

became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

- (7) A claim of lien shall set forth the name and address of the Association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed.

3-117. Other Liens Affecting the Condominium.

- (1) A judgment for money against the Association is not a lien on the Common Elements, but if docketed is a lien in favor of the judgment lien holder against all of the Units in the Condominium at the time the judgment was entered. No other property of a Unit Owner is subject to the claims of creditors of the Association.
- (2) Notwithstanding the provisions of subsection (a), if the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to G.S. 47C-3-112, the holder of that security interest must exercise its right against the Common Elements before its judgment lien on any Unit may be enforced.
- (3) Whether perfected before or after the creation of the Condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the Condominium, becomes effective against two or more Units, the Unit Owner of an affected Unit may pay the lien holder the amount of the lien attributable to his Unit, and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that Unit. The amount of the payment must be proportionate to the ratio which that Unit Owner's Common Expense liability bears to the Common Expense liabilities of all Unit Owners whose Units are subject to the lien. After payment, the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expenses incurred in connection with that lien.
- (4) A judgment against the Association shall be indexed in the name of the Condominium and the Association and, if so indexed, is notice of the lien against the Units.

3-118. Association Records.

- (1) The Association shall keep financial records sufficiently detailed to enable the Association to comply with this chapter. All financial and other records,

including records of meetings of the Association and Executive Board, shall be made reasonably available for examination by any Unit Owner and the Unit Owner's authorized agents as required by the Bylaws and by Chapter 55A of the General Statutes if the Association is a nonprofit corporation. If the Bylaws do not specify particular records to be maintained, the Association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the Bylaws to be assembled and reported to the Unit Owners at specified times, the Association shall make an annual income and expense statement and balance sheet available to all Unit Owners at no charge and within 75 days after the close of the fiscal year to which the information relates. Notwithstanding the Bylaws, a more extensive compilation, review, or audit of the Association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the Executive Board or by the affirmative vote of a majority of the Unit Owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

- (2) The Association, upon written request, shall furnish a Unit Owner or the Unit Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a Unit. The statement shall be furnished within 10 business days after receipt of the request and is binding on the Association, the Executive Board, and every Unit Owner.
- (3) No financial payments, including payments made in the form of goods and services, may be made to any officer or member of the Association's Executive Board or to a business, business associate, or relative of an officer or member of the Executive Board, except as expressly provided for in the Bylaws or in payments for services or expenses paid on behalf of the Association which are approved in advance by the Executive Board.

3-119. Association as Trustee.

With respect to a third person dealing with the Association in the Association's capacity as a trustee under 2-118 following termination or 3-113 for insurance proceeds, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as such trustee.

3-121. Display of American, State or Tribal Flags & Emblems; Political Signs.

Notwithstanding any provision in any Declaration of covenants, no restriction on the use of land shall be construed to:

- (1) Regulate or prohibit the display of the flag of the United States or North Carolina, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with patriotic custom. This subdivision shall apply to owners of property who display the flag of the United States or North Carolina on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.
- (2) Regulate or prohibit the indoor or outdoor display of a political sign by an Association member on that member's property owned exclusively by the member, unless:
- (3) Even when display of a political sign is permitted under this subdivision, an Association (i) may prohibit the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) may regulate the size and number of political signs that may be placed on a member's property if the Association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the local government in which the property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one political sign with the maximum dimensions of 24 inches by 24 inches on a member's property. For the purposes of this subdivision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. This subdivision shall apply to owners of property who display political signs on property owned exclusively by them and does not apply to common areas, easements, rights-of-way, or other areas owned by others.

Article 4 - Protection of Purchasers.

4-101. Applicability; Waiver.

- (1) This Article applies to all Units subject to this chapter, except as provided in subsection (2) or as modified or waived by agreement of purchasers of Units in a Condominium in which all Units are restricted to nonresidential use.
- (2) Neither a Public Offering Statement nor a resale certificate need be prepared or delivered in the case of a disposition which is:
 - A. Gratuitous;
 - B. Pursuant to court order;
 - C. By a government or governmental agency;
 - D. By a nonprofit corporation with a valid designation from the IRS under paragraph 501(c)(3); even if such nonprofit corporation is the Declarant;
 - E. By foreclosure or deed in lieu of foreclosure;
 - F. To a person in the business of selling Real Estate who intends to offer those Units to purchasers; or
 - G. Subject to cancellation at any time for any reason by the purchasers without penalty.

4-102. Liability for Public Offering Statement Requirements.

- (1) Except as provided in 4-101, a Declarant must, prior to the offering of any interest in a Unit to the public, prepare a Public Offering Statement conforming to the requirements of 4-103, 4-104, 4-105, and 4-106.
- (2) A Declarant must, prior to the offering of any interest in a Unit to the public, provide notice of the availability of such Unit and during the *immediately following 30-day period* restrict the sale of such Unit to an Enrolled Member of the Tribe. Subsequent to such 30-day period, the sales of such unit is unrestricted and available to the public. Such 30-day period of restriction to an Enrolled Member of the Tribe also applies to any subsequent sale or resale of a Unit.

- (3) A Declarant may transfer responsibility for preparation of all or a part of the Public Offering Statement to a successor Declarant or to a person in the business of selling Real Estate who intends to offer Units in the Condominium for his own account. In the event of any such transfer, the transferor must provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (1).
- (4) Any Declarant or other person in the business of selling Real Estate who offers a Unit for his own account to a purchaser shall deliver a Public Offering Statement in the manner prescribed in 4-108. The person who prepared all or a part of or delivered the Public Offering Statement is subject to 4-117 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the Public Offering Statement which he prepared. If a Declarant did not prepare any part of or deliver a Public Offering Statement, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission. A Declarant, who has transferred responsibility for preparation of all or a part of the Public Offering Statement under subsection (2), shall be liable when a false or misleading statement in the Public Offering Statement prepared by another results from the Declarant's failure to provide the information required in subsection (2).

4-103. Public Offering Statement; General Provisions.

- (1) A Public Offering Statement must contain or fully and accurately disclose:
 - A. The name and principal address of the Declarant and of the Condominium;
 - B. A general description of the Condominium, including to the extent possible, the types, number, and Declarant's schedule of commencement and completion of construction of buildings and amenities which Declarant anticipates including as part of the Condominium;
 - C. The number of Units in the Condominium;
 - D. Copies of the recorded or proposed Declaration (other than the plats and plans) and any other recorded covenants, conditions, restrictions and reservations affecting the Condominium; the Bylaws, and any rules or regulations of the Association; copies of any contracts and leases to be signed by purchasers at closing, and copies of or a brief narrative description of any contracts or leases that will or may be subject to cancellation by the Association under 3-105;

E. Any current balance sheet and a projected budget for the Association, either within or as an exhibit to the Public Offering Statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the Association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

- (i) A statement of the amount, or a statement that there is no amount, included in the budget as a Reserve for repairs and replacement;
- (ii) A statement of any other Reserves;
- (iii) The projected Common Expense assessment by category of expenditures for the Association; and
- (iv) The projected monthly Common Expense assessment for each type of Unit;

F. Any services that the Declarant provides or expenses that he pays which are not reflected in the budget and that he expects may become at any subsequent time a Common Expense of the Association and the projected Common Expense assessment attributable to each of those services or expenses for the Association and for each type of Unit;

G. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

H. A description of any known or recorded liens, encumbrances or defects affecting the title to the Condominium;

I. The terms and limitations of any warranties provided by the Declarant;

J. A statement that the purchaser must receive a Public Offering Statement before signing a contract for purchase and that no conveyance can occur until seven calendar days following the signing of a contract for purchase; and that the purchaser has the absolute right to cancel the contract during the seven calendar days period;

K. A statement of any known or recorded unsatisfied judgments or pending suits against the Association, and the status of any pending suits material to the Condominium of which a Declarant has actual knowledge;

L. A statement that any deposit made in connection with the purchase of a Unit will be held in an escrow account pursuant to G.S. 47C-4-108, together with the name and address of the escrow agent;

M. Any restraints on alienation of any portion of the Condominium;

N. A description of the insurance coverage provided for the benefit of Unit Owners;

O. Any current or known future fees or charges to be paid by Unit Owners for the use of the Common Elements and other facilities related to the Condominium;

P. The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to G.S. 47C-4-119;

Q. A brief narrative description of any existing zoning and other land use requirements governing the Condominium; and

R. A statement that any Common Element may be alienated or conveyed in accordance with 3-112.

- (2) A Declarant promptly shall amend the Public Offering Statement to report any material change in the information required by this section and provide a copy of any such material changes to any purchaser who has executed a contract. If any material change is made in a proposed Declaration after a contract for purchase of a Unit has been signed but before conveyance, the purchaser may rescind the contract within seven days after receipt of the notice of the change.

4-104. Public Offering Statement: Developmental Rights.

If the Declaration provides that a Condominium is subject to any Development Rights reserved by the Declarant, the Public Offering Statement shall disclose, in addition to the information required by 4-103:

- (1) The maximum number of Units, and the maximum number of Units per acre, that may be created;
- (2) How many or what percentage of the Units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

- (3) If any of the Units that may be built within Real Estate subject to Development Rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that Real Estate, of the maximum percentage of the Real Estate areas and the maximum percentage of the floor areas of all Units that may be created therein that are not restricted exclusively to residential use;
- (4) A brief narrative description of any Development Rights and of any conditions relating to or limitations upon the exercise of Development Rights;
- (5) The maximum extent to which each Unit's Allocated Interests may be changed by the exercise of any Development Right;
- (6) The extent to which any buildings or other improvements that may be erected pursuant to any Development Right in any part of the Condominium will be compatible with existing buildings and improvements in the Condominium in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
- (7) General descriptions of all other improvements that may be made and Limited Common Elements that may be created within any part of the Condominium pursuant to any Development Right, or a statement that no assurances are made in that regard;
- (8) Any limitations as to the locations of any building or other improvement that may be made within any part of the Condominium pursuant to any Development Right, or a statement that no assurances are made in that regard;
- (9) A statement that any Limited Common Elements created pursuant to any Development Right will be of the same general types and sizes as the Limited Common Elements within other parts of the Condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;
- (10) A statement that the proportion of Limited Common Elements to Units created pursuant to any Development Right will be approximately equal to the proportion existing within other parts of the Condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

- (11) A statement that all restrictions in the Declaration affecting use, occupancy, and alienation of Units will apply to any Units created pursuant to any Development Right, or a statement of any differentiations that may be made as to those Units, or a statement that no assurances are made in that regard; and
- (12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any Development Right is not exercised by the Declarant.

4-105. Public Offering Statement; Time Share.

- (1) If the Declaration provides that ownership or occupancy of any Units are or may be owned in time shares, the Public Offering Statement shall disclose, in addition to the information required by 4-103:
 - A. The number and identity of Units in which time shares may be created;
 - B. The total number of time shares that may be created;
 - C. The minimum duration of any time shares which may be created; and
 - D. The extent to which the creation of time shares will or may affect the enforceability of the Association's lien for assessments provided in 3-116.
- (2) The provisions of subsection (1) apply to all purchasers of Units in the Condominium.

4-108. Purchaser's Right to Cancel.

- (1) A person required to deliver a Public Offering Statement shall provide a purchaser of a Unit or the spouse of such purchaser with a copy of the Public Offering Statement and all amendments thereto before a contract to purchase the Unit is executed. No conveyance pursuant to the contract to purchase may occur until seven calendar days following the execution of the contract and a purchaser has the absolute right to cancel the contract at any time during this seven calendar period. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.
- (2) If a purchaser elects to cancel a contract pursuant to subsection (1), he may do so by hand-delivering notice thereof to the offeror or by mailing notice

thereof by prepaid United States mail to the offeror or to his agent for service of process.

4-109. Resales of Units.

In the case of a sale where delivery of a Public Offering Statement is required, unless exempt under 4-101, a Unit Owner shall furnish to a prospective purchaser before conveyance a statement setting forth the monthly Common Expense assessment and any other fees payable by Unit Owners. In addition, prior to the offering of any interest in a Unit to the public, a Unit Owner must provide notice of the availability of such Unit and during the immediately following 30-day period restrict the sale of such Unit to an Enrolled Member of the Tribe. Subsequent to such 30-day period, the sale of such unit is unrestricted and available to the public.

4-110. Escrow of Deposits.

- (1) Any deposit made in connection with the purchase or reservation of a Unit from a person required to deliver a Public Offering Statement pursuant to 4-102 shall be immediately deposited in a trust or escrow account in an insured bank or savings and loan Association in North Carolina and shall remain in such account for such period of time as a purchaser is entitled to cancel pursuant to 4-108 or cancellation by the purchaser whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the seller.
- (2) Except as provided in 4-108, nothing in subsection (1) is intended to preclude the parties to a contract from providing for the use of progress payments by the Declarant during construction.

4-111. Release of Liens or Encumbrances.

- (1) In the case of a sale of a Unit where delivery of a Public Offering Statement is required pursuant to 4-102, a seller shall, at or before conveying a Unit, record or furnish to the purchaser, releases of all liens or encumbrances affecting that Unit and its Common Element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any Real Estate which a Declarant has the right to withdraw.
- (2) Before conveying Real Estate to the Association the Declarant shall have that Real Estate released from:
 - A. All liens or encumbrances the foreclosure of which would deprive Unit Owners of any right of access to or easement of support of their Units, and

- B. All other liens or encumbrances on that Real Estate unless the Public Offering Statement describes certain Real Estate which may be conveyed subject to liens or encumbrances in specified amounts.

4-113. Express Warranties of Quality.

Express warranties are applicable to the sale of a Condominium Unit and supplements the provisions of this Act; provided, however, that the existence of express warranties shall not constitute a disclaimer of implied warranties.

4-114. Implied Warranties of Quality.

Implied warranties, including but not limited to, implied warranties that the premises are free from defective materials, constructed in a workmanlike manner, constructed according to sound engineering and construction standards and that the premises may be used for a particular purpose, is applicable to the sale of a Condominium Unit and supplements the provisions of this Act.

4-115. Exclusion of Modification of Implied Warranties of Quality.

- (1) Except as limited by subsection (2) with respect to a purchaser of a Unit that may be used for residential use, implied warranties of quality:
 - A. May be excluded or modified by agreement of the parties; and
 - B. Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.
- (2) With respect to a purchaser of a Unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a Declarant and any person in the business of selling Real Estate for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

4-116. Statute of Limitations for Warranties.

- (1) A judicial proceeding for breach of any obligation arising under 4-113 or 4-114 must be commenced within twelve (12) months.
- (2) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the Condominium, the cause of action

accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

4-117. Effect of Violations on Rights of Action; Attorney's Fees.

If a Declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the Declaration or Bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. The court may award reasonable attorney's fees to the prevailing party.

4-118. Labeling of Promotional Material.

If any improvement contemplated in a Condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the Condominium with respect to which the Declarant has reserved a Development Right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT".

4-119. Declarant's Obligation to Complete.

- (1) The Declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to 2-109.
- (2) The Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the Condominium, of any portion of the Condominium affected by the exercise of rights reserved pursuant to or created by 2-110, 2-111, 2-112, 2-113, 2-115, and 2-116.

4-120. Substantial Completion of Units.

In the case of a sale of a Unit where delivery of a Public Offering Statement is required, a contract of sale may be executed, but no interest in that Unit may be conveyed until the Declaration is recorded and the Unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an architect or an engineer, or by issuance of a certificate of occupancy.

**Cherokee Council House
Cherokee, Qualla Boundary (NC)**

Date: _____

ORDINANCE NO. _____(2010)

WHEREAS, the Cherokee Broadband Enterprise is a tribal entity with the responsibility to promote sustained economic growth and economic development opportunities by maximizing the benefits and economic potential of the Tribe's fiber optic assets; and

WHEREAS, in pursuit of these goals the enterprise has begun its first task of bringing wireless internet access to remote and unserved areas on the Qualla Boundary; and

WHEREAS, this project requires the construction of several towers and the use of the tower permitting process; and

WHEREAS the tower ordinance has been utilized for the first time since its adoption for the purpose stated above it has come to the attention of the Enterprise that the ordinance should be amended to better streamline the permitting process and clean up some language that is confusing; and

WHEREAS these proposed amendments in no way alter the substance or the purpose of the law nor do they diminish the Tribe's ultimate discretion in issuing tower permits.

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 shall be modified as follows:

Sec. 62-103. Definitions.

(e) *Fall Area.* A circle whose center is the base of a telecommunications tower and whose radius is equal to the tower's height or a radius certified by a tower engineer based on the engineering or design of the tower if different from the tower's height.

Sec. 62-108. Application submission and review process.

(a) A person applying for a tower permit must complete a tower permit application and shall submit the original with all supporting documentation as required in Section 62-109 to the Planning Office at least fifteen (15) working days prior to a regularly scheduled Planning Board meeting. An application shall not be accepted until the applicant

produces a receipt from the Tribe's Budget and Finance Office showing payment of the application fee. Projects funded by tribal dollars shall be exempt from the application fee.

(b) The Enforcement Office shall review the completed tower permit application for compliance with Sections 62-109 and 62-111. Any application not containing all information required in 62-109 or specific requests with supporting evidence for variances on the items for which information is not contained but is required in 62-109 shall be rejected and returned to the applicant together with the reasons for rejection. If the Planning Office deems it necessary, it may retain, at the permit applicant's expense, one or more professional engineers to assist it in reviewing any technical requirements.

(c) The Enforcement Office shall be responsible for submitting a notice to the local paper(s) and to all known property owners ~~abutting the property~~ within the fall zone where the proposed tower is to be located. Costs of the notice shall be paid by the permit applicant and may be included in the permit application fee. The notice shall state that the Planning Board will review and consider the tower permit application at a meeting, with a date certain expressed in the notice, and that the application is available for public review in the Planning Office.

(d) The Enforcement Office shall recommend to the Planning Board either approval, approval with conditions, or disapproval. In making ~~his~~ its recommendation, the Enforcement Office may include any appropriate conditions it deems should be placed on issuing the permit as identified in 62-111.

(e) The Planning Board shall consider the tower permit application and public comments regarding the application's technical compliance with the ordinance after receiving the Enforcement Office's recommendation.

(f) The Planning Board shall take formal action to approve, approve with conditions, or disapprove the tower permit application within sixty (60) days. If the action is to disapprove the tower permit application, the reasons for that action shall be stated in the minutes and specific reference shall be made to the requirements not met. If the Planning Board fails to act within the specified time period, the application shall be considered approved or disapproved as recommended by the Enforcement Office.

(g) If a tower permit application is approved or approved with conditions, the application and site development plan shall be filed in the Cherokee Agency Realty office before obtaining a building permit for the tower.

Sec. 62-109. Required application information.

All of the following information shall be submitted with the application and shall be part of the tower permit application.

(a) A site development plan prepared by the BIA Realty Department containing the following:

(4) The name, addresses and community parcel identification numbers of all owners of property ~~abutting~~ within the fall zone of the subject property.

Sec. 62-111. Tower approval standards.

(c) Towers shall be sited to contain all ice-fall or debris from tower failure on-site. The minimum distance from the tower's base to the another person's property line shall be equal to the tower's height fall zone whenever possible. If the fall zone of the tower crosses another's property line no easement for the fall zone is necessary. However, any legally recognized damage to abutting property owners shall be the expense of the permittee.

~~(1) Property located within the tower's fall area shall not be subdivided as long as the tower is standing.~~

Sec. 62-113. Variances.

~~(a) Following a final decision by the Planning Board to deny a tower permit, the applicant may request that the Business Committee grant a variance.~~

~~(b) Before determining whether to or not to grant a variance, the Business Committee shall hold a public hearing. The Planning Board committee may grant a variance if and only if it concludes that:~~

~~(1) Adherence to this article's development standards will cause extraordinary substantial economic hardship to the applicant; and~~

~~(2) If the variance is granted, the proposed use of the site will not substantially diminish the public health or safety or be detrimental to the general welfare of Tribal members; and~~

~~(3) If the variance is granted, the proposed use of the site will not substantially detract from the natural beauty of the mountains and the Tribe's future economic growth and development.~~

~~(c) If the Business Committee Planning Board grants the requested variance, the Enforcement Office shall issue a tower permit with the variances and any other conditions set by the Planning Board. The permit applicant shall acknowledge and agree to permit conditions required by the Business Committee Planning Board. If a building permit is not obtained within 12 months after the tower permit issued, the tower permit shall expire.~~

Sec. 62-116. Administrative aAppeals.

A final decision of the Enforcement Office may be appealed to the Planning Board. ~~A final decision of the Planning Board may be appealed to the Business Committee.~~ A final decision of the Business Committee Planning Board on a pending application or variance may not be further appealed. A final decision of the Business Committee Planning Board regarding a permit that has already been issued, or a variance that has already been granted, or a tower or DAS antenna that has already been constructed and installed may be appealed to the Cherokee Tribal Court. Any appeal must be filed within 30 working days of the action of the body from which the appeal is taken. Only the party named on the permit application as the applicant, or the landholder on which the tower or DAS antenna will be or is located, may file an appeal.

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and any prior ordinance or part thereof that conflicts with this ordinance is rescinded.

Submitted by: Cherokee Broadband Enterprise

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

(DATE)

ORDINANCE NO. _____ (2010)

WHEREAS, the Tribe’s Personnel Policies and Procedures Manual provides the polices and procedures for the daily management of the Tribe’s employees and programs; and

WHEREAS, the policy itself requires the Employment Office to review the manual every two years and submit it to the Executive Committee and Tribal Council for review and adoption; and

WHEREAS, to help with the review by the Employment Office, the Personnel Policy Review Committee was formed, and the two have now completed a thorough review of the manual; and

WHEREAS, Tribal employees have had an opportunity to comment on proposed changes, and the Committee has met and discussed the employee’s comments and the following recommendations have been made for change based on those comments; and

WHEREAS, the Committee’s recommendations have also been reviewed by the Deputies of each Tribal Division, the Executive Committee, and the Tribal Legal Office; and

WHEREAS, the Tribal Legal Office has written a final draft of the revised manual containing recommendations from the parties, and hereby presents the attached manual for consideration and adoption by the Tribal Council.

NOW, THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, the Tribal Council has reviewed the final draft of the 2010 revision of the Tribe’s Personnel Policies and Procedures Manual, and has determined the attached revisions have been thoroughly examined by the parties, that the revisions are approved, and that the 2010 revised manual is hereby adopted.

BE IT FURTHER ORDAINED the 2010 revised manual shall be printed in the Cherokee Code as Appendix A to Chapter 96, and the existing Appendix A is hereby rescinded in its entirety.

BE IT FINALLY ORDAINED that any prior resolution or ordinance, or any part thereof, inconsistent with or conflicts with this ordinance is hereby rescinded, and that this ordinance shall be effective upon ratification by the Principal Chief.

Submitted by: Employment Office and Personnel Policy Review Committee

EASTERN BAND OF CHEROKEE INDIANS



PERSONNEL POLICIES AND PROCEDURES

3-31-10

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Welcome employees,

As you begin your employment with the Eastern Band of Cherokee Indians (EBCI), I would like to welcome you to our organization and invite you to read and become familiar with the contents of these Personnel Policies and Procedures. You will find it full of helpful and valuable information about the policies, procedures, and opportunities available to guide and assist you in performing to the best of your abilities and developing and realizing your potential as a valued employee. With your help, we are looking forward to continuing growth and prosperity as we find new and better ways to serve the members of the EBCI.

The policies, procedures, and programs outlined in this handbook are designed to serve as guidelines to keep you informed of relevant facts about your employment. They do not, in any way, waive the sovereign immunity of the tribe. They are not intended to create any kind of contractual relationship. While the policies and procedures outlined in this document will provide answers to most of the general questions you might have about your job or the EBCI'S programs and procedures, it cannot cover every situation that might arise. If you have questions about these guidelines or need further information about any subject, please consult with your supervisor or the EBCI Employment Office. We also welcome your suggestions for improvements either to policies or procedures covered in this handbook or in other job-related areas or subjects. Your ideas on ways to improve our operations and procedures are important to us, and, along with your effort and performance, are an ideal way to contribute to the EBCI's future growth and your own development.

Please read this handbook carefully and retain it for future use. Familiarize yourself with its contents as soon as possible, because it should answer many of your initial and ongoing questions about your employment with EBCI. We want you to be fully informed and to understand our policies and procedures completely.

Once again, I welcome you and wish you success as we face the numerous challenges, opportunities, and potential rewards ahead.

Sincerely,

Michell Hicks,
Principal Chief

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PREFACE

These Personnel Policies and Procedures are intended to state clearly the benefits and responsibilities of Eastern Band of Cherokee Indians (EBCI) employment. It is the resource to inform employees of policies and procedures and to promote standard practices among all personnel. ~~The policies or procedures outlined here are not intended to create a contract of employment or to waive sovereign immunity in any way.~~ The policies, procedures, and programs outlined in this handbook are designed to serve as guidelines to keep you informed of relevant facts about your employment. They do not, in any way, waive the sovereign immunity of the tribe. They are not intended to create any kind of contractual relationship. Your employment with the Eastern Band of Cherokee Indians is "at will". While the policies and procedures outlined in this document will provide answers to most of the general questions an employee you might have about their -your job or the EBCI'S programs and procedures, it cannot cover every situation that might arise.

Each employee is responsible for becoming familiar with and complying with these policies and regulations.

EBCI Management's Responsibility to Employees

As an employee, you may expect from the EBCI:

- Fair and equitable treatment.
- Fair pay and benefits.
- Healthy and safe working conditions.
- Competent supervision.
- Opportunity for advancement based on work performance and vacancies.
- To be kept informed through two-way communication.

Employee's Responsibility to the EBCI:

As your employer, the EBCI expects you:

- To work toward the goals of the EBCI in providing service to members and residents of Cherokee.
- To be loyal.
- To be fair, courteous, and cooperative in your relationship with the public and your fellow employees.
- To give the EBCI a fair return for the pay you receive.
- To practice good grooming habits and be prompt in reporting for work and scheduled assignments.

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- To be economical and responsible in the use of supplies and equipment.
- To comply with all policies and procedures of the EBCI.

ARTICLE 1. TITLE AND PURPOSE

Sec. 1.00. Title.

These Personnel Policies and Procedures for the Eastern Band of Cherokee Indians (EBCI) have been adopted by Ordinance No. 771 (2005).

Sec. 1.01. Purpose.

The purpose of these policies and procedures is to provide accurate information to all employees regarding the personnel policies and procedures (standards, benefits, procedures, and authority) that will be used by the EBCI.

ARTICLE 2. AUTHORITY AND APPLICABILITY

Sec. 2.00. Authority.

These Personnel Policies and Procedures as adopted by the Cherokee Tribal Council set forth the rules to be applied by the Principal Chief, the Executive Committee, the Deputy Officers, and the directors, managers and supervisors of the EBCI in employment matters.

Sec. 2.01. Applicability.

These policies and procedures apply to all EBCI employees, except as otherwise specifically provided herein or in other applicable tribal law.

Sec. 2.02. Elected officials.

Elected officials shall not be subject to this manual. No member or committee of the Tribal Council shall have direct supervisory authority over any Tribal employee.

Sec. 2.03. Political appointees.

Political appointees serve in positions appointed by the Principal Chief, Vice Chief, and Tribal Council. They serve at the discretion of the appointing official(s) and may be terminated at the discretion of such official(s).

Political appointees are not subject to Sections 5.00, 5.01, 5.04, 5.05, 5.06 and 5.07 of Article V, Article XIII and Article XIV.

Sec. 2.04. Other Tribal organizations.

Nothing herein contained shall be applicable to separately chartered organizations, which have legal authority to develop and adopt separate personnel policies. These separately chartered organizations include, but are not limited to, the Cherokee Boys Club, Inc., Tribal Bingo Enterprise, ~~Qualla Housing Authority~~, Tribal Gaming Commission, Vocational Opportunities of Cherokee, ~~Museum of the Cherokee Indian~~, Cherokee Indian Hospital Authority, and the Tribal Casino Gaming Enterprise.

Sec. 2.05. Supplemental personnel procedures.

Supplemental personnel procedures may be adopted by the Executive Committee for specific EBCI Departments provided they are consistent with these Personnel Policies and Procedures. If the supplemental policies are inconsistent, the tribal personnel policy manual shall be the highest level of authority.

Sec. 2.06. Policy review and revision.

The next review and revision of this policy will begin and be passed by council in the year 2012~~08~~. Then the policy will be reviewed every two years during a non-election year for council members. The Employment Office shall determine the procedure by which the policy is reviewed by management and staff and shall specifically outline the time by which comments and proposed changes are due. Comments will be submitted to the Tribal Council for review, and changes recommended by management will be submitted to the Tribal Council for approval. In addition to the ~~biennial~~ biannual review, amendments to this policy may be made from time to time as deemed necessary and appropriate by the Tribal Council.

ARTICLE 3. DEFINITIONS.

Sec. 3.00. Appeals Committee

~~The final decision making body consisting of one management employee, one chairperson, and two regular employees, selected from a pool of employee and management representatives, for the Corrective Action Appeal Procedure. The committee is made up of two representatives, one management representative and one non-management representative, from each division.~~

Sec. 3.01. Appropriate supervisor.

An employee who has been assigned the role of supervisor for the purpose of supervising, authorizing, and managing the day-to-day operations of an EBCI program. This may include but is not limited to a deputy, manager or supervisor.

Sec. 3.02. At will.

The ability of an employer or employee to terminate employment at any time.

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Sec. 3.02. AWOL.

Absent without authorized leave.

Sec. 3.03. Calendar days/work days/ work day/ work week.

Calendar days refer to all days including weekends and holidays; work days refer to the scheduled tour of duty.

Regular work day- the regular work day will begin at 7:45 a.m. and end 4:30 p.m. which the tribe considers a business day.

Regular work week – the regular work week will begin on Monday at 7:45 a.m. and run consecutively through Friday at 4:30 p.m. Recognized tribal holidays are not considered regular business days.

Sec. 3.04. Demotion.

A change in status resulting from assignment to a position of lower salary level.

Sec. 3.05. Deputy Officer (or Deputy).

The person in charge of a tribal division as outlined in the EBCI's organizational chart.

Sec. 3.06. Difference pay.

The difference between fees/wages received for military duty and the regular rate of pay for the time period.

Sec. 3.07. Discharge/termination.

Involuntary separation of employment.

Sec. 3.08. Duty station.

Primary location or area of employee's work.

Sec. 3.09. EBCI (or Tribe).

Eastern Band of Cherokee Indians.

Sec. 3.10. Employee.

A person performing financially compensated duties for the EBCI on a non-contractual basis as defined by the Internal Revenue Code.

Sec. 3.11. Essential positions.

Positions in which work content is critical to the well being of the community in an emergency situation as declared by the Chief (including without limitation, Dispatch, Police, designated Facilities Management personnel, Natural Resources Enforcement Fish and Game, Fire Protection, Cherokee DOT, EMS, Tribal Construction, and Emergency Management, Tsali Care patient care providers, Qualla Housing Authority emergency staff, Housing and Community Development emergency staff, and Home Health patient care providers).

Sec. 3.12. Executive Committee.

A committee composed of the Principal Chief and Vice-Chief.

Sec. 3.13. Exempt employee.

An employee whose employment position is exempt from overtime pay as defined under the Fair Labor Standards Act. (See §6.02)

Sec. 3.14. FICA.

Federal Insurance Contributions Act.

Sec. 3.15. FMLA.

Tribal Family and Medical Leave Act.

Sec. 3.16. Immediate family.

Immediate family relationships are those 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. For specific applications refer to 4.02 "Employment of relatives" and 4.03 "Conflicting employee relationships."

Sec. 3.17. Individual with disabilities.

Person with a disability is anyone who has a physical or mental impairment that substantially limits one or more of the person's major life activities, or has a record of such impairment, or is regarded as having such an impairment.

Sec. 3.18. Involuntary separation.

Separation from EBCI employment because of curtailment of work, budget limitations, reorganization, or corrective action resulting in suspension or discharge.

Sec. 3.19. Lateral transfer.

Reassignment from one position to another position at an equal pay classification and similar job duties.

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Sec. 3.20. Legally mandated benefits.

Benefits mandated by applicable law such as FICA and Worker's Compensation.

Sec. 3.21. LWOP.

Leave without pay (granted in 15-minute increments).

Sec. 3.22. Non-covered employees.

Employees who are generally not covered by the Fair Labor Standards Act. These employees include such employees as elected officials, their personal staffs (political appointees), policy-making appointees, and legal advisors.

Sec. 3.23. Non-exempt employee.

An employee who is subject to the minimum wage and overtime provisions as defined under the Federal Fair Labor Standards Act. (See §6.02)

Sec. 3.24. Non-public information.

Information of a confidential nature (i.e., personnel files, drug/alcohol test results, client files, protected health information, salaries, contract and bid information, specified financial data, customer accounts and any other specified information as determined by EBCI management).

Sec. 3.25. Pay status/non-pay status.

In pay status the employee earns pay; in non-pay status the employee does not earn pay. Eligibility for benefits depends upon the provisions of the various plan documents and the applicable plan procedures.

Sec. 3.26. Position.

The group of duties and responsibilities performed for financial compensation by an employee per the employee's job description.

Sec. 3.27. Program.

A formally prescribed activity or service established to perform a specific function.

Sec. 3.28. Promotion.

A change in status resulting from assignment to a position of higher salary grade.

Sec. 3.29. Public information.

Information designated or approved for dissemination by the Principal Chief.

Sec. 3.30. Tour of duty.

The period of required work hours including all breaks.

Sec. 3.31. Tribal Council.

Elected legislative branch of the EBCI.

Sec. 3.32. Voluntary separation.

Separation from EBCI employment for reasons of resignation, retirement, or abandonment.

Sec. 3.33. Word interpretation.

For the purpose of this appendix, certain words shall be interpreted as follows:

- *Tribe* shall mean the Eastern Band of Cherokee Indians;
- *May* is permissive;
- *Shall* and *will* are mandatory.

Sec. 3.34. Seniority.

EBCI seniority is the continuous full-time service an employee has worked in any capacity for the EBCI since the last date of hire.

Sec. 3.35 Law Enforcement.

Law enforcement refers to personnel who work within the Deputy Marshall Division, Natural Resources Enforcement, and Public Safety Department who hold a current Basic Law Enforcement Training Certificate.

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ARTICLE 4. GENERAL EMPLOYMENT POLICY

Sec. 4.00. Employment preference and equal employment opportunity.

Employment decisions at EBCI will be based on merit, qualifications, ability and seniority as defined in certain policies. All employment with EBCI shall be conditioned upon a positive background check. EBCI has fundamental interests in providing employment opportunities, professional development, and financial support for its enrolled members and their families, and in fostering self-governance of the Tribe by enrolled members. It is the policy of the EBCI to give preference in all initial hiring decisions within the Tribe to enrolled members of the Eastern Band of Cherokee Indians who meet the minimum requirements. (See Section 5.07A for rules regarding promotions). If two enrolled members of the Eastern Band of Cherokee Indians meet the minimum requirements and are of equal qualification, preference will be given to the enrolled member who is also an honorably discharged veteran. Enrolled members' spouses and/or parents of EBCI-enrolled minor children (i.e., under 18 years old) who meet the minimum requirements will be given a second level of preference. Enrolled members of other federally recognized Tribes will be given a third level preference, if they meet the minimum requirements. First descendants of EBCI enrolled members shall be given a fourth level preference.-In the case of employment with the Head Start and Early Head Start Programs, a fifth preference will be given to any qualified current or former parents of Head Start or Early Head Start students. To the extent these preferences are different from other provisions of tribal law, these preferences shall prevail as to employment by the Tribe. After considering these preferences, it is the policy of the EBCI to foster, maintain, and promote equal employment opportunities. (Note: the above preferences are subject to the individual having positive reference checks and/or background checks and a positive employment history.)

Sec. 4.01. Access to personnel files.

Personnel files are the property of EBCI and maintained by EBCI personnel department, and the information they contain is restricted and confidential. Only authorized supervisors and management personnel as determined by the Employment Office will be allowed to review information; they will be required to sign for the file.

Employees and former employees may examine their personnel file by making a request to an employee of the EBCI Employment Office. A time convenient to both employee and staff will be set during regular office hours for the employee or an authorized agent (i.e., attorney or other agent who has been given written authorization from the employee) or physician to examine the file. This review will take place in the EBCI Employment Office.

An employee who objects to material in his or her file on grounds that it is inaccurate or misleading may place in the file a statement relating to the material; or, the employee may seek to have the material removed from the file. The decision about removal of material from a personnel file shall be in the discretion of the Employment Office Manager with the written concurrence of the appropriate Deputy Officer.

Employees and former employees may obtain a copy of their personnel file by signing a release form or by presenting a court order.

Sec. 4.02. Employment of relatives.

The term "immediate family" is defined in section 3.16 and shall be understood to refer to a degree of closeness of relationship that might create a problem within the working unit.

Two members of a single immediate family shall not be employed by the EBCI when such employment will result in one member providing direct supervision of the other. In cases where a conflict or the potential of conflict arises, even if there is no direct supervisory relationship, the parties may be separated by reassignment or other arrangements. If the immediate family relationship is established after employment, the employee is required to immediately report the change of circumstances related to the appropriate supervisor.

The appropriate Deputy Officer, with the approval of the Principal Chief will resolve the conflict or potential conflict within 30 calendar days.

Sec. 4.03. Conflicting employee relationships.

In cases where an employee is not covered as defined in section 3.16 but where circumstances create a close relationship (e.g. live-in companion, cousins raised as siblings) between the employees, section 4.02 shall apply.

Sec. 4.04. Elected officials and EBCI employment.

The EBCI shall adhere to the Cherokee Election Ordinance as it relates to tribal employees holding elective offices.

Sec. 4.05. Age limitations.

No individual shall be barred from EBCI employment because of age if an individual is otherwise qualified. The Tribe may set forth a maximum age for a specific position if these requirements are based on occupational qualifications essential to maintaining safe and efficient departmental operations.

The minimum age at which individuals may be employed is 18 years of age. Exceptions to this minimum age requirement include temporary, summer youth, or other specific project employment. In addition, certain positions may require a higher age requirement.

Sec. 4.06. Employment of persons with disabilities.

The EBCI supports and encourages employment of persons with disabilities. The person must meet the necessary requirements to perform the essential functions of the position. The EBCI will make every reasonable effort to remove physical and attitudinal barriers that prevent the employment of persons with disabilities.

Sec. 4.07. Subversive activity.

No employee shall advocate or become a member of any organization that advocates the unlawful disruption of the constitutional form of government of the EBCI, or of any organization that seeks by force or violence to deny other persons their rights under the Constitution of the United States.

Sec. 4.08. Political activity.

No employee shall:

- Use official authority or influence to interfere with or affect the results of an election or nomination;
- Solicit or discourage political activity of anyone who has business within the employee's program;
- Directly or indirectly coerce contributions from subordinates in support of a political party or candidate;
- Engage in political activity while on tour of duty;
- Use EBCI funds, supplies, equipment, or property in any political activity; or
- Use influence for political gain.

Employees who are working in federally funded programs may engage in limited political activities as outlined in the Hatch Act Reform Amendments of 1993, 5 U.S.C. 7321-7326 (copy on file at Employment Office Library). All employees subject to the Hatch Act shall thoroughly familiarize themselves with the limitations set forth in the law.

Sec. 4.09. Maintenance of personnel files.

An official personnel file on each employee shall be maintained in the Employment Office. The following information may be included in the personnel file: signed receipt for the personnel policies and procedures, ~~employee benefits information~~, school transcripts, diplomas, employee appraisals, reference letters, records regarding other employees, reports from former employers or investigative agencies, records of employment related investigations involving the employee, documents prepared in conjunction with any grievance, records of any corrective actions, licensure, competency, certifications, and any other materials required for accreditation, and the information they contain is restricted and confidential. Documents that may raise privacy concerns for the employee or for the provider of the document, including medical records, negative reference letters, benefits information and investigative reports with individually identifiable information, shall be maintained in a file that is separate from the personnel file.

Sec. 4.10. Personal data changes.

Each employee is responsible for keeping personal information accurate by promptly notifying the Employment Office of changes in personal data, such as:

- Personal mailing addresses (including forwarding addresses).
- Telephone numbers.
- Name changes (for example, following a marriage/divorce, with corrected Social Security card).
- Divorce or legal separation.
- Number and names of dependents.
- Individuals to be contacted in the event of an emergency.

- Educational accomplishments.
- Status reports.

The employee should first notify their supervisor of the personal information changes and the supervisor shall complete a conversion sheet to be submitted to the Employment Office.

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Sec. 4.11. Employment applications.

The EBCI will accept applications only from citizens of the United States of America or from those with appropriate immigration authorization. Any misrepresentations, falsifications, or material omissions in employment applications, resumes, Employment Security Commission referrals, information, or data may result in exclusion of the individual from further consideration for employment or in termination of employment. In addition, any adverse reference checks, negative employment history, negative information in a background investigation, positive drug test, or revoked or suspended license may affect an individual's eligibility for employment.

Sec. 4.12. Pay advances.

No pay advances on unearned wages shall be provided.

Sec. 4.13. Use of phone, mail, and office systems.

The personal use of Tribal telephones (including cell phones) for long distance and excessive use of local calls, as well as the use of mail services (e.g. postage meter, postage stamps), fax machines, and Tribal accounts are not permitted except where permitted by Executive Order, formally approved by the appropriate supervisor, or allowed by established tribal policy. Tribal employees should not have any expectation of privacy in their use of Tribal computers, phones, etc., and the Tribe reserves the right to monitor such usage from time to time or as needed to prevent abuse. Employees shall be required to reimburse EBCI for any charges resulting from personal use of any of these systems immediately and may be subject to corrective action. Any supervisor, program manager, or deputy who has knowledge of such prohibited use and fails to take immediate corrective measures shall be subject to corrective action and/or an adverse performance evaluation.

Telephone, mechanical or electronic eavesdropping or recording is prohibited, unless required for law enforcement purposes.

Sec. 4.14. Tribal Cellular Phone Usage Policy

The Tribal Cellular Phone Usage Policy included in the ~~Fiscal Management Policy~~ IT forms library on CWEB shall be recognized as the official policy for cellular phone usage.

Sec. 4.15. Internet, E-Mail, and Tribal Information System Usage.

The Internet, E-mail, and Tribal Information System Usage Policy included in the ~~Fiscal Management~~ IT Policy maintained on CWEB shall be recognized as the official policy for Internet, e-mail and Tribal information system usage.

Sec. 4.16. Use of equipment and vehicles.

Each program manager shall have the responsibility of maintaining accurate and current inventory of all EBCI property assigned to that department, as well as a monitoring system (for example, a vehicle mileage log book) to ensure proper use of tribal property. The manager shall be responsible for making sure that tribal property is not abused or mistreated in any way.

At no time shall employees use EBCI property, including vehicles, for personal use or gain. In addition, while driving or seated as a passenger in a vehicle, employees are required to use seatbelts and to ensure that all others in the vehicle are using seat belts. At no time should employees allow unauthorized individuals to be a passenger in a tribal vehicle unless expressed permission is granted by the appropriate supervisor or manager. (An "unauthorized" individual includes a person who is not employed by the tribal program or whose presence in the vehicle is not needed to accomplish the program's mission.)

When using EBCI property, employees will exercise care, perform required maintenance, and follow all operating instructions, applicable federal, tribal, or state safety standards, and guidelines. Any citations received by an employee while driving a tribal vehicle should be reported to the appropriate supervisor immediately. Tribal employees who are performing their assigned job duties on behalf of the Tribe must not transport any non-tribal employee in his/her personal vehicle without specific authorization to do so.

Employees are responsible for the proper care and maintenance of all tribal property, materials or written information issued to them, in their possession, or under their control. Employees must return all EBCI property, materials and written information to their supervisor immediately upon completion of tasks, upon termination of employment, upon promotion or transfer to other tribal employment, or otherwise upon any supervisor's request. Documents prepared or received during an employee's tour of duty, and materials obtained from training opportunities paid for by EBCI, are among the items defined as "EBCI property", and shall remain housed at the program or department where promulgated or received. Upon written request to and permission from the supervisor, copies or replicas of non-confidential, non-sensitive EBCI property (such as documents or training materials) may be retained by the employee, but not in a manner that leaves the program or department where they were promulgated or received, deprived of the property. Violation of this section is a ~~Schedule III~~ type of offense for those who continue in tribal employment. Subject to applicable federal regulations, EBCI may withhold from the employee's pay the cost or replacement costs of any items that are not returned as required. EBCI may also take appropriate legal action to recover or protect Tribal property.

Personal or other unauthorized use of EBCI property shall subject the employee to corrective action and/or an unfavorable performance evaluation. Any supervisor, manager, director or Deputy Officer who has knowledge of such personal use by an employee and who fails to take corrective action against such employee shall also be subject to corrective action and/or an unfavorable performance evaluation.

Sec. 4.17. Attendance and punctuality.

EBCI employees will be reliable and punctual in reporting to their work stations.

The standard tour of duty is five days, 40 hours, Monday through Friday. The standard workday will begin at 7:45 a.m. and continue until 4:30 p.m. (Specific Tribal departments, including but not limited to the Police, Fire and EMS Departments, maintain alternative tours of duty.) The appropriate supervisor or manager may authorize an alternate schedule for an employee or group of employees, so long as that action does not conflict with program needs. The alternate work schedules should be in writing, approved by Executive, and filed in the Compensation Program File as well as in the Employment Office to assure compliance with FLSA overtime requirements.

The lunch break will be 45 minutes and will be arranged to suit program needs. Morning and afternoon work breaks of 15 minutes each shall be scheduled by the appropriate supervisor according to work demands.

Sec. 4.18. Personal appearance.

Dress, grooming, and personal cleanliness standards contribute to the professional image presented to customers, visitors, and colleagues.

While conducting EBCI business, employees are expected to present a clean, neat and professional business-like appearance. They should dress according to the requirements of their positions as determined by the appropriate supervisor or safety officer.

Sec. 4.19. Confidentiality of personnel file; other confidential employee information.

A. *Requests for employee information.*

Conditions for release. All employee files are confidential and disclosure shall be limited to appropriate tribal staff, such as supervisors, managers, directors, Deputies, the Executive Committee, members of the Employee Appeals Committee, hiring officials and other appropriate officials from other tribal entities, the Employment and Benefits Office, and Legal Department. However, in the event an employee may be in a potentially dangerous situation, the supervisor shall disclose certain confidential information in order to protect the employee. In addition, information may be disclosed as follows:

Verification of employee information. In response to an outside party's written request (with authorized release) for verification of employee information, EBCI will only verify the following information:

- * Dates of employment;
- * Employee's position or job title; and
- * Length of service.

Information needed in civil or grievance proceedings. EBCI reserves the right to disclose employee information in defense of any personnel-related complaints.

Medical emergencies. EBCI will disclose employee information if necessary to respond to an apparent medical emergency.

Disclosure authorized by an employee. Any disclosures beyond those described above will require the employee's written consent.

B. *Contractors.* Any contracting firm that performs personnel-related services, such

as payroll processing or benefits administration, will have access to employee information needed to perform these services. All contractors will be required to maintain the confidentiality of this information.

C. *Information disclosure required by law.* The EBCI will furnish employee information whenever legally required to do so, including:

- To comply with a legally valid administrative summons or judicial order, such as a subpoena or search warrant;
- To respond to a government audit or investigation;
- To comply with federal, state or local laws or regulations; and
- To respond to a law enforcement agency's request for an employee's home address and dates of work attendance.

Sec. 4.20. Disclosure of non-public information.

Non-public information is confidential. (See Section 3.24 for definition of non-public information). An employee may not disclose or utilize non-public information for any reason. If the employee believes it is in the public interest to use such non-public information, that employee shall request permission from the appropriate supervisor. Permission to disclose the non-public information must be given in writing.

Should an employee be contacted by the press or any outside agency requesting non-public information, the request shall be given to that person's supervisor, who will forward it through levels of authority with final approval to be made by the Principal Chief. Nothing in this paragraph shall be read to allow disclosure of confidential patient information in violation of the EBCI Privacy Policy.

Sec. 4.22 Confidentiality of health plan and patient records.

All employees must comply strictly with the EBCI Privacy Policy and other applicable privacy policies as established pursuant to HIPAA or the Privacy Act. An employee's failure to be familiar with such policies or inadvertent release of confidential information through spoken, written, or any other means shall be grounds for corrective action. Intentional violations of the EBCI Privacy Policy or other applicable policies shall be grounds for termination. Questions about applicability of the Privacy Policy should be referred to the appropriate privacy officer. A copy of the EBCI HIPAA Privacy Policy shall be made available to the employees by the Benefits Office.

Sec. 4.23. Safeguarding public funds.

All employees whose duties concern the fiscal responsibility of public funds shall have knowledge of and observe all applicable legal requirements and restrictions, as well as proper accounting/finance policies and procedures. Any employee found to have violated tribal policy/procedures, or to have misused, misrepresented, or failed in a fiduciary responsibility shall be subject to corrective action, as well as possible criminal prosecution.

Sec. 4.24. Safety and health regulations.

All employees will observe all rules, signs, and instructions relating to personal safety, security, and health regulations. Photo ID badges may be required by some programs.

GENERAL SAFETY RULES

1. Report all work injuries and illnesses to your supervisor immediately. Injuries will receive immediate and appropriate attention. Formatted: Bullets and Numbering
2. Report all Unsafe Acts or Unsafe Conditions to your supervisor. In the absence of guidance or knowledge in how to proceed safely with their work, employees are to request assistance from their supervisor immediately. Formatted: Bullets and Numbering
3. Use seat belts while operating Eastern Band of Cherokee Indians vehicles and equipment. Remember, seat belts are required by law. Formatted: Bullets and Numbering
4. Equipment will be maintained and used according to manufacturer's recommendations. Defective tools and equipment will be taken out of service and replaced. Formatted: Indent: Left: 0.5"
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5. Only authorized and trained employees may repair or adjust machinery and equipment. Lock out/Tag out Procedures must be followed before removing any machine guards or working on powered machinery and equipment. Replace all guards when the repair is complete. Do not operate equipment until all lock out/tag out devices are removed. Make shift tools and/ or devices that have been modified are not to be used. Formatted: Bullets and Numbering
6. Only qualified and trained Employees may work on or near exposed energized electrical parts or electrical equipment. Follow the Electrical Safety rules when working with electrically powered machinery or equipment. Formatted: Indent: Left: 0.5"
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7. Only authorized and trained Employees may enter a Permitted Confined Space. Entry is allowed only after permits are properly issued. Formatted: Bullets and Numbering
8. Only authorized and trained Employees may dispense or use chemicals. It is your responsibility to know where material safety data sheets (MSDS) are located. Material safety data sheets (MSDS) are available for your review. Each Department maintains MSDS for their Departments specific chemicals. Formatted: Bullets and Numbering
9. EBCI-Keep work areas clean and hallways clear. Do not block exits. Formatted: Bullets and Numbering
10. Use the personal protective equipment issued by the tribal program. This includes, but is not limited to, foot protection, head protection, eye protection, hearing protection, and gloves. Formatted: Bullets and Numbering
11. Smoke only in the designated areas. Smoking is not allowed in E.B.C.I. buildings or vehicles. Formatted: Indent: Left: 0.5", No bullets or numbering

11. Horseplay is strictly prohibited.

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12. Employees are not permitted to work more than four feet above ground level without adequate safeguards.

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13. No climbing on lumber bundles.

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14. Employees are not to position themselves under loads nor will loads be permitted to be suspended or moved over employee work areas without adequate safeguards in place.

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15. Daily housekeeping is required. Work areas will be maintained in a neat and orderly manner.

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EBCI will also comply with the ~~b~~Biohazardous ~~w~~Waste ~~L~~Law policies and blood born pathogens policies that limits occupational exposure to blood and other potentially infectious materials when exposed to or working with or around hazardous or infectious materials. Infectious materials include blood and all other body fluids (such as urine, feces, saliva, etc.). Copies of the ~~Biohazardous Waste Law~~ each policy may be obtained from the Employment Library.

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Secondly, ~~em~~Employees of the EBCI will comply with the ~~EBCI Blood Born Pathogens Policy~~. In addition employees, including newly hired employees, will comply with employee health regulations regarding immunizations and screening as outlined in the supplemental policies for each tribal program where such policies are necessary, the EBCI policy manual.

Lastly, it shall be the duty of all program managers to determine whether any of additional~~these~~ policies apply to their programs. Managers shall develop and adopt supplemental policies-, monitor such, and provide annual training to their employees.

Failure to follow the above rules or the procedures may result in serious injury and/or illness. Corrective action, up to and including separation from employment with the Tribe may result for failing to follow safety rules and procedures.

Please use common sense and THINK before you act. If you are not sure how to complete a job or task safely or have questions, ask your supervisor.

Sec. 4.25. No ~~smoking~~ tobacco.

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All Tribal buildings and vehicles are considered public buildings and are will be tobacco free at all times. This includes smokeless tobacco. Any designated smoking areas outside must be positioned away from the main entrances of the building. Divisions may adopt supplemental policies that are more restrictive regarding "no tobacco" campuses based on Division policy.

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Sec. 4.26. Canvassing, gambling pools, soliciting, or selling.

Employees are prohibited from canvassing, gambling (including, but not limited to conducting game boards, tip boards, etc.), soliciting, selling or other activities for personal gain, while on tour of duty.

Sec. 4.27. Accepting notary fees.

An employee who is also a notary public may not charge or receive fees for performing notarial acts in connection with their official tour of duty. Acceptance of fees does not apply to notarial acts performed while not on duty.

Sec. 4.28. Visitors in the work place.

In order to maintain efficiency and safety in the workplace, visitors are not allowed except during designated breaks and lunch periods. Children may be allowed during emergency situations at the discretion of the appropriate supervisor.

Sec. 4.29. Procedures at separation of employment.

Upon separation of employment from the EBCI, all EBCI property in the employee's possession shall be turned over to the appropriate supervisor. This includes but is not limited to, keys, tools/equipment, vehicles, and personal codes for voice mail, computers, etc. An exit interview is to be conducted by the Employment Office.

Supervisors ~~should~~ shall arrange for an exit interview between the Tribal Employment Office and the separating employee; supervisors shall submit to the Tribal Employment Office a conversion sheet no later than the employee's last day of work or within two work days after termination of employment. The Tribal Employment Office will then notify the Benefits Office so that the Benefits Office can arrange to meet with the employee at the same time. The Tribal IT Department shall also be notified by the employee's direct supervisor immediately upon termination of employment.

At this exit interview, the employee will meet with both the Benefits Office and the Employment Office. The Benefits Office will provide the employee information regarding tribal benefits and the Employment Office will ensure that the departing employee has surrendered all tribal property, (including, but not limited to passwords, codes, keys, equipment, documents, etc.) and will ensure that the employee has reconciled any outstanding travel records. Once the Employment Office and Benefits Offices have met with the employee and determined that there are no outstanding issues regarding such things as the return of property or the reconciliation of travel records, the Employment Office will notify the Payroll Office that the employee's final check may be released.

If, due to extenuating circumstances, the departing employee is not able to appear for an exit interview prior to his/her last day of work, the supervisor should ensure, by coordinating with the Payroll, Employment, and Benefits Offices, that this exit interview is conducted prior to the release of the employee's last paycheck. In such a case, the employee will be required to report to the Finance Office to pick up his/her last check and the Finance Office will coordinate with the Employment and Benefits Offices to make sure the exit interview has been finalized and no outstanding issues exist. Final checks will not be directly deposited in the employee's bank account nor will they be mailed to the employee when outstanding issues exist regarding unreturned tribal property or un-reconciled travel records.

In the event the appropriate supervisor has failed to arrange for an employee's exit interview, the Employment Manager will notify the appropriate Deputy so that corrective action can be taken.

Note--Employees must not discard information or files before leaving.

Sec. 4.30. Suspension with pay.

In instances where serious problems are suspected and facts are obscure, an employee may be involuntarily placed on suspension with pay. This action can be used to determine facts, causes and seriousness of situations and determine appropriate solutions. The decision to suspend is made by the appropriate supervisor and the Deputy Officer. Suspension with pay may not exceed 30 days, unless additional time is required to conduct an investigation and that additional time is approved by the Deputy Officer and the Principal Chief. Suspension with pay is not a corrective action nor part of the corrective action procedure. Possible results can include such things as exoneration, simple revelations of facts and pertinent information. Finding of policy or standard practice violations or misconduct could subject employees to the corrective action procedure. Employees must leave telephone contact information with their supervisor in order to be available for questions or to participate in the investigation. If needed, an employee must return to the workplace within 24 hours of being notified to assist in this process.

It is the responsibility of the supervisor or manager to notify the Employment Office and the IT Department when anyone is suspended with pay.

Tribal property (or access to tribal property)--shall ~~may~~ be confiscated or temporarily suspended by a supervisor or manager upon suspension with pay.

Sec. 4.31. Gifts and gratuities.

EBCI employees shall not solicit or accept anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation, if it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties, or if the gift was intended to serve as a reward for any official action on their part. This shall not apply to such things as recognition of service awards, small promotional items of little monetary value etc. Holiday gift baskets received by program employees in connection with work shall be shared with all program employees. It is not intended to isolate employees from normal social practices such as gifts between friends, associates and relatives as appropriate for certain occasions.

Sec. 4.32. Promotional Prizes/Contests Sponsored by Tribal Programs.

In the event a Tribal program sponsors public prizes and/or contests for promotional purposes, the employees of such program (and the employees of other tribal programs providing technical assistance with the event) as well as immediate family members and household members of such employees, are not eligible to participate, unless the prizes are random door prizes and the ability to influence the selection of the winner by the program employee is remote, if not impossible.

Sec. 4.33. Levels of organizational authority.

Organizational structure and levels of authority are established by order of the Principal Chief who shall approve, maintain and revise as necessary, an organizational chart for the Tribe and for each of its programs and divisions upon approval of Tribal Council. Normal communications flow upward and downward through these organizational levels of authority, which unless unusual circumstances exist, employees are expected to follow.

Sec. 4.34. Open door policy.

The Tribe recognizes that a forum is needed to address problems that can arise if a manager, supervisor, director, or Deputy Officer fails or refuses to enforce EBCI policy, applicable law, or professional rules, regulations, standards or codes. Therefore, EBCI has adopted an open-door policy. In such cases, an employee is encouraged to bring such issues in writing first to the appropriate supervisor and if necessary up the supervisory levels of authority as far as the Executive Committee if necessary to obtain a fair resolution to the problem. First, an employee can provide a written submission to the appropriate supervisor for consideration and corrective measures followed by a written reply by five days addressing the problem or grievance. If the employee is dissatisfied with the result, they may present the written submission to the next level of authority (manager) for further consideration and corrective measures followed by a written reply within five days addressing the problem or grievance. If the employee remains dissatisfied, they may repeat the above procedure to the director level then to the deputy level and finally to the Executive Committee level for final consideration and binding outcome. Employees are also welcome to express any employment policy-related concerns to the Employment Office. (This section does not apply to a corrective action taken by a supervisor. In such a case, employees must follow the appeals procedures set forth in Article 14.)