

The Tribe proposes to finance the emergency services building, a portion of the government office building, the cultural center and museum, and the infrastructure improvements with bonds described in § 103 of the Code (the Bonds). The Bonds will be issued by the Tribe and the proceeds will be loaned to the Authority, an unincorporated governmental instrumentality of the Tribe.

#### Proposed Buildings

The emergency services building will be used as a headquarters for the Tribe's police and fire operations. The government office building will be used for government offices and for offices for vineyard employees. The portion of the government office building used for offices for vineyard employees will not be financed with the Bonds. The portion that will be financed with the Bonds (the Government Office Building) will be used to house various tribal government departments, including tribal administration, housing, fiscal, human resources, environmental, and community development programs.

The cultural center and museum will be approximately one-third the size of the existing Casino and will contain an exhibit area, a lobby and reception area, a gift shop, a theater, activity rooms, an office suite, and a reception/meeting room. The office space will be used to house tribal cultural resource staff and the reception/meeting room will be used for a variety of tribal and non-tribal civic functions. The portion of the cultural center and museum that will be available to nongovernmental persons will be used in a manner that meets § 1.141-3(d)(3)(i) or otherwise does not give rise to impermissible private business use. There are thousands of museums owned and operated by public authorities (which for this purpose does not include 501(c)(3) organizations) and every state owns and operates, directly or indirectly, one or more museums. Looking at a reasonably sized sample of these municipal museums, most of the museums in the sample were established before 1990. The Tribe has also submitted evidence that tax-exempt financings have been used to finance municipal museums.

None of the buildings that will be financed with the Bonds are intended to be used for commercial or industrial purposes or as revenue generating facilities.

#### Proposed Infrastructure Improvements on the Tribal Land

Improvements to the infrastructure will include improvements to the Road, a new road, and improvements to the water, sewage and drainage systems. The Road improvements will include improving access from the State Highway to the Road; splitting a portion of the Road into two separate one-way roads to improve traffic handling capacity, provide access to the proposed cultural center and museum, and accommodate visitor access to the Reservation; adding a loop road around the Casino; and making changes to improve

access to the Casino's various parking and bus dropoff facilities. These improvements will initially mainly be used to provide the public with greater access to the Casino and to provide access to the water treatment facilities, but will eventually also provide access to the cultural center and museum.

The Tribe will also add a new road between the State Highway and the Road that will go through the Acquired Property passing the government office building, the emergency services building, the houses, and the vineyard (the New Road). The New Road will be gated where it joins the Road with access limited to members of the Tribe, emergency vehicles, and access for emergency purposes. Access to the Acquired Property for the general public will be provided by a new intersection joining the New Road to the State Highway.

Improvements to the water system will include the addition of wells, a storage tank, and water lines. Improvements to the sewer system will include construction of additional storage or treatment facilities. With the improvements, these systems should meet all of the future needs of the Tribal Land, including the needs of the government office building, the cultural center and museum, and the emergency services building. However, initially, the improvements will mainly be used by the Casino and the users of the Casino. Use of the water and sewer system is governed by Tribal ordinances, which prohibit any customer from having special legal entitlements to service; all customers will have equal rights to the service.

Improvements to the drainage system will include relocation of, and modifications to, the system to accommodate the changes to the Road, and the addition of one or more basins to meet storm water retention requirements for the Tribal Land.

#### LAW AND ANALYSIS

Section 7871(a) of the Code provides that an Indian tribal government is to be treated as a State for certain purposes of the Code. Section 7871(a)(4) provides that an Indian tribal government is to be treated as a State "subject to subsection (c), for purposes of § 103 (relating to State and local bonds)." Section 7871(c)(1) provides that "section 103(a) shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or a subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function." Section 7871(e) provides that "[f]or purposes of this section, the term essential governmental function' shall not include any function which is not customarily performed by State and local governments with general taxing powers." Section 7871 was originally enacted in 1982 by The Indian Tribal Government Tax Status Act, Pub. L. No. 97-473 (1983), 96 Stat. 2605. In the legislative history to that Act, the Senate Finance Committee indicated that tax-exempt bond financing was not intended to be available to Indian tribal governments for "commercial or industrial activities (or other activities other than essential governmental functions)." S. Rep. No. 97-646, at 13-14 (1982). The House Conference Report provides specific examples of functions that are essential governmental functions, listing schools, streets, and sewers. H.R. Rep. No. 97-984, at 16-17 (1982) (Conf. Rep.).

Section 7871(e) was added to the statute by The Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330, § 10632(a) (1987). In the legislative history to this provision, the House Ways and Means Committee criticized 1984 Temporary Treasury Regulations interpreting the term essential governmental function in § 7871(c) for including certain activities eligible for Federal funding in that definition. The House Ways and Means Committee stated that the reason for this amendment was that the Committee was concerned about reports that Indian tribal governments were issuing tax-exempt bonds for interests in "commercial and industrial enterprises." The Committee further included the following statement about § 7871(e):

The bill clarifies that, with respect to bonds issued by Indian tribal governments, the term 'essential governmental function' does not include any governmental function that is not customarily performed (and financed with governmental tax-exempt bonds) by State and



local governments with general taxing powers. For example, issuance of bonds to finance commercial or industrial facilities (e.g., private rental housing, cement factories, or mirror factories) which bonds technically may not be private activity bonds is not included within the scope of the essential governmental function exception.

Additionally, the committee wishes to stress that only those activities that are customarily financed with governmental bonds (e.g., schools, roads, governmental buildings, etc.) are intended to be within the scope of this exception, notwithstanding that isolated instances of a State or local government issuing bonds for another activity may occur.

H.R. Rep. No. 100-391, at 1139 (1987).

The 1987 Conference Committee adding the limited manufacturing facility provision of § 7871(c)(3)(A), noted that:

A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the 'essential governmental function' standard (i.e., the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments). For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

H. R. Rep. No. 100-495, at 1012 n.5 (1987)(Conf. Rep).

We interpret § 7871(c) and (e) to provide that an activity will be considered an essential governmental function that is customarily performed by State and local governments if: (1) there are numerous State and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds, (2) State and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years, and (3) the activity is not a commercial or industrial activity.

In this case, ownership and operation of the Bond financed facilities represent essential governmental functions. Ownership and operation of the facilities is not a commercial or industrial activity. Almost all of the financed facilities, i.e., the improvements to the Road, new Road, drainage, and sewer and water system, the Government Office Building, and the emergency services building are public works projects, which are the same or substantially the same as examples in the legislative history of projects that meet the essential governmental function test of § 7871(e).

While the cultural center and museum may be viewed as a government building, which is described as an essential governmental function in the legislative history, the Tribe has also represented sufficient facts for us to conclude that (1) there are numerous State and local governments with general taxing powers that have been owning and operating museums and financing them with tax-exempt governmental bonds, and (2) State and local governments with general taxing powers have been owning and operating museums and financing them with tax-exempt governmental bonds for many years. The Tribe has represented that there are thousands of museums owned and operated by public authorities. Moreover, the Tribe, testing a reasonable sampling of municipally-owned museums, found that State and local governments have owned and operated museums in that sample for decades. The Tribe also has submitted information to demonstrate that tax-exempt financings have been used to finance publicly-owned museums.

We also conclude that construction and operation of the infrastructure improvements will be an essential governmental function even though the improvements will be used primarily by the Casino and the vineyard. An activity does not become a commercial or industrial activity merely because that activity benefits a commercial or industrial operation. Whether an activity is a commercial or industrial activity requires consideration of all the facts and circumstances. On this point, the private business use rules, while not controlling, provide useful analysis. Under § 141, the expectation that a private business

will make primary use of a facility will not result in private business use if that facility is intended to be available and in fact is reasonably available for use on the same basis by the general public. See § 1.141-3(f)(example 11) (bonds used to construct road reasonably expected to be used almost entirely by private business not private activity bonds because private business has no legal entitlement to road and road will be available for use without restrictions to all users, including general public). In this case, the Tribe has represented that the infrastructure improvements will be used for a variety of public uses that are not commercial or industrial activities and the governmental user, and indeed the general public, will have the same access to the infrastructure improvements as the Casino and the vineyard. The Tribe has described an entire development project for the Tribal Land that includes construction of an emergency services building, the Government Office Building, and the cultural center and museum. The infrastructure improvements are being sized to meet the needs of these buildings and all future needs of the Tribal Land, along with the needs of the Casino. It is reasonable to expect that when infrastructure is being constructed on land that will be used for a variety of uses, the infrastructure will be used by certain users of the land before being used by other users of the land. Moreover, here the Tribe expects that the proposed buildings will use the infrastructure in the relatively near term. The Tribe represents that construction on the proposed buildings will start within three years and will proceed with due diligence. Thus, even though the governmental users will begin to use the improvements later than the Casino, the ownership and operation of the infrastructure improvements is still an essential governmental function within the context of the entire project that the Tribe represents it will complete. Based on all the facts and circumstances represented by the Tribe, we conclude that the Casino's and vineyard's use of the infrastructure improvements does not cause those facilities to be used for other than an essential governmental function.

#### CONCLUSION

Accordingly, we conclude that owning and operating the Government Office Building, emergency services building, cultural center and museum, and infrastructure improvements described herein constitute essential governmental functions within the meaning of §§ 7871(c)(1) and 7871(e) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

The rulings contained in this letter are based upon information and representations, including but not limited to, representations regarding development that is expected on the Tribal Land, submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Assistant Chief Counsel (Exempt Organizations/Employment Tax/ and Government Entities)

By:

Rebecca L. Harrigal  
Branch Chief Tax-Exempt Bonds Branch

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

END OF DOCUMENT

RESOLUTION NO. \_\_\_\_\_(2010)

WHEREAS, the Eastern Band of Cherokee Indians Tribal Council is the duly authorized governing body of the Eastern Band of Cherokee Indians and is responsible for the health, safety, education and welfare of all enrolled members;

WHEREAS, Tribal Council has the authority to promulgate ordinances, resolutions, institute regulations and consider various legal matters that fall within the authority of a federally recognized Indian Tribe;

WHEREAS, the tribal government, through the Tribal Construction Program, has taken increased responsibility for completion of construction projects on and off the Qualla Boundary;

WHEREAS, the Tribal Construction Managers and their leadership propose to take the next step toward self-governance by assuming more control of construction projects administered through the Indian Health Service self-governance compact;

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled, at which a quorum is present that the Office of the Principal Chief is authorized to enter into Public Law 93-638 Title V Construction Agreements with the Nashville Area Indian Health Service for the purpose of administering Public Law 86-121 Sanitation Facilities Construction Projects awarded during fiscal year 2010.

BE IT FURTHER RESOLVED that the Tribal Council grants a limited waiver of sovereign immunity and accepts the jurisdiction of the United States Federal Court in matters regarding these projects.

BE IT FURTHER RESOLVED that the Tribal Council designates James Long (or his successor), Manager, Office of Environment and Natural Resources, as the certifying officer to assure that the requirements of the National Environmental Policy Act (NEPA) and local environmental codes or ordinances are met.

BE IT FURTHER RESOLVED that construction of any project authorized under this resolution will not be commenced until adequate consideration is given to

the effects upon the environment and an appropriate determination is issued.

BE IT FINALLY RESOLVED that the intent of this resolution be carried out by the Deputy of the Operations Division.

Submitted by: Eddie Huskey, Deputy Operations Division.



Cherokee Council House  
Cherokee, North Carolina

---

Date

RESOLUTION NO. \_\_\_\_\_(2010)

- WHEREAS, the Cherokee Language Forum (Forum), established by the Principal Chief has been actively involved in revitalization of the Cherokee language; this Forum consists of the Kituwah Preservation and Education Program, Cherokee Central Schools, Western Carolina University, Graham County Indian Education Program, Principal Chief, Deputy Administrative Officer, and Director of Youth and Adult Education; and
- WHEREAS, the Forum declares that teaching Cherokee language is essential to the education of Cherokee youth and adults; and
- WHEREAS, one goal of the Forum under this premise is to promote the Cherokee language in the area educational systems by providing certified Cherokee language instructors teaching Cherokee language curriculum; and
- WHEREAS, through collaboration with Western Carolina University, a High School-1 and High School-2 Cherokee language and culture curriculum has been established and is currently being implemented in Graham County schools with Cherokee language instructors provided by the tribe for this purpose; but, problems have arisen regarding the state certifications of these instructors; and
- WHEREAS, through government to government collaboration with the state of North Carolina, Department of Public Instruction, the state is agreeable to approve an Eastern Band of Cherokee Indians certification process for Cherokee language instructors to support Cherokee language survival and increase student success and performance; and
- WHEREAS, by the state accepting the Cherokee language subject area certification for Cherokee language, the requirements of the North Carolina, Department of Public Instruction would be met; thus, providing sustainability of the Cherokee language classes in Graham County and other K-12 schools.

NOW, THEREFORE, BE IT RESOLVED 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 does hereby authorize the Cherokee Language Forum to develop a Cherokee Language subject area test, as part of a certification process for Cherokee language instructors, which will be resubmitted for codification upon its completion.

BE IT FURTHER RESOLVED that this resolution be carried out by the Cherokee Language Forum and the Principal Chief.

BE IT FINALLY RESOLVED that all resolutions inconsistent with this resolution are rescinded, and that this resolution shall become effective when ratified by the Principal Chief.

*Submitted by: the Office of the Attorney General on behalf of  
the Principal Chief and the Cherokee Language Forum.*

# **Cherokee Language Assessment Proposal Handout**

Cherokee Language Teacher Certification Assessment Model

Rubrics and Sample Tests for Cherokee Language Assessment

WCU Cherokee Language Program prepared this document in consultation with the Cherokee Language Forum. We present a model for a Cherokee Language Teacher Certification Assessment. Our model is based on the Oklahoma Subject Area Test for Cherokee language and on the Praxis II language tests. This test is designed to assess Cherokee language skills in the areas of reading, writing, listening, speaking, grammar, and culture.

Reading Rubric and Sample Test

Writing Rubric and Sample Test

Listening Rubric and Sample Test

Speaking Rubric and Sample Test

Grammar and Education Rubric and Sample Test

Culture Rubric and Sample Test

Sample tests and rubrics for each area are available online at

<https://media.wcu.edu/groups/chokeelanguage/wiki/479bd/CertTestsGradingRubrics.html>

We have worked with Graham County and Robbinsville High School to develop High School Cherokee Language 1 and High School Cherokee Language 2. Curriculum outlines at: <https://media.wcu.edu/groups/chokeelanguage/wiki/e56c3/CherLangHighSchool.html>

## References:

ACTFL Proficiency Guidelines – Speaking (revised 1999 –pdf).

<http://www.actfl.org/i4a/pages/index.cfm?pageid=4236>

ACTFL Proficiency Guidelines – Writing (revised 2001 –pdf).

<http://www.actfl.org/i4a/pages/index.cfm?pageid=4236>

ACTFL Proficiency Guidelines (published as ACTFL. 1983. ACTFL Proficiency Guidelines. Revised 1985. Hastings-on-Hudson, NY: ACTFL Materials Center.

<http://www.sil.org/lingualinks/languagelearning/otherresources/actflproficiencyguidelines/ACTFLProficiencyGuidelines.htm>

Educational Testing Services. 2005. The Praxis Series Study Guide. Spanish: Content knowledge and productive language skills. Princeton, NJ: ETS – The Praxis Series.

Oklahoma Commission for Teacher Preparation and Pearson Education, Inc. 2007. OSAT Study Guide: 079 Cherokee. Amherst, MA: National Evaluation Systems.

[http://www.ceoe.nesinc.com/PDFs/OK\\_079\\_SG.pdf](http://www.ceoe.nesinc.com/PDFs/OK_079_SG.pdf)

# TABLED AMENDED

9.

Cherokee Council House  
Cherokee, Qualla Boundary, (NC)

Date: MAR 04 2010

## ORDINANCE NO 216 (2010)

WHEREAS, The Board of Elections has submitted proposed changes to the Election Ordinance; and

WHEREAS, The proposed changes include an Early Voting legislation to be added to the Election Ordinance.

NOW THEREFORE, BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that the following sections of Chapter 161 of Cherokee Code, shall be modified to read as follows:

### CHAPTER 161: ELECTIONS

#### 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

##### **Sec. 161-2. Tribal Offices.**

- (a) The Principal Chief and Vice-Chief shall be elected and hold office for terms of four years.
  - (b) The representatives elected to the Tribal Council shall be elected and 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 Graham and Cherokee Counties constituting one Township, two members.
  - (c) The members of 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 in Yellowhill, Painttown, and Big Y Community in 1999, and each four years thereafter.
- (Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-3. 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 primary election; and
- (3) Have resided on Cherokee trust land continuously for at least two years immediately preceding the date of the primary 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 for or serve as a member of the Tribal Council, a candidate must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age by the date of the primary 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 primary election; and
- (4) Continue to reside in the township in which the candidate was elected during their term of office; and
- (5) Be a registered voter with the Tribal Election Board.

(c) In order to run or serve as a member of the Cherokee School Board, a candidate must:

- (1) Reside in the community the candidate represents for at least one year immediately preceding the date of the primary election and continue to reside in that community during the term of office; and
- (2) Be at least 21 years of age by the date of the primary 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 Central School System; and
- (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 Office, if:

- (1) The person has been convicted of, pled guilty to, or entered an Alford plea to a felony; or
- (2) The person has aided, abetted, counseled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or has defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians; or
- (3) The person has been impeached by the Tribal Council or found guilty in any jurisdiction to have violated a law that would constitute a violation of Section 17 of the Charter and Governing Document of the Eastern Band of Cherokee Indians; or
- (4) The person has resigned from office while under investigation or under pending charges for fraud, or a 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 currently held will expire prior to or at the same time as the person would assume office if elected to the new office.

(f) No person is eligible to hold the office for Principal Chief, Vice-Chief or Tribal Council member while simultaneously being a Tribal employee or an employee of a Tribal entity.

(g) Members of the Tribal Council or School Board who change their residence from the township that they were elected to represent shall be removed from office by the Board of Elections if a petition is filed with the Board by an enrolled member registered in that township and upon such a finding made by the Board of Elections. Tribal Council or School Board members whose residence is challenged by such a petition 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 Election Board's decision is the final decision to be made by a Tribal body, but may be appealed to the Tribal Court for further review.  
(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-4. Filing for office.**

(a) All persons filing for election to the office of Principal Chief, Vice-Chief, Tribal Council, or School Board must file with the Tribal Finance Office between March 1 and March 31 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. Such notification shall be sent to the address listed on the applicants filing form by certified mail with return receipt requested. Such notice shall be considered served on the third day of its deposit with the US Postal Service. Any adverse decisions shall be accompanied with a clear and concise statement as to the reason for denial and shall include a list of the applicant's rights to request a hearing before the Board of Elections.

(c) Simultaneously with the filing of an application, each candidate must pay a filing fee to the Tribal Finance Office. Candidates for the office of Principal Chief and Vice-Chief shall pay a filing fee of \$500.00. Candidates for the Tribal Council shall pay a filing fee of \$300.00. Candidates for the School Board shall pay a filing fee of \$150.00. All fees are non-refundable and shall be paid by cash, cashiers check, or money order.

(d) No candidate shall have his or her name placed on any official ballot unless the candidate has been both certified by the Board of Elections and has paid the proper filing fee to the Tribal Finance Office pursuant to Subsections (a), (b), and (c) of this Section.

(e) Candidates who are denied certification shall have the right to request a hearing before the Board of Elections. Such hearings may be obtained only by filing a written request with the Chairman of the Board of Elections within five business days of the adverse ruling by the Board of Elections. Such hearing requests shall be hand delivered to the office of the Board of Elections during normal business hours or sent to the Board of Elections by certified mail with return receipt requested. Such hearing request shall be considered served on the date of the hand delivered or on the date of the receipt of the certified mail. The burden for appearance at the scheduled date and time shall be on the denied candidate. At such hearing, any person denied certification shall have the right to present written evidence or oral testimony to establish their qualification as a candidate for that particular office. The Board shall issue a written decision to the candidate stating whether the candidate satisfies the requirements for such office within two business days 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. The written decision from the Board of Elections shall be sent to the candidate by certified mail with return receipt requested. Proof of service of process is a return receipt from the United States Postal Service or a return of service from the Cherokee Police Department.

(f) All candidates shall sign an agreement under oath to use the voter list provided to the candidate pursuant to Section 161-11.3 of this Chapter only for truthful communications with eligible voters in connection with the election. The candidate must clearly identify himself/herself in all such communications. Any claims or complaints shall be directed to the Board of Elections for investigation.

(g) If at any time prior to the candidate being seated into their respective office should a candidate no longer meet the eligibility requirements of Section 161-3 of this Chapter, the Board of Elections reserves the right to retract their initial certification and decertify that a person as a candidate. A candidate may request a hearing under Subsection (e) above.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-4.1. Write-in candidates.**

- (a) All persons wishing to run as write-in candidates in the general election must declare their candidacy by filing with the Board of Elections [REDACTED] no later than 30 days [REDACTED] after the primary election. All candidates must complete a filing form to establish that they meet the qualifications of the office for which they file.
- (b) Write in candidates shall pay a filing fee in the amount as required by the registered candidate as specified in Subsection 161-4(c) of this Chapter.
- (c) The Board of Elections shall review all write-in forms and shall certify each applicant as either eligible or ineligible and notify the applicant of its decision within five business days of the date of filing.
- (d) Write-in votes will not be counted unless the first and last name of the candidate is written on the ballot. The name of the candidate for purposes of write-in voting is the name filed by the candidate with the Board of Elections. The Board of Elections shall make public the names of write-in candidates certified as eligible for each Tribal office no later than seven days before the general election.
- (e) Unless a person has filed with and been certified as a write-in candidate by the Board of Elections pursuant to Subsection (a) and (c) of this Section, no write-in votes for that person shall be counted or reported by the Board of Elections.
- (f) No write-in voting is permitted in the primary election, and no write-in votes cast in the primary election shall be counted or reported.
- (g) No stickers preprinted with a candidate's name are permitted.  
(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-5. Primary elections.**

- (a) 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.
- (b) The two candidates receiving the most votes for the office of School Board in each district shall be certified by the Board of Elections, and their names shall be placed on the ballot for the general election.
- (c) If two or fewer candidates file and are certified eligible under Section 161-4 for Principal Chief, Vice-Chief, or a district School Board position, then no primary election shall be held for that office, and those candidates shall have their names placed on the ballot for the general election.
- (d) If four or fewer candidates file and are certified eligible under Section 161-4 for Tribal Council in a particular township, then no primary election for Tribal Council shall be held in that township, and those candidates shall have their names placed on the ballot for the general election.
- (e) No write-in voting is permitted in the primary election, and no write-in votes cast in a primary election shall be counted or reported.  
(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-6. Recounts.**

- (a) If 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 two business days after the closing of the polls for that election. The recount shall be performed by the members of the Board of Elections.

(b) If 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 Board of Elections within two business days after the closing of the polls for that election. The recount shall be conducted by the Board of Elections within three business days of filing of the request by the unsuccessful candidate.

(c) At the conclusion of any such recount, the Board of Elections shall announce the tally and results of the recount, which shall become the unofficial tally for that office pending official certification of the results of the election to the Tribal Council pursuant to Section 161-16.1 of this Chapter.

(d) Any candidate on a ballot subject to a recount by the Board of Elections may observe in person or designate a person to observe the recount. Such representation must be designated in writing, with such written appointment delivered to 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-7. Run-off elections.**

(a) If after a recount of ballots by the Board of Elections two or more candidates running for seats on the School Board, Tribal Council, Vice Chief, or Principal Chief receive the same number of votes in the primary election for the last available position on the general election ballot, the Board shall conduct a run-off election between such candidates. The candidate receiving the greatest number of votes in that election shall be deemed eligible to stand for the general election.

(b) If in the general election after a recount of ballots is conducted by the Board of Elections two candidates receive the same number of votes and the votes represent the largest vote total by any individual candidate for that township, the two candidates shall be deemed elected to the seats on the council for that township.

(c) If after a recount of ballots by the Board of Elections two or more candidates running for the last available seat on the Tribal Council receive the same number of votes in the general election and the 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 Tribal Council for that township.

(d) If after a recount of ballots by the Board of Elections two or more candidates running for a seat on the School Board, or for the seat of Vice Chief, or Principal Chief receive the same number of votes in the general election and the votes represent the 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 a seat on the School Board or to the seat of Vice Chief or Principal Chief as the case may be.

(e) Should the Board of Elections determine that a recount of ballots would not determine the accurate vote count; the Board of Elections shall issue a run-off election between all candidates that the Board deems as necessary to resolve any issues concerning the accuracy of the vote count. All decisions made by the Board of Elections in regards to run-off elections shall be final.

(f) A run-off election shall be held within 15 days of the decision of the Board of Elections to hold such a run-off.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-8. Special elections.**

(a) In case of a vacancy for the office of Principal Chief, the Vice Chief shall become the Principal Chief and shall serve the balance of the elected term of office until his or her successor is elected.

(b) If the position of Vice Chief is vacated, the council may elect a successor who shall serve until his successor is elected.

(c) If the office of the 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 of the Tribal Council does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled as follows: The office of Vice Chief shall be filled through election by Tribal Council, and the Vice Chief shall serve in place of the Principal Chief until a special election can be held. The Board of Elections shall give public notice of a period of 15 days during which qualified persons may file for 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 special 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. The candidate receiving the most votes in the run off election shall be deemed elected to the seat of Principal Chief. Once the Principal Chief is elected and seated, the acting Principal Chief shall step down and resume his or her elected position as Vice Chief.

(d) In the event of a vacancy on the Tribal Council 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 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 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 in 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 applicable qualifications for that office pursuant to Section 161-3 of this Chapter.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-9. Referendums/initiatives.**

(a) *Purpose.* A referendum is the people's ability to refer newly enacted law by petition, from the legislation to the ballot for final approval. The following rules shall apply.

(b) *Definitions.*

*Initiative* shall mean the right and procedure by which citizens can propose a law by petition and ensure its submission to the electorate.

*Referendum* shall mean the submission of a proposed public measure or actual statute to a direct actual vote.

(c) *Process.*

(1) A referendum/initiative issue shall only be established by resolution of the Tribal Council, duly ratified by the Principal Chief.

a. A referendum initiated by Tribal Council does not need a petition.

(2) It shall require a petition of 25 percent of the registered voters to petition the Tribal Council for a resolution for a referendum/initiative election on a proposed ordinance or action by the Tribal Council or Principal Chief. It shall require a petition of 33 percent of registered voters to petition the Tribal Council for resolution for a referendum/initiative election on a proposed change to the Charter or Governing Document. The petition requirement shall not apply to any resolution or issue properly before council, which council, on its own initiative presents to the Cherokee people for referendum vote.

(3) 51 percent of registered voters must vote in a referendum/initiative election before the proposed amendment to the Charter or Governing Document shall be enacted or repealed.

(4) If a majority of the voters voting in a referendum/initiative election are in favor of the enactment or repeal of an ordinance or resolution, provided that at least 30 percent of registered voters have voted in such an election, the ordinance or resolution shall be enacted or repealed. No action undertaken by this procedure shall be overturned by Tribal Council.

a. A petition shall be on a form provided by the Board of Elections and shall include the designation of three signatories as the Petitioner's Committee; signature lines for the names, addresses and enrollment numbers of supporters of the petition; and a full explanation of the proposed action sought by referendum including the full text of the proposed action. This proposed legislation shall appear on all signature sheets.

b. The petition shall be submitted to the Board of Elections in order that the information listed on the petition is verified. Only registered voters shall be counted in this process.

(5) Each resolution for referendum shall be in the full text form of the proposed action. Before the issue is presented to the Cherokee people for a vote, the text of the question shall be reviewed by the Office of the Attorney General and finally approved by the Tribal Council and the Principal Chief to ensure that the question for vote adequately and clearly informs the voter of the question to be answered, is limited to one question at a time, and encompasses only one issue per question.

(6) All registered voters shall be eligible to vote on a referendum issue.

(7) Referendums for any purpose of this Section shall be conducted by the following procedures:

a. The Board of Elections shall schedule a referendum election for any purpose other than that of modifying the Charter and Governing Document to be held within 90 days of ratification of the resolution.

b. Within 10 business days of ratification of the resolution the Board of Elections shall give public notice of the upcoming referendum by advertising in the Cherokee One Feather, Graham Star, and Cherokee Scout and by mailing all eligible voters. The public notice shall contain an election schedule which shall notify all voters of the date of the election, the question to be voted on and the date in which the voter registration rolls will close.

c. The Board of Elections shall close the voter registration books 30 days prior to the referendum election.

d. The Board of Elections shall appoint all election officials within 10 days of the ratification of the resolution for referendum. The Board shall conduct an orientation for precinct officials prior to the election.

e. The Board of Elections shall issue ballots for referendum in accordance with the absentee ballot application process pursuant to the procedures set out in this Section.

f. Persons desiring to vote by absentee ballot may begin applying for such ballot immediately after receiving notice of the referendum election and all applications must be submitted by at least 15 days prior to the election.

g. Absentee ballots shall be given or mailed to the prospective voter by the Board of Elections beginning 15 days following the ratification of the resolution for referendum. All absentee ballots for referendum must meet the same criteria for any other election and must be returned to and received by the Board of Elections ten days prior to the referendum election.



(8) The outcome of the referendum vote shall be certified by the Board of Elections and shall be a binding action or law duly passed and ratified by the Principal Chief.

(9) Any protest regarding an election irregularity shall be conducted according to the procedures set out in the current law. (Tribal Election Law Section 161-16).

(10) An issue that has been brought before the eligible voters and voted upon by referendum/initiative may not be voted upon again until a period of five years has passed.

(Ord. No. 409, 8-25-2008)

## ARTICLE II. VOTERS

### **Sec. 161-10. Qualifications.**

To be eligible to vote in any Cherokee election, a person must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age on the date of the applicable election; and
- (3) Be registered with the Cherokee Board of Elections as set forth in Section 161-11 prior to the applicable election.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-11. 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 sent by certified United States Mail with a certified and verified voter registration card. All voter registration cards received by mail must be notarized and must include a copy of the voter's government issued ID card.

(b) Voters shall register in the township in which they currently reside. Tribal members not living on Cherokee Trust Land shall register in the township in which they last resided. Voters who have never resided on Cherokee Trust Lands shall register in the township in which his/her enrolled mother last resided. If the voter's mother was not an enrolled member or never held a residence on Cherokee Trust Land, then the voter shall register where his/her enrolled father last resided.

In the case that neither the voters mother or father held a residence on Cherokee Trust Land, then the voter shall register in the township where their nearest matrilineal ancestor last resided. If the voter's mother's side of the family is not of Cherokee descent then the first matrilineal line on the father's side shall be used to determine township.

For the purpose of this Section the terms mother and father shall mean biological mother and biological father, unless a legal adoption has occurred in which case mother and father shall mean adoptive mother and adoptive father. Voters moving from one township to another must reregister in the new township.

(c) The Board of Elections may conduct special registrations within any precinct if it is deemed advisable. All such special registration shall be published at least one week in advance in the Cherokee One Feather, Cherokee Scout, and Graham Star.

(d) 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. Those registered voters who change their residence during this period are not required to update their registrations until the registration rolls reopen. The residency requirement of Subsection 161-11.1(a) of this Chapter shall be waived during this period to resolve any conflicts within this Chapter.

(e) The Board of Elections shall open the voter registration books on the Monday following the certification of the primary election until the last business day in July to allow voters to register and/or re-register for the general election. During the period when the registration rolls are

closed those registered voters who change their residence are not required to update their registration until the registration rolls reopen on the first business day following the certification of the general election. This residency requirement of Subsection 161-11.1(a) of this Chapter shall be waived during this period to resolve any conflicts within this Chapter.

(f) The Board of Elections shall reopen the voter registration books on the next business day following the certification of the general election.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-11.1. Changes in voter registration.**

(a) Once a person is registered by the Board of Elections, they shall remain registered until such time as they move to a different township, at which time they must register in the new township pursuant to Subsection 161-11(b) of this Section.

(b) Persons living in a long term care facilities and those who are displaced due to emergency situations may petition the Board of Elections for a waiver for the change of township requirement in Subsection (a) of this Section. Waivers may be issued upon proof of displacement.

(c) The Board of Elections shall purge its lists of voters annually for deceased voters in each community.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-11.2. Challenges to voter registration.**

(a) When the Board of Elections has or receives evidence demonstrating to the Board's satisfaction that a voter is not registered in the correct township, the Board shall notify the voter in writing and give the voter five business days to re-register or submit any relevant evidence in response. See Section 161-16 for proof of residency. The Board shall determine the voter's correct voting township based on the evidence and notify each voter in writing of any changes. No changes shall be made to a voter's township when the registration rolls are closed.

(b) The Board of Elections is authorized to utilize all resources available to properly document a voter's residence for registration purposes. The burden is placed upon the voter to dispute any changes made by the Board of Elections within the registration books. Any affected voter may request a hearing before the Board of Elections within five business days from receipt of a change of township notice. The Board shall afford any voter a hearing within five business days from receipt of hearing request. The affected voter has the right to present any witnesses or documentation to the Board of Elections during the hearing. The Board will issue its decision within five business days from the date of the hearing to either rescind or uphold its decision.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-11.3. Notice of voter registration.**

(a) The Board of Elections shall post a notice of all eligible voters and current registrations in the office of the Board of Elections; and the Board of Elections shall mail eligible voters notice of any new voter registration laws in order to give voters the opportunity to make corrections to their voter registration as may be necessary.

(b) The Board of Elections shall prepare and provide to each candidate a printed and electronic listing of each registered voter within the candidate's precinct. This list shall contain the name and current mailing address for each voter. All mailing addresses will be provided by the EBCI Enrollment Department. The Board of Elections shall cross-reference registered voters between townships prior to each Tribal election. Except as provided in this Subsection, the Board shall not be required to give any other lists or other database information to candidates. The candidates are authorized to use such lists only for lawful communications with registered voters related to the election campaign pursuant to Section 161-4(f) of this Chapter.

(c) The Board of Elections shall not release any information regarding an individual's personal voting record to candidates or the general public.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-12. 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.

(c) No campaign signs of any kind shall be allowed within 100 yards of designated polling places for a period of one week prior to the Election Date.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-13. 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, or actively support any candidate, running in the precinct the election official serves; and

(6) Must successfully attend and complete the mandatory orientation training seminar provided by the Board of Elections prior to each election.

(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. The chief judge shall be responsible for obtaining the ballot box, tally sheets, and the registration books from the Board of Elections on the day of orientation 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 election judges shall be responsible for reconciling the ballot totals with the ballot tabulator receipts in their respective precincts. They shall certify the count by signing the tally sheets. 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 casting a ballot. The Clerk shall assist individual voters who seek assistance in marking ballots. The Clerk shall assist 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, their immediate family, or their workers are within 100 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. One alternate shall be appointed by the Board of Elections to serve at the Board of Elections Office, and shall serve in any polling place should an unforeseen emergency arise.

(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) All election officials shall before entering on their duties of office take the following oath before a member of the Board of Election: "I [name], having been duly appointed to serve as [title] for the [community] Township in the [year] [type of election] Election, do solemnly swear (or affirm) that I will faithfully perform the duties of that office to the best of my abilities and that I shall serve in a fair and impartial manner without fear or favor to anyone." All oaths shall be signed and dated by the respective elected official, such signed oath shall also include the printed name of the elected official.

(3) 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### **Sec. 161-14. Voting procedures.**

(a) When a Tribal member appears at the polling place to vote, the enrolled member shall present an Election Judge with a government issued I.D. to verify identification, an Election Judge shall then determine if the name appears on the official list of registered voters furnished by the Board of Elections. If there is any question regarding a voter's eligibility, the chief judge shall call the Board of Elections to verify. If after confirmation with the Board of Elections, the voter is determined not to be eligible or registered, he/she shall not be allowed to vote. If the name appears on the list, the clerk shall then insure that the voter's name does not also appear on the list of absentee voters or list of early voters, and record the name in a record book maintained for that purpose. A judge shall then give the voter an unmarked ballot.

(b) The voter shall mark the ballot in a private area within the polling place. 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 or other assisting party shall mark the ballot as requested by the voter, and shall have two election officials witness the marking. An official Affidavit of Assistance form must be signed by the voter prior to the clerk or other assisting party marking the ballot and noted on that form the signatures of all election staff who in the administration or witnessing of the casting of the ballot. The two election officials shall witness the marking of the ballot and then immediately return the ballot to the polling place and deposit the ballot in the ballot box.

(d) The Board of Elections shall not provide absentee ballots for run-off or special elections.

(e) If any elderly, handicapped, or infirm person is unable to enter the polling place, the person shall be permitted to vote in a motorized vehicle at the polling place. Such elderly, handicapped, or infirm voters shall be permitted to vote by having any two of the four election officials personally deliver the ballot to such a voter. An official Affidavit of Assistance form must be signed by the voter prior to the voter marking the ballot, and be noted on that form the signatures of all election staff who assisted in the administration or witnessing of the casting of the ballot. The two election officials shall witness the marking of the ballot by the voter and then immediately return the ballot to the polling place and deposit the ballot in the ballot box.

(f) After the polls are opened, under no circumstances shall a ballot box be opened until the polls are closed. If manual ballots are used, 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 judge for the Board of Elections only at the closing of the polls. If electronic tabulators are used, the Board of Elections shall use equivalent procedures consistent with the technical requirements of the ballot tabulators to ensure that no unauthorized ballots are inserted in the ballot box or counted in the election.

(g) 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. The Chief Judge must submit a report of the alleged irregularities in writing stating specifically and in detail what the alleged irregularity is immediately.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-15. 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) Only enrolled members who are registered to vote and meet one of the following requirements may vote by mail or in person by absentee ballot:

(1) Tribal members serving on active military duty who are unable to return to Cherokee to cast their votes;

(2) Tribal members employed with the Federal government assigned to duty other than the Cherokee Indian Reservation who are unable to return to Cherokee to cast their votes;

(3) Tribal members enrolled in institutions of higher education that are unable to return to Cherokee to cast their votes;

(4) Tribal members who are employees of the Tribe and are required to be away from Cherokee for training or for reasons required by their employment on the date of election who are unable to return to Cherokee to cast their votes;

(5) Tribal members who because of illness are in a hospital, nursing home, or other treatment facility and who because of their physical condition and course of treatment are unable to return to Cherokee to cast their votes; or

(6) Tribal members who physically reside on Cherokee trust lands but who will be absent from Cherokee on Election Day for business or personal reasons and are unable to return to Cherokee to cast their votes.

(c) Person desiring to vote by absentee ballot must apply for such a ballot within the following time periods: Beginning on April 1 and ending on May 15 for the primary election, and beginning on July 1 and ending on August 15 for the general election. The Board of Elections may require appropriate documentation to establish compliance of Subsection 161-15(b) of this Section be submitted with the application.

(d) Absentee ballots shall be given or 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, and 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 all 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 ballot 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, etc.) to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_."

(g) An application for absentee ballot shall be issued only by mail or in person to the voter. The voter shall provide a copy of his/her enrollment card and a copy of his/her government issued id card with the application for absentee ballot. The application shall require the voter to certify as follows:

"I, (Print Full Name), do certify that I am a voter in the \_\_\_\_\_ Township of the Eastern Band of Cherokee Indians, duly registered in accordance with Cherokee Code. I understand it is a criminal offense to falsely sign this certificate.

\_\_\_\_\_  
Signature of Voter

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

(h) 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 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 certifies that \_\_\_\_\_ is a registered and qualified voter of \_\_\_\_\_ Township and has made proper request to vote under the laws of the Eastern Band of Cherokee Indians.

\_\_\_\_\_  
Chairman/Member

Date:

(2) On the other side shall be printed the return address of the Board of Elections and the following certification:

"Certification of Absentee Voter: I, (Print Full Name), do certify that I am registered voter in \_\_\_\_\_ Township of the Eastern Band of Cherokee Indians. I further certify that I requested an absentee ballot and that I marked the ballot enclosed herein, or that it was 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: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

(i) On or before May 1 for a primary election and August 1 for a general election, the Board of Elections shall prepare and print a sufficient number of instruction sheets on how voters are to prepare absentee ballots and return them to the Board of Elections. The instruction sheet shall state the date on which ballots must be received by the Board of Elections to be counted.

(j) The Board of Elections shall use the following procedures:

(1) Record of applications received and ballots issued. Upon receipt of a voters application for an absentee ballot, 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 the voter requesting an absentee ballot.
- b. Number assigned to voters ballot when issued.
- c. The township in which applicant is registered.
- d. Address to which the ballot is mailed.
- e. The date the request for ballot was received.

(2) When the Board of Elections receives an application for absentee ballots, it shall promptly issue and transmit the ballot to the voter only, not to a relative, in accordance with the following instructions:

- a. On a detachable tab, the Board of Elections shall have printed the words "Absentee Ballot No. \_\_\_\_" and insert in the blank space the number assigned to the absentee voter. The Board shall not write, type, or print any other matter upon the ballot.
- b. The Board shall detach the numbered tab, fold and place the ballot in a return envelope and write or type in the appropriate blanks thereon the absentee voters name, his/her ballot number and the designation of the township in which the voter is registered. The Board of Elections shall leave the return envelope holding the ballots unsealed.
- c. The Board of Elections shall then place the unsealed return envelope holding the ballot, together with printed instructions for voting and returning the ballot, in an envelope addressed to the voter at the address stated in his/her request; seal the envelope, and mail it at the expense of the Board of Elections. Alternatively, a voter may personally pick up the ballot at the Board of Elections office.

(3) If the application is denied, the Board of Elections will notify the voter in writing of the reason for denial and give the voter 10 days to seek reconsideration of that decision by the Board of Elections. The decision of the Board of Elections to deny an absentee ballot application shall be final.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### **Sec. 161-15.1 Early Voting**

(a) Any eligible registered voter may vote under the provisions of this subsection.

(b) Early voting opens the second Monday of May before the primary election and the second Monday of August before the general election and closes at 4:30 pm on the last Saturday prior to the primary or general election. Early voting hours shall be 8:00 am until 4:30 pm on regular business days except for the last Saturday prior to the scheduled election; the last Saturday hours shall be 8:00 am until 4:30 pm. All early voting shall be conducted at the Board of Elections Office.

(c) A voter shall produce a government issued identification to a Board of Elections member or an authorized board employee. If after examining voter registration records, it is determined that the voter is registered, they shall be issued a ballot for the community in which they are registered. Prior to receiving the ballot, the voter shall print in a legible manner their name, print the community in which they are registered, and sign their name on an early voting log maintained by the Board of Elections.

(1) The early voting ballots shall be marked and distinctly colored separate from the absentee and regular voting ballots. On a detachable stub, the Board of Elections shall have printed the words "Early ballot No. \_\_\_\_" and insert in the blank space the number assigned to the early voter. This number shall be recorded on the early voting log. The

Board shall not write, type, or print any other matter upon the stub. The Board shall detach the numbered ballot tab.

(2) After voting in a private area of the Board of Elections Office, the voter shall fold the ballot and place the ballot in a sealed envelope provided and witnessed by a Board Member.

(d) A registered voter who is medically homebound, who resides on Trust land, and does not meet the criteria for absentee voting, may call the Board of Elections Office and schedule an appointment for two Board Members to bring a ballot to their home so that they may cast their ballot. The Board of Elections members may assist the voter if requested in accordance with the procedures set forth in 161-14 (e). This voting will only be allowed during the time that the early voting period is open.

(e) The Board of Elections shall prepare a list of all early ballots cast 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 early voter's list.

(f) Election irregularities and protests shall be conducted in accordance with the procedures set forth in Section 161-16 of this chapter.

#### **Sec. 161-16. Election irregularities and protests.**

(a) All protests must be submitted to the Board of Elections in writing and on forms provided by the Election Board. All hearings for election irregularities and protests shall be set according to this Section.

(b) A protest of a voter's township registration may be made by any enrolled member or candidate who is a registered voter, but such protest must be made and received by the Board of Elections by March 31 of an election year as defined in Section 161-20 of this Chapter. Proof of township for registration purposes are set out in Section 161-20 of this Chapter. There shall be no township registration protests accepted from April 1 until the following business day after the certification of the general election results.

(c) A protest of irregularities in the conduct of an election must be submitted to the Board of Elections no later than five business days after the close of the polls and a hearing shall be set within five business days after the receipt of the written protest. All persons that the protest may affect shall be notified of the scheduled hearing by the Election Board.

(d) Any person filing a protest for election irregularities under Subsection 161-16(c), above, must establish during a hearing in front of the Board of Elections that the alleged irregularities unfairly and improperly or illegally affected the actual outcome of the election or that, but for the alleged irregularities, the outcome of the election would have been different.

(e) All persons shall have the right to have legal counsel represent them at the hearing.

(f) After all parties have had an opportunity to be heard and present evidence the Board of Elections shall issue a final written decision stating their findings and decision. The decision shall be issued within five business days after the conclusion of the hearing. The written decision shall be sent to all affected person(s) by means of certified mail with return receipt requested, or shall be hand delivered by an officer of the Cherokee Police Department. Proof of service of process is a return receipt from the United States Postal Service or a return of service from the Cherokee Police Department.

(g) The Board has the power to:

(1) Find that the protest did not meet the requirements set forth in this Chapter and dismiss the protest; or

(2) Find that the protest did meet the requirements set forth in this Chapter and issue the appropriate relief.

(3) If the Board of Elections finds that there was an election irregularity, then the Board of Elections is authorized to issue relief in the form of ordering a new election or a run-off election between two or more candidates affected by the election irregularity. If it is shown by the evidence presented that a crime may have been committed during the course of the election, the Board of Elections may present evidence to the Tribal Prosecutors Office for possible criminal charges.

(4) The Board of Elections shall use the same procedure set out in Section 161-7 of this Chapter, if a new or run-off election is warranted. Eligibility to vote in a new or run-off election under this Section shall be determined by the Board of Elections based on the voters eligibility and the circumstances at the time of the new or run-off election.

(h) No person shall be entitled to receive monetary damages or recover their legal or personal expenses from the Board of Elections or the Tribe.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### **Sec. 161-16.1. Certification of election results.**

(a) At the meeting of Tribal Council on the first Monday of October following a regular election, or after the first meeting of the Tribal Council following a special or primary election, the Board of Elections shall certify the election to the Tribal Council.

(b) 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.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **ARTICLE III. BOARD OF ELECTIONS**

#### **Sec. 161-17. Board established.**

(a) The Board of Elections shall be composed of four 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.

(b) In order to serve as a member of the Board of Elections, a candidate must:

(1) Be an enrolled member of the Eastern Band of Cherokee Indians; and

(2) Be at least 18 years of age on the date of appointment; and

(3) Reside on Cherokee Trust Lands for at least one year prior to the date of appointment and continue to reside on Cherokee Trust Land for the duration of their term; and

(4) Have received a high school diploma or equivalent prior to the date of appointment.

(c) 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 the member is appointed to the Board.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### **Sec. 161-18. Vacancies.**

A vacancy on the Board 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### **Sec. 161-19. Duties of the Board.**

- (a) The Board shall have the power to make final decision on candidate eligibility, proper registrations, absentee eligibility, and protest decisions. The Board, in carrying out its decision, shall have the authority to subpoena documents and witnesses and shall have quasi-judicial powers to make the final rulings on all election protests properly before it.
- (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 a 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 elections officials in each precinct.
- (e) The Board shall be responsible for certifying each applicant as eligible or ineligible, notifying each applicant of its decision, and holding appeal hearings as set forth in this Chapter. The Board shall make public the names of the candidates certified as eligible on the ballot for each Tribal office no later than May 10 of an election year for the primary election and August 10 of an election year for the general election.
- (f) The Board, together with the election officials for each precinct shall conduct all ballot counts after the closing of the polls. The Board shall thereafter make public unofficial reports of election returns. The Board shall certify elections as specified in Section 161-16.1.
- (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 in accordance with Section 161-16.
- (h) The Board shall have access to all ballot boxes and their contents, all voting machines and their contents, all registration records, and all necessary enrollment records in the Tribal Enrollment Office to carry out its duties under this Chapter. The Board of Elections is authorized to utilize all resources available to properly document a voter's residence for registration purposes.
- (i) The Board shall conduct an instructional meeting for precinct officials one day prior to each election.
- (j) The Board shall keep a tape or written record of all Board meetings
- (k) 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.
- (l) The Board shall have the authority to fully implement and carry out all other duties set forth in this Chapter.
- (Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

## ARTICLE IV. GENERAL PROVISIONS

### **Sec. 161-20. Definitions.**

The terms defined in this Section shall, for all purposes of this Chapter, have the meanings specified below:

*An Election Year* shall mean October 1 through September 30 of the year of a regular election.

*Government Issued Identification* (I.D.) shall mean a state issued driver's license, military personnel I.D. card, a government issued passport, or EBCI Enrollment card.

*Immediately Related* shall mean a husband, wife, father, mother, brother, sister, daughter, son, aunt, uncle, grandfather, grandmother, niece, or nephew.

*Precinct* shall mean the polling place in each voting township, referring specifically to trust land.

*Residence* shall mean the act or fact of living in a particular township for some time or the place where one actually lives as evident by, but not limited to, a 911 address, government I.D. affidavits of neighbors, school records for children, employment records, and spouse's employment records. Residence is meant to be interpreted as the word is most commonly used.

*Township* shall mean the established communities recognized by the Tribal Council: Big Cove (including Tow String), BirdTown (including 3200 Acre Tract), PaintTown, YellowHill, WolfeTown (including Big Y), SnowBird, and Cherokee County trust lands combined.

*Trust Land* shall mean land held in trust by the United States government for the benefit of the Eastern Band of Cherokee Indians or its members.  
(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-21. 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-22. Effective date; amendment; severability; weekends.**

(a) This Chapter and amendments to it shall be effective upon ratification by the Principal Chief.

(b) The provisions of this Chapter that established election requirements or procedures shall not be amended during an election year as defined in Section 161-20.

(c) If any provisions of this Chapter are found to be invalid because it is inconsistent with another law, then the inconsistent portion shall be reviewed and amended until all conflicts are resolved. All other provisions of this Chapter shall remain in full force and effect.

(d) If the deadline for any action required under this Chapter falls on a weekend or holiday, then the deadline is extended until the next business day.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-23. Appellate review.**

The standard of review for an appeal of a final decision by the Board of Elections shall be for error of law.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**ARTICLE V. MISCELLANEOUS**

**Sec. 161-24. Amendment to this Chapter.**

No provisions of this Chapter 161, otherwise known as the Election Ordinance, may be amended during any Election year in which regularly scheduled general elections for Tribal Council or Principal Chief or Vice Chief are held. This restriction does not apply to amendments that are necessary to comply with decisions of the Cherokee Tribal Court, or to amendments that are procedural or administrative that do not alter the substantive requirements for the actions or persons expressed in this Chapter.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

SUBMITTED BY: CHEROKEE BOARD OF ELECTIONS



AMENDMENTS TO ELECTION ORDINANCE

May 6, 2010 Tribal Council

CHAPTER 161 – ELECTIONS

**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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-2. Tribal Offices.**

(a) The Principal Chief and Vice-Chief shall be elected and hold office for terms of four years.

(b) The representatives elected to the Tribal Council shall be elected and 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 Graham and Cherokee Counties constituting one Township, two members.

(c) The members of 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 in Yellowhill, Painttown, and Big Y Community in 1999, and each four years thereafter.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

**Sec. 161-3. 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 primary election; and
- (3) Have resided on Cherokee trust land continuously for at least two years immediately preceding the date of the primary 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 for or serve as a member of the Tribal Council, a candidate must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age by the date of the primary 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 primary election; and
- (4) Continue to reside in the township in which the candidate was elected during their term of office; and
- (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 the candidate represents for at least 90 days immediately preceding the date of the primary election and continue to reside in that community during the term of office; and
- (2) Be at least 18 years of age by the date of the primary 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 Central School System; and
- (5) Be a registered voter with the Tribal Election Board.

123 2/12/10 7:19 PM  
Deleted: one year

123 2/12/10 7:20 PM  
Deleted: 21

(d) No person shall ever be eligible to file for or serve in any of the above Tribal Office, if:

- (1) The person has been convicted of, pled guilty to, or entered a no contest plea to a felony; or
- (2) The person has aided, abetted, counseled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or has defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians; or
- (3) The person has been impeached by the Tribal Council or found guilty in any jurisdiction to have violated a law that would constitute a violation of Section 17 of the Charter and Governing Document of the Eastern Band of Cherokee Indians; or

123 5/5/10 5:06 PM  
Deleted: an Alford

123 5/5/10 5:06 PM  
Formatted: Indent: Left: 0.5"

(4) The person has resigned from office while under investigation or under pending charges for fraud, or a 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 currently held will expire prior to or at the same time as the person would assume office if elected to the new office.

(f) No person is eligible to hold the office for Principal Chief, Vice-Chief or Tribal Council member while simultaneously being a Tribal employee or an employee of a Tribal entity.

(g) Members of the Tribal Council or School Board who change their residence from the township that they were elected to represent shall be removed from office by the Board of Elections if a petition is filed with the Board by an enrolled member registered in that township and upon such a finding made by the Board of Elections. Tribal Council or School Board members whose residence is challenged by such a petition 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 Election Board's decision is the final decision to be made by a Tribal body, but may be appealed to the Tribal Court for further review.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### **Sec. 161-4. Filing for office.**

(a) All persons filing for election to the office of Principal Chief, Vice-Chief, Tribal Council, or School Board must file with the Tribal Finance Office between March 1 and March 31 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. Such notification shall be sent to the address listed on the applicants filing form by certified mail with return receipt requested. Such notice shall be considered served on the third day of its deposit with the US Postal Service. Any adverse decisions shall be accompanied with a clear and concise statement as to the reason for denial and shall include a list of the applicant's rights to request a hearing before the Board of Elections.

(c) Simultaneously with the filing of an application, each candidate must pay a filing fee to the Tribal Finance Office. Candidates for the office of Principal Chief and Vice-Chief shall pay a filing fee of \$500.00. Candidates for the Tribal Council shall pay a filing fee of \$300.00. Candidates for the School Board shall pay a filing fee of \$150.00. All fees are non-refundable and shall be paid by cash, cashiers check, or money order.

(d) No candidate shall have his or her name placed on any official ballot unless the candidate has been both certified by the Board of Elections and has paid the proper filing fee to the Tribal Finance Office pursuant to Subsections (a), (b), and (c) of this Section.

(e) Candidates who are denied certification shall have the right to request a hearing before the Board of Elections. Such hearings may be obtained only by filing a written request with the Chairman of the Board of Elections within five business days of the adverse ruling by the Board of Elections. Such hearing requests shall be hand delivered to the office of the Board of Elections during normal business hours or sent to the

Board of Elections by certified mail with return receipt requested. Such hearing request shall be considered served on the date of the hand delivered or on the date of the receipt of the certified mail. The burden for appearance at the scheduled date and time shall be on the denied candidate. At such hearing, any person denied certification shall have the right to present written evidence or oral testimony to establish their qualification as a candidate for that particular office. The Board shall issue a written decision to the candidate stating whether the candidate satisfies the requirements for such office within two business days 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. The written decision from the Board of Elections shall be sent to the candidate by certified mail with return receipt requested. Proof of service of process is a return receipt from the United States Postal Service or a return of service from the Cherokee Police Department.

(f) All candidates shall sign an agreement under oath to use the voter list provided to the candidate pursuant to Section 161-11.3 of this Chapter only for truthful communications with eligible voters in connection with the election. The candidate must clearly identify himself/herself in all such communications. Any claims or complaints shall be directed to the Board of Elections for investigation. The voter list shall be furnished to each candidate in printed form, and if requested by the candidate, in electronic form set by field identifiers in a manner to permit the candidate to utilize the list electronically for the intended purpose of communication with the registered voters. The Election Board shall take all steps necessary to assure that the electronic list is made accessible for the candidate to properly utilize.

(g) If at any time prior to the election should a candidate no longer meet the eligibility requirements of Section 161-3 of this Chapter, the Board of Elections may decertify that person as a candidate. A decertified candidate may request a hearing under Sec. 161-4 (e).

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

#### Sec. 161-4.1. Write-in candidates.

(a) All persons wishing to run as write-in candidates in the general election must declare their candidacy by filing with the Board of Elections at least 30 days prior to the general election. All candidates must complete a filing form to establish that they meet the qualifications of the office for which they file.

(b) Write in candidates shall pay a filing fee in the amount as required by the registered candidate as specified in Subsection 161-4(c) of this Chapter.

(c) The Board of Elections shall review all write-in forms and shall certify each applicant as either eligible or ineligible and notify the applicant of its decision within five business days of the date of filing.

(d) Write-in votes will not be counted unless the first and last name of the candidate is written on the ballot. The name of the candidate for purposes of write-in voting is the name filed by the candidate with the Board of Elections. The Board of Elections shall make public the names of write-in candidates certified as eligible for each Tribal office no later than seven days before the general election.

(e) Unless a person has filed with and been certified as a write-in candidate by the Board of Elections pursuant to Subsection (a) thru (c) of this Section, no write-in votes for that person shall be counted or reported by the Board of Elections.

(f) No write-in voting is permitted in the primary election, and no write-in votes cast in the primary election shall be counted or reported.

123 2/12/10 7:34 PM

Deleted: the candidate being seated into their respective office

123 2/12/10 7:35 PM

Deleted: reserves the right to retract their initial certification and

123 2/12/10 7:28 PM

Deleted: a

123 2/12/10 7:37 PM

Deleted: Subsection (e) above.

123 2/12/10 7:40 PM

Deleted: and

(g) No stickers preprinted with a candidate's name are permitted.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-5. Primary elections.

(a) 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.

(b) The two candidates receiving the most votes for the office of School Board in each district shall be certified by the Board of Elections, and their names shall be placed on the ballot for the general election.

(c) If two or fewer candidates file and are certified eligible under Section 161-4 for Principal Chief, Vice-Chief, or a district School Board position, then no primary election shall be held for that office, and those candidates shall have their names placed on the ballot for the general election.

(d) If four or fewer candidates file and are certified eligible under Section 161-4 for Tribal Council in a particular township, then no primary election for Tribal Council shall be held in that township, and those candidates shall have their names placed on the ballot for the general election.

(e) No write-in voting is permitted in the primary election, and no write-in votes cast in a primary election shall be counted or reported.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-6. Recounts.

(a) If 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 two business days after the closing of the polls for that election. The recount shall be performed by the members of the Board of Elections.

(b) If 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 Board of Elections within two business days after the closing of the polls for that election. The recount shall be conducted by the Board of Elections within three business days of filing of the request by the unsuccessful candidate.

(c) At the conclusion of any such recount, the Board of Elections shall announce the tally and results of the recount, which shall become the unofficial tally for that office pending official certification of the results of the election to the Tribal Council pursuant to Section 161-16.1 of this Chapter.

(d) Any candidate on a ballot subject to a recount by the Board of Elections may personally observe the recount and be accompanied by one person to observe the recount. Should the candidate choose to not attend they may designate one representative to observe the recount. Such representation must be designated in writing, with such written appointment delivered to 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.

12/3 2/12/10 7:46 PM  
Deleted: designate  
12/3 2/12/10 7:46 PM  
Deleted: a

(e) Recount proceedings shall be recorded and transcribed and copies of the transcriptions shall be made available to each candidate upon request. (Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

12/3 2/12/10 7:53 PM

Deleted:

### Sec. 161-7. Run-off elections.

(a) If after a recount of ballots by the Board of Elections two or more candidates running for seats on the School Board, Tribal Council, Vice Chief, or Principal Chief receives the same number of votes in the primary election for the last available position on the general election ballot, the Board shall conduct a run-off election between such candidates. The candidate receiving the greatest number of votes in that election shall be deemed eligible to stand for the general election.

(b) If in the general election for Tribal Council two candidates receive the same number of votes and the votes represent the largest vote total by any individual candidate for that township, the two candidates shall be deemed elected to the seats on the council for that township.

12/3 2/12/10 7:57 PM

Deleted: after a recount of ballots is conducted by the Board of Elections

(c) If after a recount of ballots by the Board of Elections two or more candidates running for the last available seat on the Tribal Council receive the same number of votes in the general election and the 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 Tribal Council for that township.

(d) If after a recount of ballots by the Board of Elections two or more candidates running for a seat on the School Board, or for the seat of Vice Chief, or Principal Chief receive the same number of votes in the general election and the votes represent the largest vote total by any individual candidate for that race, 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 a seat on the School Board or to the seat of Vice Chief or Principal Chief as the case may be.

12/3 2/12/10 7:59 PM

Deleted: township

(e) Should the Board of Elections determine that a recount of ballots would not determine the accurate vote count, the Board of Elections shall issue a run-off election between all candidates that the Board deems as necessary to resolve any issues concerning the accuracy of the vote count. All decisions made by the Board of Elections in regards to run-off elections shall be final.

(f) A run-off election shall be held within 15 days of the decision of the Board of Elections to hold such a run-off.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-8. Special elections.

(a) In case of a vacancy for the office of Principal Chief, the Vice Chief shall become the Principal Chief and shall serve the balance of the elected term of office until his or her successor is elected.

(b) If the position of Vice Chief is vacated, the council may elect a successor who shall serve until his or her successor is elected.

12/3 2/13/10 2:57 PM

Deleted: h

(c) If the office of the 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 of the

Tribal Council does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled as follows: The office of Vice Chief shall be filled through election by Tribal Council, and the Vice Chief shall serve in place of the Principal Chief until a special election can be held. The Board of Elections shall give public notice of a period of 15 days during which qualified persons may file for 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 special 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. The candidate receiving the most votes in the run off election shall be deemed elected to the seat of Principal Chief. Once the Principal Chief is elected and seated, the acting Principal Chief shall step down and resume his or her elected position as Vice Chief.

(d) In the event of a vacancy on the Tribal Council 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, if the vacancy occurs during an election year the seat shall remain vacant until the next election. 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 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 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 in 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 applicable qualifications for that office pursuant to Section 161-3 of this Chapter.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-9. Referendums/initiatives.**

(a) Purpose. A referendum is the people's ability to refer newly enacted law by petition, from the legislation to the ballot for final approval. The following rules shall apply.

(b) Definitions.

*Initiative* shall mean the right and procedure by which citizens can propose a law by petition and ensure its submission to the electorate.

*Referendum* shall mean the submission of a proposed public measure or actual statute to a direct actual vote.

(c) Process.

(1) A referendum/initiative issue shall only be established by resolution of the Tribal Council, duly ratified by the Principal Chief.



- a. A referendum initiated by Tribal Council does not need a petition.

(2) A referendum/initiative shall require a petition of:

- a. 25 percent of the registered voters to petition the Tribal Council for a resolution for a referendum/initiative election on a proposed ordinance or action by the Tribal Council or Principal Chief.
- b. 33 percent of registered voters to petition the Tribal Council for resolution for a referendum/initiative election on a proposed change to the Charter or Governing Document.

123 2/12/10 8:17 PM  
Deleted: It

123 2/12/10 8:20 PM  
Deleted: It shall require a petition of

The petition requirement shall not apply to any resolution or issue properly before council, which council, on its own initiative presents to the Cherokee people for referendum vote.

(3) 51 percent of registered voters must vote in a referendum/initiative election before the proposed amendment to the Charter or Governing Document shall be enacted or repealed.

123 5/5/10 5:16 PM  
Deleted:

123 2/12/10 8:31 PM  
Formatted: Font color: Blue

123 2/12/10 8:31 PM  
Formatted: Font color: Red

(4) If a majority of the voters voting in a referendum/initiative election are in favor of the enactment or repeal of an ordinance or resolution, provided that at least 30 percent of registered voters have voted in such an election, the ordinance or resolution shall be enacted or repealed. No action undertaken by this procedure shall be overturned by Tribal Council.

- a. A petition shall be on a form provided by the Board of Elections and shall include the designation of three signatories as the Petitioner's Committee; signature lines for the names, addresses and enrollment numbers of supporters of the petition; and a full explanation of the proposed action sought by referendum including the full text of the proposed action. This proposed legislation shall appear on all signature sheets.
- b. The petition shall be submitted to the Board of Elections in order that the information listed on the petition is verified. Only registered voters shall be counted in this process.

(5) Each resolution for referendum shall be in the full text form of the proposed action. Before the issue is presented to the Cherokee people for a vote, the text of the question shall be reviewed by the Office of the Attorney General and finally approved by the Tribal Council and the Principal Chief to ensure that the question for vote adequately and clearly informs the voter of the question to be answered, is limited to one question at a time, and encompasses only one issue per question.

(6) All registered voters shall be eligible to vote on a referendum issue.

(7) Referendums for any purpose of this Section shall be conducted by the following procedures:

- a. The Board of Elections shall schedule a referendum election for any purpose other than that of modifying the Charter and Governing Document to be held within 90 days of ratification of the resolution.
- b. Within 10 business days of ratification of the resolution the Board of Elections shall give public notice of the upcoming referendum by advertising in the Cherokee One Feather, Graham Star, and Cherokee Scout and by mailing all eligible voters. The public notice shall

contain an election schedule which shall notify all voters of the date of the election, the question to be voted on and the date in which the voter registration rolls will close.

c. The Board of Elections shall close the voter registration books 30 days prior to the referendum election.

d. The Board of Elections shall appoint all election officials within 10 days of the ratification of the resolution for referendum. The Board shall conduct an orientation for precinct officials prior to the election.

e. The Board of Elections shall issue ballots for referendum in accordance with the absentee ballot application process pursuant to the procedures set out in this Section.

f. Persons desiring to vote by absentee ballot may begin applying for such ballot immediately after receiving notice of the referendum election and all applications must be submitted by at least 15 days prior to the election.

g. Absentee ballots shall be given or mailed to the prospective voter by the Board of Elections beginning 15 days following the ratification of the resolution for referendum. All absentee ballots for referendum must meet the same criteria for any other election and must be returned to and received by the Board of Elections ten days prior to the referendum election.

(8) The outcome of the referendum vote shall be certified by the Board of Elections and shall be a binding action or law duly passed and ratified by the Principal Chief.

(9) Any protest regarding an election irregularity shall be conducted according to the procedures set out in the current law. (Tribal Election Law Section 161-16).

(10) An issue that has been brought before the eligible voters and voted upon by referendum/initiative may not be voted upon again until a period of five years has passed.

(Ord. No. 409, 8-25-2008)

## **ARTICLE II. VOTERS**

### **Sec.161-10. Qualifications.**

To be eligible to vote in any Cherokee election, a person must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age on the date of the applicable election; and
- (3) Be registered with the Cherokee Board of Elections as set forth in Section 161-11 prior to the applicable election.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-11. 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 sent by certified United States Mail with a certified and verified voter registration card. All voter registration cards received by mail must be notarized and must include a copy of the voter's government issued ID card.

(b) Voters shall register in the township in which they currently reside. Tribal members not living on Cherokee Trust Land shall register in the township in which they last resided. Voters who have never resided on Cherokee Trust Lands shall register in the township in which his/her enrolled mother last resided. If the voter's mother was not an enrolled member or never held a residence on Cherokee Trust Land, then the voter shall register where his/her enrolled father last resided.

In the case that neither the voters mother or father held a residence on Cherokee Trust Land, then the voter shall register in the township where their nearest matrilineal ancestor last resided. If the voter's mother's side of the family is not of Cherokee descent then the first matrilineal line on the father's side shall be used to determine township.

For the purpose of this Section the terms mother and father shall mean biological mother and biological father, unless a legal adoption has occurred in which case mother and father shall mean adoptive mother and adoptive father. Voters moving from one township to another must reregister in the new township.

(c) The Board of Elections may conduct special registrations within any precinct if it is deemed advisable. All such special registration shall be published at least one week in advance in the Cherokee One Feather, Cherokee Scout, and Graham Star.

(d) 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. Those registered voters who change their residence during this period are not required to update their registrations until the registration rolls reopen. The residency requirement of Subsection 161-11.1(a) of this Chapter shall be waived during this period to resolve any conflicts within this Chapter.

(e) The Board of Elections shall open the voter registration books on the Monday following the certification of the primary election until the last business day in July to allow voters to register and/or re-register for the general election. During the period when the registration rolls are closed those registered voters who change their residence are not required to update their registration until the registration rolls reopen on the first business day following the certification of the general election. This residency requirement of Subsection 161-11.1(a) of this Chapter shall be waived during this period to resolve any conflicts within this Chapter.

(f) The Board of Elections shall reopen the voter registration books on the next business day following the certification of the general election.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-11.1. Changes in voter registration.**

(a) Once a person is registered by the Board of Elections, they shall remain registered until such time as they move to a different township, or an investigation made by the Board of Elections has found an improper township registration, at which time they must register in the new township pursuant to Subsection 161-11(b) of this Section.

(b) Persons living in long term care facilities and those who are displaced due to emergency situations may petition the Board of Elections for a waiver for the change of township requirement in Subsection (a) of this Section. Waivers may be issued upon proof of displacement.

123 2/13/10 10:10 AM  
Deleted: a

(c) The Board of Elections shall purge its lists of voters annually for deceased voters in each community.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-11.2. Challenges to voter registration.

(a) When the Board of Elections has or receives evidence demonstrating to the Board's satisfaction that a voter is not registered in the correct township, the Board shall notify the voter in writing and give the voter five business days to re-register or submit any relevant evidence in response. All enrolled members of the Tribe shall have the right to enter a challenge to any person's registration in a particular township. Such challenge may be made anonymously and the Board shall weigh the evidence provided accordingly and issue the proper investigation required. See Section 161-16 for proof of residency. The Board shall determine the voter's correct voting township based on the evidence and notify each voter in writing of any changes. No changes shall be made to a voter's township when the registration rolls are closed.

(b) The Board of Elections is authorized to utilize all resources available to properly document a voter's residence for registration purposes. The burden is placed upon the voter to dispute any changes made by the Board of Elections within the registration books. Any affected voter may request a hearing before the Board of Elections within five business days from receipt of a change of township notice. The Board shall afford any voter a hearing within five business days from receipt of hearing request. The affected voter has the right to present any witnesses or documentation to the Board of Elections during the hearing. The Board will issue its decision within five business days from the date of the hearing to either rescind or uphold its decision.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-11.3. Notice of voter registration.

(a) The Board of Elections shall publish in the Cherokee One Feather newspaper and post a notice in the office of the Board of Elections a list of all registered voters and their current listed township no later than Jan. 30 of the election year as defined in Sec. 161-16 and Sec. 161-20 of this Chapter; and the Board of Elections shall mail registered voters notice of any new voter registration laws in order to give voters the opportunity to make corrections to their voter registration as may be necessary.

123 2/13/10 9:38 AM  
Deleted: eligible

123 2/13/10 9:39 AM  
Deleted: registrations in the office of the Board of Elections

123 2/13/10 9:42 AM  
Deleted: eligible

(b) The Board of Elections shall prepare and provide to each candidate a printed and electronic listing of each registered voter within the candidate's precinct. This list shall contain the name and current mailing address for each voter and shall be accessible by the candidate to be utilized electronically for its intended purpose. The voter list shall be furnished to each candidate in printed form, and if requested by the candidate, in electronic form set by field indentifiers in a manner to permit the candidate to utilize the list electronically for the intended purpose of communication with the registered voters. All mailing addresses will be provided by the EBCI Enrollment Department. The Board of Elections shall cross-reference registered voters between townships prior to each Tribal election. Except as provided in this Chapter, the Board shall not be required to give any other lists or other database information to candidates. The candidates are authorized to use such lists only for lawful communications with registered voters related to the election campaign pursuant to Section 161-4(f) of this Chapter.

123 2/13/10 9:59 AM  
Deleted: Subsection

(c) The Board of Elections shall not release any information regarding an individual's personal voting record to candidates or the general public.

Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### **Sec. 161-12. 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.
- (c) No campaign signs of any kind shall be allowed within 250 yards of designated polling places for a period of one week prior to the Election Date.

### **Sec. 161-13. 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, or actively support any candidate, running in the precinct the election official serves; and
- (6) Must successfully attend and complete the mandatory orientation training seminar provided by the Board of Elections prior to each election.

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. The chief judge shall be responsible for obtaining the ballot box, tally sheets, and the registration books from the Board of Elections on the day of orientation 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 election judges shall be responsible for reconciling the ballot totals with the ballot tabulator receipts in their respective precincts. They shall certify the count by signing the tally sheets. 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.

) 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 casting a ballot. The Clerk shall assist individual voters who seek assistance in marking ballots. The Clerk shall assist 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, their immediate family, 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.

123 2/13/10 10:30 AM  
Deleted: be

) 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) All election officials shall before entering on their duties of office take the following oath before a member of the Board of Election: "I [name], having been duly appointed to serve as [title] for the [community] Township in the [year] [type of election] Election, do solemnly swear (or affirm) that I will faithfully perform the duties of that office to the best of my abilities and that I shall serve in a fair and impartial manner without fear or favor to anyone." All oaths shall be signed and dated by the respective elected official, such signed oath shall also include the printed name of the elected official.

(3) 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)



## Sec. 161-14. Voting procedures.

(a) When a Tribal member appears at the polling place to vote, the enrolled member shall present an Election Judge with a government issued I.D. to verify identification, an Election Judge shall then determine if the name appears on the official list of registered voters furnished by the Board of Elections. If the name appears on the list, the clerk shall then insure that the voter's name does not also appear on the list of absentee voters and record the name in a record book maintained for that purpose. A judge shall then give the voter an unmarked ballot. If there is any question in regard to a person's proper registration that person shall be issued a "provisional ballot". The provisional ballot shall be identical to the regular official ballot but shall be printed on a different colored paper and shall be sequentially numbered. The name of the voter receiving a provisional ballot along with the sequential number from the ballot shall be recorded so the voter may be later confirmed as a valid or invalid voter. These provisional ballots shall be deposited by the voter into a separate ballot box to be counted separately. These provisional ballots shall be secured and will be counted only if a recount process is deemed necessary or is requested under Sec. 161-6. Recounts. Prior to the count of any provisional ballots the Board shall verify whether the provisional voter was properly registered for that township. If the voter was not properly registered then that provisional ballot shall be found to be invalid and shall not be counted in any recount process.

12/3 2/13/10 10:51 AM

**Deleted:** If there is any question regarding a voter's eligibility, the chief judge shall call the Board of Elections to verify. If after confirmation with the Board of Elections, the voter is determined not to be eligible or registered, he/she shall not be allowed to vote.

(b) The voter shall mark the ballot in a private area within the polling place. 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 or other assisting party shall mark the ballot as requested by the voter, and shall have two election officials witness the marking. An official Affidavit of Assistance form must be signed by the voter prior to the clerk or other assisting party marking the ballot and noted on that form the signatures of all election staff who in the administration or witnessing of the casting of the ballot. The two election officials shall witness the marking of the ballot and then immediately return the ballot to the polling place and deposit the ballot in the ballot box.

(d) The Board of Elections shall not provide absentee ballots for run-off or special elections.

(e) If any elderly, handicapped, or infirm person is unable to enter the polling place, the person shall be permitted to vote in a motorized vehicle at the polling place. Such elderly, handicapped, or infirm voters shall be permitted to vote by having any two of the four election officials personally deliver the ballot to such a voter. An official Affidavit of Assistance form must be signed by the voter prior to the voter marking the ballot, and be noted on that form the signatures of all election staff who assisted in the administration or witnessing of the casting of the ballot. The two election officials shall witness the marking of the ballot by the voter and then immediately return the ballot to the polling place and deposit the ballot in the ballot box.

(f) After the polls are opened, under no circumstances shall a ballot box be opened until the polls are closed. If manual ballots are used, 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 judge for the Board of Elections only at the closing of the polls. If electronic tabulators are used, the Board of Elections shall use equivalent procedures consistent with the technical requirements of the ballot tabulators to ensure that no unauthorized ballots are inserted in the ballot box or counted in the election.

(1) The electronic tabulator machines and the programming devices for the electronic readers shall be handled as high security protected devices. A full chain of custody of these devices shall be maintained at all times and shall never fall suspect to security concerns.

12/3 2/13/10 11:13 AM

Formatted: FontBold

(2) The ballots shall be secured immediately upon closing of the polls in tamper proof containers and stored in a highly secured area. The ballots shall not be accessed by anyone until the expiration of all possible challenges, legal proceedings and certification of the election results unless a valid recount is being conducted in accordance with Sec. 161-6 of this Chapter.

(g) 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. The Chief Judge must submit a report of the alleged irregularities in writing stating specifically and in detail what the alleged irregularity is immediately. Any alleged irregularities and the manner in which it was handled shall be communicated to each candidate by the Board of Elections within 48 hours.

#### **Sec. 161-15. 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) Only enrolled members who are registered to vote and meet one of the following requirements may vote by mail or in person by absentee ballot:

(1) Tribal members serving on active military duty who are unable to return to Cherokee to cast their votes;

(2) Tribal members employed with the Federal government assigned to duty other than the Cherokee Indian Reservation who are unable to return to Cherokee to cast their votes;

(3) Tribal members enrolled in institutions of higher education that are unable to return to Cherokee to cast their votes;

(4) Tribal members who are employees of the Tribe and are required to be away from Cherokee for training or for reasons required by their employment on the date of election who are unable to return to Cherokee to cast their votes;

(5) Tribal members who because of illness are in a hospital, nursing home, or other treatment facility and who because of their physical condition and course of treatment are unable to return to Cherokee to cast their votes; or

(6) Tribal members who physically reside on Cherokee trust lands but who will be absent from Cherokee on Election Day for business or personal reasons and are unable to return to Cherokee to cast their votes.

(c) Person desiring to vote by absentee ballot must apply for such a ballot within the following time periods: Beginning on April 1 and ending on May 15 for the primary election, and beginning on July 1 and ending on August 15 for the general election. The Board of Elections shall require appropriate documentation to establish compliance of Subsection 161-15(b) of this Section be submitted with the application.

(d) Absentee ballots shall be given or 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

12/3/10 11:18 AM  
Deleted: may

Board of Elections on or before 4:30 p.m. on the Friday before the primary election, and 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. For clarity purposes, the following dates are reiterated: Deadline for applying to receive an absentee ballot is May 15 for the primary, and August 15 for the general elections. If a voter has met the application deadline and received an absentee ballot, they have until Friday before the primary election and the Friday before the general election to have those ballots back in the custody of the Board of Elections. The Board of Elections shall not issue any absentee ballots after May 15 for the primary or August 15 for the general elections, nor shall the Board accept any absentee ballots after 4:30 pm on the Friday preceding the elections.

(e) The Board of Elections shall prepare a list of all absentee voters who returned ballots 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.

123 2/13/10 11:32 AM  
Deleted: returned

(f) The Board of Elections shall print on the face of each application for absentee ballot 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, etc.) to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_."

(g) An application for absentee ballot shall be issued only by mail or in person to the voter. The voter shall provide a copy of his/her enrollment card and a copy of his/her government issued ID card with the application for absentee ballot. The application shall require the voter to certify as follows:

"I, (Print Full Name), do certify that I am a voter in the \_\_\_\_\_ Township of the Eastern Band of Cherokee Indians, duly registered in accordance with Cherokee Code. I understand it is a criminal offense to falsely sign this certificate.

Signature of Voter  
Date: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Address: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Address: \_\_\_\_\_

(h) 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 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 certifies that \_\_\_\_\_ is a registered and qualified voter of \_\_\_\_\_ Township and has made proper request to vote under the laws of the Eastern Band of Cherokee Indians.

Chairman/Member  
Date:

(2) On the other side shall be printed the return address of the Board of Elections and the following certification:

"Certification of Absentee Voter: I, (Print Full Name), do certify that I am registered voter in \_\_\_\_\_ Township of the Eastern Band of Cherokee Indians. I further certify that I requested an absentee ballot and that I marked the ballot enclosed herein, or that it was 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: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

(i) On or before May 1 for a primary election and August 1 for a general election, the Board of Elections shall prepare and print a sufficient number of instruction sheets on how voters are to prepare absentee ballots and return them to the Board of Elections. The instruction sheet shall state the date on which ballots must be received by the Board of Elections to be counted.

(j) The Board of Elections shall use the following procedures:

(1) Record of applications received and ballots issued. Upon receipt of a voters application for an absentee ballot, 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 the voter requesting an absentee ballot.
- b. Number assigned to voters ballot when issued.
- c. The township in which applicant is registered.
- d. Address to which the ballot is mailed.
- e. The date the request for ballot was received.

(2) When the Board of Elections receives an application for absentee ballots, it shall promptly issue and transmit the ballot to the voter only, not to a relative, in accordance with the following instructions:

- a. On a detachable tab, the Board of Elections shall have printed the words "Absentee Ballot No. \_\_\_\_" and insert in the blank space the number assigned to the absentee voter. The Board shall not write, type, or print any other matter upon the ballot.
- b. The Board shall detach the numbered tab, fold and place the ballot in a return envelope and write or type in the appropriate blanks thereon the absentee voters name, his/her ballot number and the designation of the township in which the voter is registered. The Board of Elections shall leave the return envelope holding the ballots unsealed.
- c. The Board of Elections shall then place the unsealed return envelope holding the ballot, together with printed instructions for voting and returning the ballot, in an enveloped addressed to the voter at the address stated in his/her request; seal the envelope, and mail it at the expense

of the Board of Elections. Alternatively, a voter may personally pick up the ballot at the Board of Elections office.

- (3) If the application is denied, the Board of Elections will notify the voter in writing of the reason for denial and give the voter 10 days to seek reconsideration of that decision by the Board of Elections. The decision of the Board of Elections to deny an absentee ballot application shall be final.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-16. Election irregularities and protests.

(a) All protests must be submitted to the Board of Elections in writing and on forms provided by the Election Board. All hearings for election irregularities and protests shall be set according to this Section.

(b) A protest of a voter's township registration may be made by any enrolled member or candidate as specified in Sec. 161-11.1 thru 161-11.3. No protests of a voter's township registration shall be accepted or acted upon by the Board of Elections between April 30 and the first business day following the certification of the primary election results; and between July 31 and the first business day following the certification of the general election results.

123 2/13/10 11:53 AM

Deleted: who is a registered voter.

(c) A protest of irregularities in the conduct of an election must be submitted to the Board of Elections no later than five business days after the close of the polls and a hearing shall be set within five business days after the receipt of the written protest. The parties to the protest shall be allowed adequate time to prepare their case and be allowed to call witnesses and subpoena documents. It is imperative to proceed in a timely manner, therefore the normal rules of civil procedure are not applicable; However, the Board of Elections shall give the parties every consideration and opportunity to provide a solid case and may extend any deadline or hearing to assure that it has all the facts in order to make a valid final decision. All persons that the protest may affect shall be notified of the scheduled hearing by the Election Board.

123 2/13/10 12:20 PM

Deleted: but such protest must be made and received by the Board of Elections by March 31 of an election year as defined in Section 161-20 of this Chapter. Proof of township for registration purposes are set out in Section 161-20 of this Chapter. There shall be no township registration protests accepted from April 1 until the following business day after the certification of the general election results.

(d) Any person filing a protest for election irregularities under Subsection 161-16(c), must establish during a hearing in front of the Board of Elections that the alleged irregularities unfairly and improperly or illegally affected the actual outcome of the election.

123 2/13/10 12:42 PM

Deleted: above, '

(e) All persons shall have the right to have legal counsel represent them at the hearing.

123 2/13/10 12:42 PM

Deleted: or that, but for the alleged irregularities, the outcome of the election would have been different.

(f) After all parties have had an opportunity to be heard and present evidence the Board of Elections shall issue a final written decision stating their findings and decision. The decision shall be issued within five business days after the conclusion of the hearing. The written decision shall be sent to all affected person(s) by means of certified mail with return receipt requested, or shall be hand delivered by an officer of the Cherokee Police Department. Proof of service of process is a return receipt from the United States Postal Service or a return of service from the Cherokee Police Department.

(g) The Board has the power to:

(1) Find that the protest did not meet the requirements set forth in this Chapter and dismiss the protest. The burden of proving that the alleged election irregularity did affect the outcome of the election is upon the plaintiff party. The evidentiary threshold is one of clear and convincing evidence. The evidence must clearly establish that the irregularity affected which candidate may be seated. It is not enough for a plaintiff party to show only that the number of votes was affected, it is

123 2/13/10 12:36 PM

Deleted: ; or

necessary to prove by clear and convincing evidence that the number of votes were affected enough to cause a different final result in who is elected for that seat.

(2) Find that the protest did meet the requirements set forth in this Chapter and issue the appropriate relief. The Board may find that there was in fact an election irregularity but the irregularity did not affect the outcome of the election and issue an order that there was an irregularity but it did not affect the outcome of the election.

(3) If the Board of Elections finds that there was an election irregularity that did in fact affect the outcome of the election, then the Board of Elections is authorized to issue relief in the form of ordering a new election or a run-off election between two or more candidates affected by the election irregularity. If it is shown by the evidence presented that a crime may have been committed during the course of the election, the Board of Elections may present evidence to the Tribal Prosecutors Office for possible criminal charges.

(4) The Board of Elections shall use the same procedure set out in Section 161-7 of this Chapter, if a new or run-off election is warranted. Eligibility to vote in a new or run-off election under this Section shall be determined by the Board of Elections based on the voters' eligibility and the circumstances at the time of the new or run-off election.

(h) No person shall be entitled to receive monetary damages or recover their legal or personal expenses from the Board of Elections or the Tribe.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-16.1. Certification of election results.

(a) At the meeting of Tribal Council on the first Monday of October following a regular election, or after the first meeting of the Tribal Council following a special or primary election, the Board of Elections shall certify the election to the Tribal Council.

b) If a formal election protest is filed with and not yet resolved by the Board of Elections pursuant to Sec. 161-16, the Board of Elections shall only certify the results of the seats or offices not in dispute with the Council.

(c) The newly elected and certified Tribal officials shall thereupon be seated into their respective elective offices and take the oath of office from the properly designated official.

(d) Any offices not certified at the Tribal Council session due to a valid protest pending with the Board of Elections pursuant to Sec. 161-16 shall be left vacant until such office is officially certified by the Board of Elections pursuant to the Election Ordinance.

(e) Should any office not be certified at the normally appointed time then the elected official currently sitting in that capacity shall continue in those duties until their successor is validly certified by the Board of Elections. The "hold-over" official would not take a new oath of office for the new term but would solely be continuing their duties until the protest is resolved and the seat is properly certified by the Board of Elections.

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

12/3 5/5/10 5:26 PM  
Deleted: (b) 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 .

12/3 2/1/06 9:06 PM  
Formatted: Font:Times New Roman, 12

12/3 2/1/06 9:06 PM  
Formatted: Font:Times New Roman, 12

12/3 2/1/06 9:06 PM  
Formatted: Font:Times New Roman, 12

12/3 2/1/06 9:06 PM  
Formatted: Font:Times New Roman, 12

12/3 2/1/06 9:06 PM  
Formatted: Font:Times New Roman, 12

pt



## ARTICLE III. BOARD OF ELECTIONS

### Sec. 161-17. Board established.

(a) The Board of Elections shall be composed of six members, one member from each of the six recognized townships as listed in Sec. 161-20. 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.

12/2/13/10 1:16 PM

Deleted: four

(b) In order to serve as a member of the Board of Elections, a candidate must:

- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age on the date of appointment; and
- (3) Reside on Cherokee Trust Lands for at least one year prior to the date of appointment and continue to reside on Cherokee Trust Land for the duration of their term; and
- (4) Have received a high school diploma or equivalent prior to the date of appointment.

(c) No Election Board member shall be a candidate for any Tribal office, actively support any candidate for Tribal office during the term for which the member is appointed to the Board, or be immediately related to a candidate or current elected official, or share a residence with a candidate or current elected official (as defined in Sec. 161-20).

12/2/13/10 1:19 PM

Deleted: or

(Ord. No. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-18. Vacancies.

A vacancy on the Board 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. 556, 12-28-2006; Ord. No. 409, 8-25-2008)

### Sec. 161-19. Duties of the Board.

(a) The Board shall have the power to make final decisions on candidate eligibility, proper registrations, absentee eligibility, and protest decisions. The Board, in carrying out its decision, shall have the authority to subpoena documents and witnesses and shall have quasi-judicial powers to make the final rulings on all election protests properly before it.

(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 a list of registered voters for their respective precincts.