

(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:

*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)

# TABLED

Cherokee Council House  
Cherokee, North Carolina

APR 08 2010

Date

ORDINANCE NO. 274 (2010)

- WHEREAS, Chapter 117 of the Cherokee Code addresses Tribal Government; and
- WHEREAS, Section 117-38 addresses form of ordinances submitted to Tribal Council ; and
- WHEREAS, the tribe supports the revitalization and preservation of the Cherokee language; and
- WHEREAS, it is beneficial for a student of the Cherokee language to hear and read the language simultaneously; and
- WHEREAS, Resolution 202 (2010) mandates that, at a minimum, a summary of all ordinances and resolutions be interpreted in the Cherokee language during Tribal Council; and
- WHEREAS, the Cherokee interpretation of each ordinance and resolution should be written in Cherokee syllabary and be contained within the body of each document so as to be included in the permanent filing process; and
- WHEREAS, these documents should be make available for use by students of the Cherokee language for educational research and study and should be available at the Cherokee Central Schools Library and the Qualla Boundary Public Library in visual and oral form; and
- WHEREAS, to ensure that these English-Cherokee documents would then be available for archival purposes for future generations, the Cherokee Code should be amended to include a written summary in Cherokee syllabary on all proposed ordinances and resolutions presented to Tribal Council.

117-38 ᑕᐅᐅ

\_\_\_\_\_ ᐱᑭᐅ ᐱᑕᑕᑕ

ᑕᐅ, ᐱᐱᐱ ᐅᐅᐅ, 'ᑕᐅ ᑕᐅᐅ ᑕᐅᐅ ᑕᐅᐅᐅ(ᐅ) ᑕᐅᐅᑕᑕ, ᑕᐅᐅ  
ᑕᐅᐅᑕ, ᑕᐅᐅ ᑕᐅᐅᐅ ᑕᐅᐅ ᑕᐅᐅᐅᐅ ᑕᐅᐅ ᑕᐅᐅᐅᐅᐅᐅᐅᐅᐅ, ᐅᑕ ᐅᑕᐅᐅᑕᑕ:

117 ᑕᐅᐅᐅ ᑕᐅᐅ ᑕᐅᐅᐅᐅᐅ

117-38 ᑕᐅᐅᐅ. ᐱᑕᑕᑕ ᐱᑕᑕᑕ ᐅᐅᐅᐅ ᐱᑕᑕᑕ; ᐅᑕ ᑕᐅᐅᐅᐅ  
ᐱᑕᑕᑕ.

(a) ᑕᐅᐅᐅ ᑕᐅᐅᐅ ᐱᑕᑕᑕ ᑕᐅᐅᐅ ᑕᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ  
ᑕᐅᐅᐅ ᐅᐅᐅ ᑕᐅᐅ (b) ᑕᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅ ᑕᐅᐅᑕ ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅ ᑕᐅᐅᐅ ᐱᑕᑕᑕ ᑕᐅᐅᐅᐅᐅᐅ.

(b) ᐱᑕᑕᑕ ᐅᐅᐅᐅᐅᐅᐅ ᑕᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅᐅ. ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ  
ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ, ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅ  
ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅᐅ. ᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ, ᑕᐅᐅᐅᐅ ᐅᐅ  
ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅᐅᐅᐅᐅ ᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ.

(c) ᑕᐅᐅᐅ ᐱᑕᑕᑕ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ, ᐅᐅᐅᐅᐅᐅᐅᐅ  
ᐅᐅᐅᐅ ᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ, ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ, ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ,  
ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ, ᐅᐅ ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ.

(d) ᑕᐅᐅᐅ ᐱᑕᑕᑕ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ:  
(1) ("ᑕᐅᐅᐅ") ᐅᐅᐅᐅ ᑕᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ, ᐅᐅᐅ ᐅᐅᐅᐅᐅᐅ  
ᐱᑕᑕᑕ ᐅᐅ ᐅᐅᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ, ᐅᐅ ᐅᐅᐅᐅ ᐅᐅ ᐅᐅᐅᐅᐅ  
ᐱᑕᑕᑕ ᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ;  
(2) ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅ ᐅᐅᐅᐅᐅ ᐅᐅᐅᐅᐅᐅᐅ;

(3) ("ඊට උඩට පැමිණි ...") පැමිණි හිටි බලධරීන්  
විමර්ශනය කළහ;

(4) ධනයට ධම්මයෙන් බලධරීන්;

(5) පලකරන ධනයට ධම්මයෙන්, ධනයට පැමිණි ධනයට බලධරීන්  
විමර්ශනය කළහ/විමර්ශනය කළහ ධනයට බලධරීන්, ධනයට බලධරීන්  
විමර්ශනය කළහ, ධනයට බලධරීන්, ධනයට බලධරීන්  
විමර්ශනය කළහ.

(6) ධම්මයෙන් බලධරීන් හිටි ධම්මයෙන් බලධරීන්  
විමර්ශනය කළහ ධම්මයෙන් බලධරීන් බලධරීන් බලධරීන්.

(7) ධම්මයෙන් බලධරීන් ධම්මයෙන් බලධරීන් බලධරීන්  
විමර්ශනය කළහ බලධරීන් බලධරීන් බලධරීන්;

(8) ධනයට බලධරීන් බලධරීන් බලධරීන්, බලධරීන්, බලධරීන්,  
විමර්ශනය කළහ.

(e) ධනයට බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්  
බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්.

(f) බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්  
බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්  
බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්  
බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්.

බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්  
බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්  
බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්.

බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන් බලධරීන්.

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

#### Chapter 117 TRIBAL GOVERNMENT

Sec. 117-38. Legislative reading ordinance; form of ordinances.

- (a) No ordinance enacted by the Tribal Council shall be valid unless it has been introduced in compliance with subsection (b) at a regular or special session not less than 25 calendar days prior to the day the ordinance has been voted upon by the Council.
- (b) All ordinances proposed to be considered by the Tribal Council shall be either placed on the agenda by the Clerk or introduced by the Principal Chief as emergency legislation. The Clerk shall assign the ordinance a number and read the ordinance into the record. By majority vote, the Tribal Council may waive the reading requirement and deem the ordinance read into the record. After the reading of the ordinance, the Council may discuss the proposed ordinance but no member may propose any motion or amendment to the ordinance at the first reading. At the conclusion of discussion the Chair shall automatically table the ordinance and either assign the ordinance to a Committee for further investigation or study or direct that the ordinance be placed on the agenda at the next scheduled Council session that is not less than 25 calendar days after the first reading.
- (c) All ordinances appearing on the Council agenda for the second time, after the required 25-day waiting period, may be brought to the floor for consideration, debate, motions, amendments and passage.
- (d) All proposed ordinances shall be drafted to include:
  - (1) A background ("whereas") section describing the history of the issue, prior ordinances and resolutions related to the matter, and the need or reason for the proposed ordinance or amendment;
  - (2) A written summary in Cherokee syllabary;
  - (23) Language to enact the proposed ordinance or amendment ("now therefore be it ordained . . .");
  - (34) The proposed ordinance;
  - (45) When an amendment is proposed, it shall include the Cherokee Code section number of the existing ordinance, the existing language of the section(s) proposed to be amended, and enough of the existing

ordinance as is necessary to understand the context of the proposed change, with proposed additions underlined and proposed deletions stricken through;

| (~~56~~) A clause rescinding all prior resolutions and ordinances that are inconsistent with the proposed ordinance or amendment;

| (~~67~~) A clause stating that the ordinance or amendment is to be effective upon ratification by the Principal Chief, or at some other proposed time; and

| (~~78~~) The name of the program, enterprise, committee, or person submitting the proposed ordinance.

(e) The proposed ordinance shall be published by the Tribal Operations Program (TOP) in the Cherokee One Feather for public review and comment.

(f) No cover resolution shall be submitted. The Tribal Council may, in its discretion, consider resolutions that are not in this form when there is an urgent need and there is not sufficient time to withdraw and redraft the ordinance, provided that the proposed ordinance or amendment is clear.

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

*Submitted by: Office of the Attorney General at the request of Marie Junaluska*



\*\*\*SUBSTITUTE\*\*\*

Cherokee Council House  
Cherokee, North Carolina

\_\_\_\_\_  
Date

ORDINANCE NO. \_\_\_\_\_(2010)

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

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

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

**Chapter 92**  
**TRIBAL BUSINESS PREFERENCE LAW**

**Article I. Policy, Application, Definitions**

**Sec. 92-1. Short title.**

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

**Sec. 92-2. Declaration of policy.**

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

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

**Sec. 92-3. Application of chapter.**

(a) This chapter applies to contracts offered by the Eastern Band of Cherokee Indians and all of its divisions, programs, offices, subdivisions and enterprises, and subcontracts offered pursuant thereto. It does not apply to private business arrangements in which the Eastern Band, or any division, program, office, subdivision or enterprise of the Eastern Band, is not involved.

(b) Except as provided in subsection (a), this chapter is binding on all economic entities operating within the territory of the Tribe, whether or not they are doing so at that time this chapter is implemented.

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

**Sec. 92-4. Definitions.**

**Business formation** minimal legal structure:

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

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

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

**Commission** means the Tribal Employment Rights Commission.

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

**Complaint** means a written notification submitted to the manager of the Tribal Employment Rights Office in matters relating to the certification of economic entities, the compliance efforts of contractors, subcontractors and the Tribe, actions of the

manager or the Commission, and the interpretation of this chapter and rules, regulations and guidelines adopted by the Commission.

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

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

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

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

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

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

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

**Manager** means the manager of the Tribal Employment Rights Office.

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

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

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

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

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

*TERO* means the Tribal Employment Rights Office.

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

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

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

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

## **Article II. TERO Commission and Office**

### **Sec. 92-5. Tribal Employment Rights Commission.**

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

(h) The Commission shall act by majority vote. A majority of the Commission constitutes a quorum to transact business. If a commissioner leaves a meeting and his absence destroys the quorum, then no business may be transacted until a quorum is re-established. When a position on the Commission is vacant, the remaining members may exercise the powers of the Commission until the vacancy is filled.

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

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

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

### **Sec. 92-6. Powers of the Commission.**

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

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

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

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

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

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

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

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

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

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

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

**Sec. 92-7. Tribal Employment Rights Office.**

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

**Sec. 92-8. Delegation of authority.**

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

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

**Sec. 92-9. Conflicts of interest prohibited.**

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

(e) The Commissioners may, by majority vote, determine that a Commissioner or TERO employee has a conflict of interest and may preclude that Commissioner or TERO employee from participating in the decision or circumstance at issue.

(f) This section does not preclude a Commissioner or TERO employee from participating in an action or decision by the Commission or TERO which generally affects a class of persons, regardless of whether the Commissioner, TERO employee, or immediate family is a member of the affected class.  
(Ord. No. 280, 4-29-2002)

### **Article III. Certification**

#### **Sec. 92-10. Certification requirements.**

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

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

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

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

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

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

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

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

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

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

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

a. Licensing history.

b. Criminal history.

c. Debt and credit history.

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

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

(11) An economic entity shall have been operational in Cherokee/Western North for at least two years in the trade in which the economic entity wants to be certified. If the economic entity has not been operational for at least two years, it shall obtain a waiver of the two-year requirement from the Commission by meeting all of the following conditions:

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

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

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

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

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

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

4. The economic entity's financial capacity;

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

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

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

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

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

c. Vehicle insurance;

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

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

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

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

(b) If, at any time, an economic entity fails to meet the requirements imposed in this section the Commission shall, after a hearing, suspend the economic entity's certification



and give it an opportunity to meet the requirements. Repeated failure to meet requirements will result in termination of certification.  
(Ord. No. 280, 4-29-2002)

**Sec. 92-11. Indian ownership required.**

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

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

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

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

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

**Sec. 92-12. Fronts are prohibited.**

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

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

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

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

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

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

- (1) An Indian owner shall serve as Chief Executive Officer or President and have the experience or expertise in the trade the economic entity is engaged in (or management experience generally) such that his or her position at a senior level is legitimate.
- (2) The Indian owner shall have sufficient knowledge about the economic entity and its projects to be accountable for the entity's activities.
- (c) Non-Indians may be involved in the ownership and management of an economic entity as partners, directors, officers, shareholders, or limited liability members. However, non-Indians may not:
  - (1) Exercise actual control or have the power to control the economic entity or retain disproportionate responsibility for the management or operation of the economic entity;
  - (2) Be a former employer or principal of a former employer of an Indian person who owns and controls the economic entity;
  - (3) Control the formation of a quorum for the purpose of holding a board meeting or directly or indirectly control the voting at board meetings;
  - (d) Non-Indians having an equity interest in an economic entity and who provide critical financing, bonding or a critical license may be found to be a front.
  - (e) If, based upon the elements expressed in subsections (a) through (d), the Commission reasonably determines that the economic entity has been structured managerially or financially in a manner that is convoluted or inconsistent with sound business practice in order to qualify for Indian preference, the economic entity will be denied certification, even if it satisfies other specific criteria expressed in other sections of this chapter.

**Sec. 92-12A. Brokers are prohibited.**

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

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

Certification is prohibited if it would promote violation of Tribal law including, but not limited to, violations of Sec. 117-45, Cherokee Code, which prohibits elected officials, program directors, executive staff employees and immediate family members from participating in the award of or benefiting from contracts with the Tribe. (Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

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

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

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

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

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

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

If a certified economic entity is sold or if the ownership or majority of assets are transferred, the original certification ends and the entity must submit an application for certification as a new business and pay the appropriate certification fee.  
(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

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

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

- (1) The trust is revocable;
  - (2) An Indian individual is the grantor of the trust;
  - (3) An Indian individual is a trustee of the trust; and,
  - (4) An Indian individual is the sole current beneficiary of the trust.
- (Ord. No. 280, 4-29-2002)

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

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

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

This list is not comprehensive and other circumstances may exist that demonstrate bad character sufficient to deny, suspend or terminate certification.  
(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

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

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

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

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

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

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

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

**Article IV. Applications**

**Sec. 92-18. Applications and fees.**

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

(b) Applicants shall pay an application fee of \$175~~100.00~~ for each trade for which they want to be newly certified. If and when an applicant is approved, the vendor shall pay a subsequent \$100.00 certification fee. ~~\$ 50.00 shall be due when application is submitted.~~

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

(d) Applicants for re-certification shall pay a fee of ~~\$150~~75.00 for each trade for which they want to be re-certified. Certified craft vendors applying to be re-certified shall pay a fee of \$15.00 for recertification in that field.

(e) Application fees are not refundable.

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

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

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

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

**Sec. 92-19. Processing applications.**

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

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

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

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

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

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

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

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

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

**Sec. 92-21. Annual review required.**

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

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

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

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

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

**Article V. Preferences**

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

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

(b) When a procuring entity, subject to the provisions of this chapter, has in effect a comprehensive Indian business preference policy and procedure, whether imposed by a funding agency or adopted pursuant to its own administrative authority, such policy and procedure shall continue in force and effect in lieu of the requirements of this chapter provided the compliance officer determines that such policy and procedure:

- (1) Establishes preference priorities identical to those stated below;
- (2) In all other respects, meet or exceed the requirements of this chapter;
- (3) Provide for an effective complaint procedure; and
- (4) Are fully and effectively enforced.

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

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

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

~~(1) The first priority shall be given to Priority 1 firms; provided, that if federal law prohibits preference based on tribal affiliation, the first priority shall be given to an economic entity that is at least 51 percent owned by a member of a federally recognized Indian Tribe who lives on or near the territory of the Tribe.~~

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

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

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

**Sec. 92-25. Procedures for providing preference.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Small purchases of goods and supplies may be done in any customary manner if a formal contract is not feasible. Price preference percentages apply in all cases.

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

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

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

(m) The entity that is awarded the contract shall pay a fee of .5%, payable to TERO.



(n) The entity that is awarded the contract shall maintain a work force of which thirty percent (30%) are eligible for preference.

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

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

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

**Sec. 92-27. Fair bidding and deadlines.**

- (a) Bids solicited under this chapter shall be solicited fairly and objectively.
- (b) Bids, ~~price quotes, etc.,~~ shall be submitted before expiration of the bidding period. Bid deadlines are final and shall not be extended.
- (c) If a certified economic entity receives an opportunity to submit a revised bid, the revised bid shall be submitted within 72 hours (excluding weekends and holidays) of notice of the opportunity.
- (d) Notice of formal bid openings shall be provided to the TERO at least 72 hours before the opening.

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

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

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

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

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

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

## Article VI. Enforcement and Sanctions

### Sec. 92-29. Complaints.

(a) Before filing a complaint, parties shall attempt to resolve differences informally. The manager and the Commission may refuse to hear a complaint if the parties have not made a good faith effort to resolve differences and may order mediation or other steps to attempt to resolve the issues.

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

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

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

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

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

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

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

### Sec. 92-30. Investigations.

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

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

**Sec. 92-31. Power to require testimony.**

(a) For investigations or hearings which, in the opinion of the Commission, are necessary and proper for the enforcement of this chapter, the Commission may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements or other documents, records or information which the Commission deems relevant or material to the inquiry.

(b) Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed pursuant to this chapter and used in an investigation, compliance hearing or subsequent appeal to the Cherokee Court, shall be kept confidential and shall not be opened by the Commission to public inspection.

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

**Sec. 92-32. Enforcement.**

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

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

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

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

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

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

(3) The circumstances under which the alleged violator may be required to post bond to prevent it from removing itself or property from the jurisdiction of the Tribe.

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

(e) Hearings held pursuant to this section shall be conducted by the Commission. The Commission may consider evidence it deems relevant to the hearing, under rules of practice and procedure adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this chapter, and no informality in any proceeding, as in the manner of taking testimony, may invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission. No

stenographic record of the proceeding and testimony is required except upon arrangement by, and at the cost of the party charged with the violation.  
(Ord. No. 280, 4-29-2002)

**Sec. 92-33. Sanctions.**

(a) If, after a hearing is held, or if no hearing is requested by the alleged violator, and the Commission determines that the alleged violation occurred and that the violator has no adequate defense in law or fact, the Commission may impose the sanctions described in this section.

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

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

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

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

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

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

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

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

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

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

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

(6) Order the violator to take other action necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of 25 U.S.C. 1301 et seq. (the Indian Civil Rights Act).

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

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

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

- (e) The Commission's decision shall be in writing, and shall be provided in writing to the violator no later than 30 days after the close of the hearing.
- (f) The Commission may sanction a party to a complaint for failure to respond in a timely manner to requests of the compliance officer, manager or Commission for documents and information.  
(Ord. No. 280, 4-29-2002; Ord. No. 627, 4-7-2005)

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

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

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

(15) Willful violation by an entity, or any of its principals, of this chapter or any rule, procedure, guideline or order adopted by the Commission, if the violation pertains to material issues.

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

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

(a) Except as provided in Sec. 92-38, an appeal to the Cherokee Court may be taken from any final order of the Commission by a party adversely affected by the final order. The appeal shall be filed with the Court no later than 20 days after the party receives formal notice of the Commission's decision.

(b) The Cherokee Court shall uphold the decision of the Commission unless the appellant proves that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

(c) The appeal shall be executed by serving a written notice of appeal with the Cherokee Court, with a copy to the manager, within 20 days after the date of the entry of the order of the Commission. The notice of appeal shall:

- (1) Set forth the order from which appeal is taken;
- (2) Specify the grounds upon which reversal or modification of the order is sought;
- (3) Be signed by the appellant.

(d) Except as provided below or in subsection (b), the order of the Commission shall abate pending the determination of the Cherokee Court. However, the manager may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond:

- (1) Sufficient to cover monetary damages that the Commission assessed against the party;
- (2) To assure the party's compliance with other sanctions; or
- (3) Remedial actions imposed by the Commission's order if that order is upheld by the Court.

(e) If the order of the Commission is reversed or modified, the Court shall expressly and specifically direct the Commission as to further action ordered by the Court in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

(f) If the Commission's order is upheld on appeal, or if no appeal is sought within 20 days from the date of the party's receipt of the Commission's order, the Commission shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

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

**Sec. 92-36. Attachment of property.**

(a) If at any stage in the enforcement process, the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Cherokee Court, so that the Commission or the Court will not be able to collect monetary damages that are: (1) owed by that party pursuant to any outstanding order of the Commission or Court; or (2) which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Cherokee Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of

the party to secure compliance or for other relief necessary and appropriate to protect the rights of the Commission and affected parties.

(b) The Commission shall develop procedures for the sale or disposition of property which has been held in compliance with a Court order pursuant to this chapter.  
(Ord. No. 280, 4-29-2002)

**Sec. 92-37. Orders of police.**

(a) The Cherokee Police Department shall enforce cease and desist and related orders as may be properly issued by the Commission or manager.

(b) The orders do not require a judicial decree or order to render them enforceable. The Cherokee Police Department shall not be civilly liable for enforcing the orders so long as the order is signed by the manager and the Commission.

(c) Notwithstanding subsection (b), the Cherokee Police Department shall not enforce an order of the manager or Commission ordering the removal of a certified economic entity or procuring entity from the territory of the Tribe or attachment of property unless the order is accompanied by a judicial decree by the Cherokee Court.

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

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

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

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

**Sec. 92-39. Severability.**

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

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

**Sec. 92-40. Prior inconsistent law rescinded.**

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

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

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

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

Certifications issued before April 15, 2002 shall be void on July 4, 2002.

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

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

*Submitted by: TERO and the Office of the Attorney General*



Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: May 6, 2010

**TABLED**

**ORDINANCE NO. 321 substitute (2010)**

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

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

WHEREAS, A further Amendment, Ordinance 160 was deemed read and tabled for the 25 day period at the February 4, 2010 Tribal Council Session and was tabled at the March and April Tribal Council Sessions.

WHEREAS, To facilitate business transactions on Tribal Land, Ordinance 160 is being replaced and 106-50 should be amended so that Business Background checks are only performed so as to protect the general public.

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

Sec. 106-50. Business background checks.

(a) A background check requirement applies to any person, business partner or entity who is:

Deleted: A

1. not a member of the Eastern Band of Cherokee Indians and;
2. ~~who enters into a contract or lease with services or receipts of more than \$25,000.00 with the Tribe or Tribal Entity~~ who leases or operates a retail business on the boundary

~~is subject to a background check.~~

(b) This section applies regardless of whether the person or entity is for-profit or not-for-profit, and regardless of their legal formation or lack thereof. If a new corporation, the principals thereof are subject to the background check. If the corporation is not new, that

is, it has existed for more than two years in its current corporate formation the corporation is subject to the background check.

(c) Business background checks shall be performed by the respective Tribal entity and in the manner identified by the Business Committee.

(d) The person or entity subject to the background check must pay for the background check.

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

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

(2) Has not committed any criminal activity.

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

(g) TCGE and TBE are exempt from this section.

(h) This section is effective on January 1, 2006.

(Ord. No. 622, 3-30-2005; Ord. No. 801, 7-27-2009)

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

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

Cherokee Council House  
Cherokee, North Carolina

MAY 06 2010

Date

ORDINANCE NO. 323 (2010)

WHEREAS, Cherokee Code Chapter 113 regulates Hunting and Fishing within the territorial jurisdiction of the Eastern Band of Cherokee Indians; and

WHEREAS, Chapter 113 needs to be amended for clarity to ensure that all tribal members are able to access tribal fishing waters without charge; and

WHEREAS, Chapter 113 additionally needs to be amended to not prevent tribal members from participating in historically cultural fishing techniques.

NOW THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Cherokee Code Chapter 113 is amended, to read as follows:

## Chapter 113 HUNTING AND FISHING

### Sec. 113-4. License.

- (f) Special permits available for:
  - (1) Souses of enrolled members (no charge).
  - (2) Children of enrolled members including first descendants and adopted children (no charge).
  - (3) Catch and release waters for a fee of \$20.00. An enrolled member's enrollment card shall serve as his license when fishing in catch and release waters.
- (g) Members of other federally recognized tribes may receive a seasonal fishing permit for a fee of \$10.00.  
(Ord. No. 754, 5-16-2001; Ord. No. 277, 5-12-2008)

### Sec. 113-5. Prohibitions.

- (b) Fishing criminal offenses.
  - (1) Seining of fish shall be unlawful.
  - (2) Buying or selling of game fish shall be unlawful.
  - (3) Giggling or spearing fish shall be unlawful.
  - (4) Dynamiting or poisoning of fish shall be unlawful.

- (5) Destruction of fish in Tribal holding facilities shall be unlawful.
  - (6) Fishing in closed ponds posted "No Fishing" or "No Trespassing" shall be unlawful.
  - (7) Destruction and damaging of Tribal holding facilities shall be unlawful.
  - (8) Electro fishing shall be unlawful unless performed by the Tribe or through approved research.
- (c) Infractions.
- (1) It shall be unlawful to exceed the fishing creel limit.
  - (2) It shall be unlawful to fish without a permit.
  - (3) Snagging of fish is unlawful. Tribal members may snag culturally significant fish.
  - (4) Grabbing of fish is unlawful.
  - (5) Chumming of fish is unlawful.
  - (6) Fishing with more than one line is unlawful.
  - (7) Setting of trotlines is unlawful.
  - (8) Fishing in a closed stream is unlawful.
  - (9) Fishing before or after legal fishing hours is unlawful. Tribal members may fish before or after such set fishing hours.
  - (10) It shall be unlawful to fail to keep individual catch separate.
  - (11) Failure to retain all trout caught shall be unlawful.
  - (12) It shall be unlawful to retain illegally caught trout.
  - (13) Camping in unauthorized area for the purpose of fishing or hunting.
  - (14) It shall be unlawful to carry a rifle or shotgun on Tribal reserve lands during the closed hunting season unless it shall be unloaded and locked in a case or the trunk of a vehicle.
  - (15) It shall be unlawful to cut wood or timber, except for campsite use, on Tribal reserve land at any time except in those areas designated for cutting by the BIA Forestry department.
  - (16) It shall be unlawful to hunt any game on Sunday. For purpose of this Chapter, Sunday shall be defined as extending from sunrise on Sunday morning until sunrise on the following Monday morning.
  - (17) It shall be unlawful to hunt or fish within the Territorial Jurisdiction of the Eastern Band of Cherokee Indians without the proper license.
  - (18) It shall be unlawful to fail to produce a valid license to any Natural Resources Enforcement Officer when requested.
- (Ord. No. 90, 2-6-1992; Ord. No. 754, 5-16-2001; Ord. No. 198, 6-28-2004; Ord. No. 277, 5-12-2008)

**Sec. 113-6. Catch and release fishing area.**

- (a) General guidelines.
- (1) Non-enrolled fishermen, or non-special permit recipients must possess a valid Cherokee Indian Reservation Enterprise Waters Fishing Permit and the additional Special Use Permit associated with Trophy Trout Catch and Release Waters. An enrolled member's enrollment card shall serve as his license when fishing in catch and release waters.
  - (2) Open to fishing year-round (no closed season).

(3) Fishing hours - One hour before sunrise to one hour after sunset. No fishing hour restrictions for tribal members.

(4) No trout may be killed or had in possession.

(5) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials, so long as all flies are constructed in a normal fashion on a single hook with components wound on or about the hook. Anything other than these items is prohibited.

(6) Fishing must be done with tackle limited to fly rods, fly reels, and fly line with a maximum of 18 feet in leader material or monofilament line attached.

(7) The use or possession of any natural bait, fish bait, bait paste and similar substances, fish eggs (natural or molded), or any other edible substance is prohibited.

(8) Taking bait fish or natural fish-bait is prohibited.

(b) Catch and Release special use permit (\$20.00) required fee. No fee required for tribal members.

(1) Non-enrolled persons;

(2) Non-special permit recipient over 12 years of age.

(c) Catch and release permit valid for one full year from the date of purchase.  
(Ord. No. 277, 5-12-2008)

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

*Submitted by: Perry Shell, Big Cove Tribal Council Representative*

Date: June 3, 2010

## TABLED

### ORDINANCE NO. 356 (2010)

- WHEREAS, The Cherokee Code currently prohibits carrying concealed weapons on the Qualla Boundary; and
- WHEREAS, Any eligible Tribal member can apply for and receive a Concealed Carry Permit from the State of North Carolina; and
- WHEREAS, The Tribal Government values and protects the rights of its gun-owning enrolled members as provided in the 2<sup>nd</sup> Amendment of the U.S. Constitution; and
- WHEREAS, Cherokee Code section 14-34.11, Aggravated Weapons Offense, contains language prohibiting the concealed carry of a “dangerous weapon.”

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 Cherokee Code Chapter 14-34.11 be amended as follows:

#### Section 14-34.00. Aggravated Weapons Offense.

- (a) It shall be unlawful to carry a dangerous weapon concealed, unless lawfully authorized to do so, or to threaten to use or exhibit a dangerous weapon in a dangerous and threatening manner, or use a dangerous weapon in a fight or quarrel; or to possess a shotgun or rifle having a barrel or barrels of less than 16 inches in a length or an altered or modified shotgun or rifle less than 24 inches overall length.
- (b) Aggravated weapons offense shall be punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, by exclusion for a period for a period of not less than one nor more than five years, or by any combination of them.
- (c) The Eastern Band of Cherokee Indians and all law enforcement officers on the Qualla Boundary shall give Full Faith and Credit to Article 54B of North Carolina Criminal Law, N.C. Gen. Stat. §14-415.10 through §14-415.26, Concealed Handgun Permit, and possession of a concealed handgun pursuant to N.C. Gen. Stat. §14-415.10 through §14-415.26 shall be lawful authority to do so.

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

*Submitted by John Ayers*

Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: June 3, 2010

**Tabled**

**ORDINANCE NO. 357 (2010)**

WHEREAS, Chapter 50B of the Cherokee Code, Domestic Violence, is in need of updates; and

WHEREAS, Changes can be made to simplify and streamline the Chapter 50B process; and

WHEREAS, These changes will not only streamline the Chapter 50B process for Tribal Court, but for the population at large.

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 Cherokee Code Chapter 50B, Domestic Violence, be amended as follows:

Chapter 50B DOMESTIC VIOLENCE PREVENTION\*

Sec. 50B-1. Purposes.

Sec. 50B-2. Definitions.

Sec. 50B-3. Domestic violence prohibited--Who may seek relief.

Sec. 50B-4. Jurisdiction.

Sec. 50B-5. Prior acts.

Sec. 50B-6. Intoxication is no defense; status of relationship is irrelevant.

Sec. 50B-7. Forms of relief.

Sec. 50B-8. Clerk to make forms and instructions available.

Sec. 50B-9. Contents of protective orders.

Sec. 50B-10. Duration of protective orders.

Sec. 50B-11. Mutual orders are prohibited.

Sec. 50B-12. Parties shall receive orders and notice; police to enter information.

Sec. 50B-13. Enforcement of orders.

Sec. 50B-14. Full faith and credit.

Sec. 50B-15. Emergency assistance.

Sec. 50B-16. Referral requirement

Sec. 50B-17. Construction of chapter.

Sec. 50B-18. Remedies not exclusive.

Sec. 50B-19. No defense to criminal prosecution.

Sec. 50B-20. Severability.

Sec. 50B-21. Repeal of inconsistent law.

**Sec. 50B-1. Purposes.**

The purpose of this chapter is to recognize that domestic abuse is a serious crime against society, the Eastern Band of Cherokee Indians, and the family, and to provide the victim of domestic violence the maximum protection from further abuse which the law can provide. The strength of the Eastern Band of Cherokee Indians is founded on healthy families, and families damaged by domestic abuse, must be healed by the immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services. Violent behavior will not be excused or tolerated within the territory of the Eastern Band.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-2. Definitions.**

As used in this chapter, these terms have the following meanings:

*Advocate* means an employee of a program that provides services to victims of domestic violence.

*Causing emotional distress* means engaging in conduct that respondent/defendant knows, or has reason to know, would cause the petitioner (or would cause the person on whose behalf the petition is filed) emotional distress and does in fact cause emotional distress to the person. Examples of conduct which may cause emotional distress include, but are not limited to:

- (1) Creating a disturbance at a person's place of employment, residence, school, or other place occupied by the person;
- (2) Repeatedly telephoning, e-mailing, or faxing, to a person's place of employment or residence, or otherwise seeking to communicate with the person, either directly or through a third party;
- (3) Repeatedly keeping a person under surveillance by remaining present outside his or her residence, school, place of employment, vehicle or other place occupied by the person or by peering in the windows;
- (4) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child or making a threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or
- (5) Threatening physical force, confinement or restraint.



*Causing fear of the infliction of physical harm, bodily injury or assault* means any act, including, but not limited to harassment, psychological abuse, or the utterance of verbal threats, which causes a person to reasonably fear physical harm, bodily injury or death.

*Causing physical harm or bodily injury* includes, but is not limited to causing physical pain, serious illness, or an impairment of a physical condition.

*Domestic violence* occurs when a person commits one of the following acts against ~~an intimate partner or against a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship; but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing physical harm, bodily injury, or assault to ~~an intimate partner or to a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship, or to an animal of such person in which they have a personal relationship;

(2) Placing ~~an intimate partner or a member of the intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship in fear of the infliction of physical harm, bodily injury or assault;

(3) Forcing ~~an intimate partner or a member of the intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship to engage in sexual activity by force, threat of force, or duress;

(4) Attempting to cause or causing emotional distress to ~~an intimate partner or to a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship;

(5) Willfully violating a court order intended to protect ~~the intimate partner or a member of such person's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship; or

(6) Committing one of the following offenses, as defined by chapter 14, Cherokee Code, against ~~an intimate partner or against a family or household member of such intimate partner~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship:

- a. Injuring real property (§ 14-10.11);

- b. Injuring telephone, wires or other communication equipment; Interfering with emergency communication (§ 14-10.14);
- c. Criminal Trespass (§ 14-10.15, 14-10.16, and/or 14-10.17);
- d. Burglary (§ 14-10.40);
- e. Breaking and entering (§ 14-10);
- f. Criminal mischief (§ 14-10.9);
- g. Arson (§§ 14-10.50, 14-10.51, and/or 14-10.52);
- h. Assault (§§ 14-40.10, 14-41.11, 14-40.12);
- i. Maiming (§ 14-40.14);
- j. Discharging a firearm into an occupied building (§ 14-40.15);
- k. Harassment; telephone harassment (§§ 14-25.13 and/or 14-5.3);
- l. Kidnapping (§ 14-40.30);
- m. False imprisonment (§ 14-40.31);
- n. Custodial interference (§ 14-40.32);
- o. Homicide (§§ 14-40.40 and/or 14-40.41);
- p. Sex offenses, including rape, taking indecent liberties with children, aggravated sexual abuse, sexual abuse, sexual abuse of minor or ward (§§ 14-20.1, 14-20.2, 14-20.3, 14-20.4);
- q. Stalking (§ 14-5.5);
- r. Communicating threats (§ 14-5.2);
- s. Weapons law violations (§§ 14-34.10, 14-34.11, 14-34.12, 14-34.13 and/or 14-34.14);
- t. Cruelty to animals (§ 14-5.20) when such cruelty is inflicted on an animal belonging to or residing in the household of the intimate partner or family member.

*Ex parte order* means an emergency order entered before notice can be given to the other party.

*Personal Relationship* means:

- (1) Current or former spouses; or
- (2) Persons who live together or have lived together, and are or were in a dating relationship while living together
- (3) Persons who are related as parents and children, including persons acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16; or
- (4) Persons who have a child in common or who are expecting a child together; or
- (5) Persons who are current or former household members.
- (6) Persons who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.
- (7) Persons who have engaged in an ongoing sexual relationship.

*Pro se* means without the assistance of an attorney.

*Territory of the Eastern Band of Cherokee Indians* means all lands within the Qualla Boundary, and all lands held by the United States for the benefit of the Eastern Band of Cherokee or any member of the Eastern Band of Cherokee, and all additional lands acquired by the Eastern Band of Cherokee notwithstanding the issuance of any right-of-way. (Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003)

**Sec. 50B-3. Domestic violence prohibited--Who may seek relief.**

(a) Domestic violence is prohibited within the territory of the Eastern Band of Cherokee Indians.

(b) Who may seek relief. Any person may seek relief under this chapter on behalf of themselves or a person who is a victim of domestic violence and who is residing in the Territory of the Eastern Band of Cherokee Indians by filing a small claims action (pursuant to § 1-11 Cherokee Code) to obtain an Order of Protection, or by filing a motion in any existing family law action, alleging acts of domestic violence. Persons outlined below who are entitled to seek relief under this chapter may proceed pro se, without the assistance of legal counsel. No filing fee shall be required for actions filed

under this chapter. A person may seek a protective order or file an action pursuant to this chapter in an existing family law action:

- (1) For herself or himself; or
- (2) On behalf of a minor child; or
- (3) On behalf of any person prevented by a mental or physical incapacity or by hospitalization, from seeking a protection order.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-4. Jurisdiction.**

The Cherokee Court shall have original jurisdiction over actions instituted under this chapter. Either a trial judge or a magistrate of the Court may hear and decide any and all matters filed under this chapter. When an act of domestic violence has occurred outside of Tribal Lands and jurisdiction over the defendant/respondent has been established by an order of a competent court, personal jurisdiction over a defendant/respondent is not required when an order is issued merely to preserve the protected status of the petitioner or the person(s) on whose behalf the petition is filed and the order grants no affirmative relief against the defendant/respondent.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-5. Prior acts.**

The Court shall not be barred by Rule 404 of the Rules of Evidence from considering evidence of any other domestic violence crimes, or of any wrongs, acts or patterns of behavior which may be relevant to the need for a protective order and this evidence shall be admissible regardless of whether the alleged crimes, wrongs, acts or patterns of behavior were committed by respondent against ~~the intimate partner, family or household member~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship currently before the Court or were committed by respondent against any past ~~intimate partner, family or household member~~ person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship. The Court shall not deny any complaint filed under this Chapter solely because it was not filed within a particular time period after the last alleged incident of domestic violence.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-6. Intoxication is no defense; status of relationship is irrelevant.**

- (a) Intoxication is not a defense to a violation of any provision of this chapter.

(b) The provisions of this chapter shall be enforced regardless of marital status, cohabitation or the existence of a current relationship.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-7. Forms of relief.**

(a) *Final order of protective relief.* A petitioner may petition or move the court for a protective order if he or she has reasonable cause to believe that there is a danger of acts of domestic violence which may cause serious or immediate injury (either physical or emotional) to ~~an intimate partner, or to a member of such intimate partner's family or household~~ a person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship. A hearing on such petition or motion shall be set by the court within 14 days. If a party is proceeding ~~pro se~~ pro se, the clerk shall set a date for hearing and issue a notice of hearing and shall effect service of the summons, complaint, and other papers through the appropriate law enforcement agency where the defendant is to be served. If an immediate order is needed, then an ex parte order may be issued by the court in accordance with subsection (b), below.

(b) *Ex parte order.* If an immediate order is needed, the petitioner or movant may request, or the court may issue on its own motion, ex parte relief prior to the hearing specified in the above paragraph 50B-7(a). To issue such an order, it must clearly appear to the court from specific facts shown that petitioner has reasonable cause to believe that there is an immediate danger of domestic violence which could result in the physical or emotional injury to the person on whose behalf the petition is filed.

However, a temporary order for custody prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury, sexual abuse, or emotional distress. A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice. If an aggrieved party acting pro se requests ex parte relief, the Clerk of Court shall schedule an ex parte hearing with the Court by the end of the next day on which the Court is in session. If the Court is not in session, the clerk shall arrange for a magistrate or judge to hear the motion for ex parte relief within 24 hours. An ex parte order for protection shall be effective until modified or vacated by the court.

(1) Upon the issuance of an ex parte order under this subsection, a copy of the order, along with a short form notification shall be immediately served on the respondent. The short form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the names of all protected parties; the date in which the ex parte order for protection was filed; the court file number; the hearing date and time; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge or magistrate who signed the order. The short form notification must be in bold print in the following form:

THE ORDER FOR PROTECTION IS NOW ENFORCEABLE. You are subject to arrest and may be charged with a crime if you violate any of the terms of the order for protection or this short form notice.

(2) After an ex parte order is issued under this subsection, a hearing shall be set by the court within 14 days. In the interim, the ex parte order will remain in effect until such time as a hearing is held and a new order is entered, ~~or the ex parte order is vacated by the court,~~ or the petitioner Voluntarily Dismisses the ex parte order before the date of the hearing.

(3) If the party is proceeding pro se, the clerk shall immediately issue the short form notice to the defendant/respondent with an attached copy of the ex parte order, set a date for hearing, issue a notice of hearing, and effect service of the summons, complaint, notice of hearing, short form notice of ex parte order, ex parte order, and other papers through the appropriate law enforcement agency where the defendant/respondent is to be served.

(4) At the time of the hearing, the respondent may request and the Court may grant a continuance for good cause. During the time of any such continuance, the ex parte order shall remain in effect.

(5) At the time of the hearing, if the respondent is represented by an attorney and the petitioner is not, then the petitioner may request and the Court may grant a continuance for the aggrieved party to retain an attorney. During the time of any such continuance, the ex parte order shall remain in effect.

(Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003; Ord. No. 670, 3-30-2005)

**Sec. 50B-8. Clerk to make forms and instructions available.**

Standard petition forms with instructions for completion shall be available from the Clerk of Court.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-9. Contents of protective orders.**

- (a) The Court may grant any protective order or approve any consent agreement to stop or to prevent acts of domestic violence. Relief granted pursuant to an ex parte order shall expire at such time as a final protective order is entered. Relief granted pursuant to a final order shall be for a fixed period not to exceed two years duration and may be modified or extended at a subsequent hearing upon proof and a finding by the court that the threat of domestic violence still exists. If an immediate modification or renewal is needed, this may done ex parte (see section 50B-10 below). Permanent orders regarding matters of custody, visitation, support or division of property should

be addressed by filing separate civil actions with the court in accordance with the applicable rules of civil procedure. The orders or agreements may:

- (1) Direct a party responsible for domestic violence to refrain from any acts of domestic violence as defined in section 50B-2.
- (2) Grant to an aggrieved party possession of the residence or household of the parties and exclude the other party from the residence or household.
- (3) Require a party responsible for domestic violence to provide a spouse and his or her children suitable alternate housing.
- (4) Award temporary custody of minor children, order either party to make payments for the support of minor children as required by law, and establish temporary visitation rights of the minor children, with the primary consideration being the least disruption of the children, which shall include, but not be limited to consideration of the health, safety, education, and normal routines of children. If visitation is granted there shall be set rules for exchange of children for visitation, including but not limited to times, places, persons and the non-custodial parent may be required to post a bond as required by the Court. If the Court finds that the safety of the victim or the children will be jeopardized, the Court may deny visitation entirely.
- (5) Order the eviction of a party responsible for domestic violence from the residence or household and assistance to the victim in returning to it.
- (6) Order respondent to make timely payments on existing debts of the respondent, including mortgage or rental payments and necessary utilities, medical expenses, health insurance coverage for spouse and minor children, as well as any other necessary expenses and require the respondent to continue all available insurance coverage without change in coverage or beneficiary designation.
- (7) Provide for possession of personal property of the parties, including granting an aggrieved party use of a vehicle and other essential personal effects, regardless of which party holds title to such property.
- (8) Order a respondent to refrain from doing any or all of the following:
  - a. Threatening, abusing, or following ~~the intimate partner or a member of the intimate partner's household or family~~ the person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship,
  - b. Visiting the home, workplace, school or any other place where the ~~intimate partner or intimate partner's household member(s) or family member(s)~~ person in which they have a personal relationship or against a

family member or household member of such person in which they have a personal relationship is likely to be and wherein Respondent has no authorized business or need to be;

c. Communicating with the ~~intimate partner in person or with the intimate partner's family or household member(s)~~ person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship, by telephone, in writing, through gifts, either directly or indirectly through third persons (unless through an attorney or allowed through court ordered visitation of a minor child) or otherwise;

d. Coming within a certain distance of the ~~intimate partner or named household or family member at any time~~ person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship, or

e. Otherwise interfering with the ~~intimate partner or household member or family member or intimate partner~~ or engaging in any other conduct that would result in emotional distress to the ~~intimate partner or any household or family members~~ the person in which they have a personal relationship or against a family member or household member of such person in which they have a personal relationship or result in reasonable fear of bodily injury to same.

(9) Award costs and attorneys' fees to the aggrieved party.

(10) Prohibit a respondent from receiving, using, possessing, purchasing or transporting a firearm or ammunition.

(11) Order a respondent to attend and complete an abuser treatment program recognized and approved by the Eastern Band of Cherokee Indians or the Tribe's program for victims of domestic violence as based on an effective established model that has a sensitivity to and focus on the Native American experience.

(12) Order a respondent to participate in drug or alcohol assessment and treatment.

(13) Order one or both parties to maintain, and refrain from removing funds beyond a certain limit from, the parties' bank account.

(14) Order one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, or altering property except as authorizing by the Court, and requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition and expenditure.



(15) Order respondent to pay restitution to the aggrieved party or to any member of the aggrieved party's family or household who has suffered a financial loss due to respondent's actions.

(16) Include any additional prohibitions or requirements the court deems necessary to protect an aggrieved party or a minor child.

(17) Order respondent to reimburse within 30 calendar days of this order any victim services agency/program (including but not limited to The Tribal Domestic Violence Program, Western North Carolina Legal Services, etc.) for any services provided to petitioner/aggrieved party as a victim of domestic violence (for example, reimbursement could be ordered for such things as advocacy, shelter, legal assistance, etc.) Failure to reimburse any tribal program within the stated time frame shall constitute a debt to the tribe.

(Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003)

#### **Sec. 50B-10. Duration of protective orders.**

Ex parte orders shall expire upon the issuance by the Court of a final protective order. Final protective orders entered or consent orders approved pursuant to this chapter shall be for a fixed period of time not to exceed two years. Upon notice to all parties and a hearing, a judge may renew or modify all or part of the relief granted in the original or any succeeding order for successive ~~one-year~~ two-year periods with no limitation on the number of renewals, however, a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond a maximum one-year period. The Court may extend or modify the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(1) Respondent has violated a prior or existing order of protection or has engaged in other acts of domestic violence; or

(2) The petitioner (or person on whose behalf petition is filed) is reasonably in fear of physical or emotional harm from the Respondent

A petitioner does not need to show that physical or emotional harm is imminent to obtain an extension or a subsequent order. However, an ex parte modification or renewal may be issued immediately by the court if it finds that petitioner has reasonable cause to believe that there is an immediate danger of domestic violence which could result in immediate physical or emotional injury to the person(s) on whose behalf the petition is filed. Upon the issuance of an ex parte modification or renewal, the procedure outlined in subsection 50B-7(b) for scheduling a hearing and serving notice on the defendant/respondent shall be followed.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-11. Mutual orders are prohibited.**

Protective orders entered or consent orders approved shall not be mutual in nature, however, the Court may issue separate orders for protection and for restraining each opposing party when each party has properly filed and served petitions or motions for protective orders, each party has committed domestic violence as defined in this Chapter, each poses a continuing risk of violence to the other, and neither party acted primarily in self-defense.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-12. Parties shall receive orders and notice; police to enter information.**

(a) A copy of any order entered and filed under this Chapter shall be issued to each party. In addition, a copy of the order shall be issued within 24 hours of its issuance to the Cherokee Police Department and/or the police or sheriff city of the city or county of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(b) The Cherokee Police Department shall provide for immediate entry of the order (as well as any modifications or renewals) onto the National Crime Information Center Registry and shall provide for access of such orders to magistrates and judges on a 24-hour-a-day basis. Modifications, renewals, terminations and dismissals of the order shall also be promptly entered.

(c) Attached to each order shall be a Notice to Parties which must include the following language:

To respondent:

1. You must obey the protective order entered against you. If you violate the order, you are subject to imprisonment of up to 12 months in jail, as well as civil and criminal penalties and fines.
2. The protective order is valid and will be enforced against you by the Eastern Band of Cherokee Indians as well as in all 50 states of the United States, the District of Columbia, any Indian lands, and any commonwealth, territory or possession of the United States.
3. Federal law prohibits you from possessing or purchasing any firearm while this order is in effect as long as the order is not an ex parte order. The federal law applies whether or not the domestic violence protective order entered against you by tribal court prohibits you from possessing or purchasing firearms.
4. If you travel across state or Indian lands with the intent to violate the protective order entered against you, you are subject to prosecution for a federal crime.

5. If you travel across state or Indian lands with the intent to injure, harass, or intimidate the person protected by the order entered against you or if you travel across state lines or enter Indian lands or use the mail or any facility of interstate commerce across state lines with the intent to place that person or a member of the immediate family of that person in fear of serious bodily harm, you are subject to prosecution for a federal crime.

6. You and the party protected by the order cannot change the terms of the order entered against you by your own agreement. All of the provisions of this order continue in effect until the ending date of the order unless modified by the Court. If you violate this order you can be charged with a crime even though the protected has agreed to your violation.

To the protected party:

1. You should keep a copy of the protective order on you at all times and should make copies to give to your friends and family. If you move to another jurisdiction, you may wish to give a copy to the local law enforcement agency where you move, but you are not required to do so.

2. The protective order is valid not only within the territorial jurisdiction of the Eastern Band of Cherokee Indians, but also in all 50 states of the United States, the District of Columbia, all Indian lands, and U.S. territories.

3. You may not change the terms of the order by agreement with the other party. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.

4. If the Respondent violates any provision of the protective order, you may call a law enforcement officer or go to a magistrate to charge the Respondent with a crime of violating a protective order. You also may go to the Clerk's Office and ask to fill out Form CTC-CV-307 to have an order issued for the defendant to appear before a judge to be held in contempt for violating the order.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-13. Enforcement of orders.**

(a) Violation of order of protection. In addition to any other penalties available under law or equity, a person who knowingly violates an order of protection entered pursuant to this chapter or who knowingly violates a valid protective order entered by the courts of another Indian tribe or the courts of a state shall be subject to the penalties outlined in section 14-40.1 of the Cherokee Criminal Code, which includes punishment by imprisonment for up to 12 months, a fine of up to \$5,000.00 and, if the party is not subject to the criminal jurisdiction of the Cherokee Court, then such person is subject to exclusion from Tribal territory. In addition, a party may file a motion for contempt for

violation of any order entered pursuant to this chapter. The party may file and proceed with such motion pro se, using forms provided by the Clerk of Court.

(1) Upon the filing of a pro se motion for contempt and a proper affidavit under this subsection, the ~~clerk~~ Court shall ~~schedule and~~ issue a notice of a show cause hearing ~~with the Court~~ at the earliest possible date.

(2) The clerk shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in section 50B-9(a)(8).

(1) Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest.

(2) The person arrested shall be brought before the Court at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested may be released on bail as determined by the Court.

(c) Valid protective orders entered pursuant to this section shall be enforced by all law enforcement agencies without further order of the Court. If a defendant/respondent is excluded from the residence of the petitioner (or person on whose behalf petition is filed) or ordered to stay away from such person, an invitation by such protected party does not waive or nullify an order of protection.

(Ord. No. 407, 9-26-2002)

#### **Sec. 50B-14. Full faith and credit.**

Valid protective orders that are entered by the courts of a state or another Indian tribe and are consistent with 18 U.S.C. 2265 shall be accorded full faith and credit by the Cherokee Court whether or not the order has been registered and shall be enforced by the Cherokee Court and the Cherokee Police Department as if it were an order issued by the Cherokee Court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by a state or another Indian tribe that is provided to the officer and on the statement of the person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in Cherokee Court by filing with the Clerk of the Court a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the Cherokee Police Department. Unless the issuing state or Indian tribe has already entered the order, the Cherokee Police Department

shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to Section 50B-12(b). Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect.

(Ord. No. 407, 9-26-2002)

**Sec. 50B-15. Emergency assistance.**

(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of the Cherokee Police Department, and the Police Department shall respond to the request for assistance as a high priority matter.

(1) The police officer responding to the request for assistance shall take whatever steps are reasonably necessary to protect the victim and his or her minor children from harm, including without limitation:

a. Advise the victim of sources of shelter, medical care, counseling and other services;

b. Transport the victim to appropriate facilities such as hospitals, the Court, or public or private facilities for emergency shelter;

c. If Court order excludes Respondent from dwelling or residence and awards temporary possession to victim; accompany victim and assist in placing victim in possession of dwelling or residence, or otherwise assist in execution or service of the order of protection.

d. Upon request, accompany the victim to his or her residence, so that the victim may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the victim and any minor children who are presently in the care of the victim to remain elsewhere pending further proceedings;

e. Confiscate any weapon involved in the alleged domestic violence;

f. Give the victim adequate notice of rights, remedies and services available;

g. Arrest the alleged perpetrator as may be required by section 14-40.1(e) of the Cherokee Code;

h. Enforce all valid protective orders entered by the Court without further order of the Court; and