

TABLED

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: July 14 2011

ORDINANCE NO. 768 (2011)

WHEREAS, The Tribal Council established Cherokee Code Chapter 18B to govern the regulation of alcoholic beverages (Chapter 18B is attached); and

WHEREAS, The North Carolina Legislature has enacted changes to its ABC laws to allow the Tribe to self regulate the purchase, possession, consumption, sale and delivery of alcoholic beverages at retail that require changes to Cherokee Code Chapter 18B.

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Cherokee Code Chapter 18B is amended to read as follows:

A. New 18B -109 shall be added as follows:

No person shall have malt beverages or unfortified wine shipped directly from a point outside this State to the Eastern Band of Cherokee Indians for resale on Indian Country lands within this State under the jurisdiction of the Eastern Band of Cherokee Indians if those alcoholic beverages are for resale.

B. New 18B – 112 shall be added as follows:

Tribal alcoholic beverage control.

(a) Chapter 18B of the North Carolina General Statutes has been amended to provide that the Eastern Band of Cherokee Indians, a federally recognized Indian tribe and sovereign nation, shall be exempt from the provisions of Chapter 18B of the North Carolina General Statutes, except for those made applicable by section 18B-112 of the North Carolina General Statutes and enacted as tribal law herein. The Eastern Band of Cherokee Indians shall hold lawful tribal elections as set out in tribal law and in a manner consistent with North Carolina General Statute 18B-600(a), and if the result of such election authorizes the activity upon which a vote was held, the activity shall be deemed authorized by this section. For the purposes of this section, the tribal alcoholic beverage control commission shall possess the same powers and authority conveyed upon the North Carolina Alcoholic Beverage Control Commission by any section of Chapter 18B of the North Carolina General Statutes made applicable to the tribe by this section as enacted herein.

(b) Compliance Required. The Eastern Band of Cherokee Indians shall comply with the following provisions of Chapter 18B of the North Carolina General Statutes to the extent they apply to or can be made applicable to the tribe:

(1) The following provisions of Article 1. General Provisions.

a. G.S. 18B-101(4), (7), 7(c), (9), (10), (11), (12), (12a), (13), (14), (14a), (14b) and (15).

b. G.S. 18B-102.1.

c. G.S. 18B-104.

d. G.S. 18B-105 except that this section shall not apply to any establishment where gaming is permitted under a state compact and pursuant to federal law.

e. G.S. 18B-109(b).

f. G.S. 18B-110.

g. G.S. 18B-111.

h. G.S. 18B-112.

(2) Article 1A. Compensation for Injury Caused by Sales to Underage Persons to the extent it applies to retail establishments or the tribal alcoholic beverage control commission if it operates ABC stores, or any other permitted establishment, at retail pursuant to the provisions of this section.

(3) Article 3. Sale, Possession, and Consumption, except for G.S. 18B-308 and 18B-309.

(4) Article 4. Transportation.

(5) Article 5. Enforcement, except for G.S. 18B-500 and G.S. 18-501.

(7) Article 9. Issuance of Permits, except for G.S. 18B-902(g) and (h) and G.S. 18B-906

(8) Article 10. Retail Activity, except for G.S. 18B-1001.1, G.S. 18B-1001.2, and G.S. 18B-1001.3.

Any provision of this Chapter which has not been made applicable to the Eastern Band of Cherokee Indians by this section shall act as a bar to engaging in activity authorized by that Article or section.

(c) Alcoholic Beverages Which May Be Sold. No alcoholic beverage may be sold on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians pursuant to this section which has not been approved for sale in this State by the North Carolina Alcoholic Beverage Control Commission.

(d) Establishment of a Tribal Commission. Chapter 18B of the North Carolina General Statutes has been amended to recognize that the Eastern Band of Cherokee Indians, is authorized to establish a tribal alcoholic beverage control commission to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail on any land designated as Indian Country pursuant to 18 U.S.C § 1151 under the jurisdiction of the Eastern Band of Cherokee Indians. The tribal commission shall have exclusive authority to issue retail permits to retail

establishments, located wholly on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians, and to regulate the purchase, possession, consumption, sale, and delivery of alcoholic beverages at retail outlets and premises. Permits issued by the tribal commission pursuant to this section shall be deemed issued by the state for the purposes of sales and delivery of beer and wine by wholesalers to the retail outlets located on Indian Country lands. The fees generated by the tribal alcoholic beverage control commission for the issuance of retail permits may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

- (e) Establishment of Rules. The tribal alcoholic beverage control commission shall adopt the rules of the North Carolina Alcoholic Beverage Commission regulating retail outlet activity.
- (f) Authority of the North Carolina Alcoholic Beverage Control Commission. The Tribe recognizes the authority of the North Carolina Alcoholic Beverage Control Commission to enter into agreements with the tribal alcoholic beverage control commission to provide for the sale, delivery, and distribution of spirituous liquor to the tribal alcoholic beverage control commission. The tribal alcoholic beverage control commission shall purchase spirituous liquor for resale by the tribal alcoholic beverage control commission exclusively from the North Carolina Alcoholic Beverage Control Commission at the same price and on the same basis that such spirits are purchased by local boards. To the extent there is a conflict of between the tribal alcoholic beverage control commission's authority or purpose and the North Carolina Alcoholic Beverage Control Commission's authority or purpose, the North Carolina Alcoholic Beverage Control Commission shall prevail, to the extent there is no conflict of law as provided in Subsection (j) below.
- (g) Discrimination. The tribal alcoholic beverage control commission shall not discriminate against non-Indians in the application of the Tribal ABC law. Non-Indians shall be entitled to apply for and receive ABC permits in the same manner as an Indian on Indian Country lands under the jurisdiction of the Eastern Band of Cherokee Indians.
- (h) Resolution of Contested Cases. If the tribal alcoholic beverage control commission levies a fine, or suspends or revokes a permit pursuant to the provisions of G.S. 18B-104 for a violation of the provisions applicable to the Eastern Band of Cherokee Indians in this Section, the permittee shall have the right of appeal of an agency final decision of the tribal commission to the tribal courts. Any further appeal shall be to the appellate courts of the tribe. All fines paid to the tribal commission in satisfaction of any penalty assessed by the tribal commission may be retained by the Eastern Band of Cherokee Indians to offset costs of operating the tribal alcoholic beverage control commission.

- (i) Failure to Comply With Laws of the State of North Carolina. The Tribe shall conform to future amendments to Chapter 18B of the North Carolina General Statutes as required by 18 U.S.C. § 1161.
- (j) Conflict of Laws. If any provision of North Carolina General Statutes Section 18B-112 or its application conflicts with federal law, the conflict of laws shall be resolved in favor of the federal law unless compliance with the federal law abrogates a right reserved to the State under the Constitution of the United States.”

C. Section 18B-200(e) shall read as follows:

(e) Employees. -- The Commission may authorize the chairman- chairman is authorized to employ, discharge, and otherwise supervise subordinate personnel of the Commission.

D. New Section 18B-200(j) is added as follows:

“All Commissioners are subject to the same criminal background checks as TCGE and TGC employees. Each Commissioner is required to update their information.

E. Section 18B-203 Powers and duties of the Commission (a) shall read as follows:

(a) Powers. -- The Commission shall have authority to:

- (1) Administer the Tribal ABC laws;
- (2) Provide for enforcement of the Tribal ABC laws, in conjunction with the ALE Division;
- (3) Issue ABC permits as allowed under this Ordinance;
- (4) Adopt rules and procedures for the issuance and enforcement of ABC permits;
- (5) Administer an annual budget with said budget to be approved annually by the Tribal Council;
- (6) Act as the distributor of all alcohol on tribal trust lands. Spirituos liquor and fortified wine shall be purchased by TABCC directly from North Carolina Warehouse, or as needed from a Local ABC Store. Malt beverages and unfortified wine shall be purchased from North Carolina authorized distributors and may be redistributed from a TABCC warehouse or authorized to be delivered directly to TABCC authorized permittee; and

(7) Engage in negotiations and make application with the State of North Carolina and the North Carolina ABC Commission for Issue any Retail ABC license or permit issued by the North Carolina Alcoholic Beverage Control Commission, including a temporary license or permit. Negotiate and enter into contract with North Carolina ABC Commission for purchase of spirituous liquor and fortified wine; and

(8) Adopt fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, the daily deposit of funds and any other rules necessary to assure the proper accountability of public funds.

F. Section 18B-600. Alcoholic beverage elections. shall read as follows:

(a) All alcohol referendum questions shall be conducted in accordance with Tribal law and its election procedures as set forth in Section 161-9 of the Cherokee Code.

(b) As authorized in NC 18B-600, the following kinds of alcoholic beverage elections shall be allowed as authorized by Tribal Council:

(1) Malt beverage;

(2) Unfortified Wine;

(3) ABC store; and

(4) Mixed beverage

G. New Section 18B-603 shall read as follows:

18B-603 Effect of alcoholic beverage elections on issuance of permits :

North Carolina 18B-603 language is adopted as Tribal Law (except (e) Mixed Beverages at Airports, (f2) Special ABC Areas, (h) Permits based on existing permits).

H. Section 18B-700 Retail sale of alcoholic beverages shall read as follows:

Spirituous liquor, fortified and unfortified wine and malt beverages may be offered for retail sale ~~only by the Tribal Casino Gaming Enterprise (hereinafter referred to as "TCGE") upon the premises of Harrah's Cherokee Casino and Hotel.~~ only under the provisions of a permit issued by TABCC as authorized by the provisions of this ordinance. TABCC shall operate any retail spirituous and fortified wine store that may in the future be authorized by Tribal election. TABCC shall also be authorized to operate a retail malt beverage and unfortified wine store should that facility be authorized by a Tribal election.

I. Section 18B-800 shall read as follows:

§ 18B-800. All alcoholic beverages authorized to be sold shall be purchased by the permittee ~~from the State of North Carolina until such time as the Tribe organizes and~~

establishes a wholesale distribution system for the distribution of alcohol beverages on Tribal land. from TABCC or as directed by TABCC.

J. New Section 18B-804 Alcoholic beverage Pricing shall read as follows:

The uniform pricing of Spirits sold to permittees and the public shall be the same uniform price as published by North Carolina 18B-804. Where a tax or markup is imposed in this section, the TABCC is authorized to impose the same tax or markup as a Tribal tax or markup, where appropriate, and to utilize such tax or markup in operations of TABCC and profits after operation shall be distributed as determined by Tribal Council.

K. Section 18B-900 shall read as follows:

§ 18B-900. The TCGE shall be eligible to receive and to hold a Tribal ABC permit for the retail sale of alcoholic beverages on the premises of Harrah's Cherokee Casino & Hotel as authorized by the special election referendum held on June 4, 2009. At the request of TCGE, TABCC is authorized to issue a permit to a contracted or leased facility providing a service for TCGE on the premises of Harrah's Cherokee Casino and Hotel.

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 Robert Blankenship, Chairman TABCC



IN REPLY REFER TO.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Cherokee Agency
Cherokee, North Carolina 28719

Michell Hicks, Principal Chief
Eastern Band of Cherokee Indians
P.O. Box 455
88 Council House Loop Cherokee, NC 28719

Dear Chief Hicks:

Attached is signed Tribal Council Resolution No 903 dated August 6, 2009.
Should you have any questions regarding this matter please contact me at (828) 497-9131 extension 227.

Sincerely,

Superintendent

**AMENDED
PASSED**
AUG 06 2009

Cherokee Council House
Cherokee, Qualla Boundary (NC)
Date: JUL 09 2009

SUBSTITUTE ORDINANCE NO. 903 (2009)

WHEREAS, on June 4, 2009 an election referendum was held requesting that the sale of malt beverages, unfortified wine, and mixed drinks be allowed upon the premises of Harrah's Cherokee Casino & Hotel; and

WHEREAS, the requisite number of registered voters were in favor of the sale of malt beverages, unfortified wine, and mixed drinks upon the premises of Harrah's Cherokee Casino & Hotel; and

WHEREAS, the results of said referendum election have been certified by the Board of Elections; and

WHEREAS, to comply with the said referendum results and Federal Register Document 68-11170 entitled "Ordinance Legalizing Introduction, Sale or Possession of Intoxicants", Federal Register, Volume 33, No. 180 (1968), it is now necessary to adopt an ordinance expanding the existing Chapter 18 "Alcohol" of the Cherokee Code to regulate alcoholic beverages on the lands of the Eastern Band of Cherokee Indians.

NOW, THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that a new Chapter 18B is added to the Cherokee Code as follows:

CHAPTER 18B. REGULATION OF ALCOHOLIC BEVERAGES

ARTICLE 1. GENERAL PROVISIONS

§ 18B-100. Purpose of Chapter

This Chapter is intended to establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages on the trust lands of the Eastern Band of Cherokee Indians, and to provide procedures to insure the proper administration of the tribal laws regulating alcoholic beverages. This Chapter shall be liberally construed to the end that the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages shall be prohibited except as authorized in this Chapter.

§ 18B-101. Definitions

As used in this Chapter, unless the context requires otherwise:

(1) "Tribal ABC law" or "Tribal ABC laws" means any code or ordinance in this Chapter, and the rules issued by the Commission under the authority of this Chapter.

(2) "Tribal ABC permit" or "permits" means any written or printed authorization issued by the Commission pursuant to the provisions of this Chapter. Unless the context clearly requires otherwise, as in the provisions concerning applications for permits, "ABC permit" or "permit" means a presently valid permit.

(3) "Alcoholic beverage" means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(4) Reserved for future codification purposes.

(5) "Commission" means the Tribal Alcoholic Beverage Control Commission established under *G.S. 18B-200*.

(6) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage.

(8) "Mixed beverage" means either of the following:

a. A drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package.

b. A premixed cocktail served from a closed package containing only one serving.

(9) "Nontaxpaid alcoholic beverage" means any alcoholic beverage upon which the taxes imposed by the United States, the Eastern Band of Cherokee Indians, or any other territorial jurisdiction in which the alcoholic beverage was purchased have not been paid.

(10) "Permittee" means a person who receives a Tribal ABC permit.

(11) "Person" means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

(12) "Premises" means all areas, whether inside or outside the licensed premises, where the permittee has control of the property through a lease, deed, or other legal process.

(13) "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(14) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(15) "State of emergency" means those circumstances defined in Cherokee Code Section 166-9(a): "A State of Emergency shall be deemed to exist whenever during times of public crises, disaster, rioting, catastrophe, or similar public emergency, for any reason, public safety authorities are unable to maintain public order or afford adequate protection for lives, safety or property, or whenever the occurrence of any such condition is imminent."

(16) "Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

§ 18B-102. Manufacture, sale, etc., forbidden except as expressly authorized

(a) General Prohibition. -- It shall be unlawful for any person to manufacture, sell, transport, import, deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the Tribal ABC law.

(b) Violation a Misdemeanor. -- Unless a different punishment is otherwise expressly stated, any person who violates any provision of this Chapter shall be guilty of a misdemeanor.

§ 18B-102.1. Reserved for future codification purposes

§ 18B-105. Advertising

(a) General Rule. -- No person shall advertise alcoholic beverages on Tribal trust land except in compliance with the rules of the Commission.

§§ 18B-106 through 18B-109. Reserved for future codification purposes

§ 18B-110. Emergency

When the Principal Chief of the Eastern Band of Cherokee Indians finds that a "state of emergency," as defined by tribal law, exists anywhere on Tribal land, he may order the cessation of all sales, transportation, manufacture, and bottling of alcoholic beverages.

The Principal Chief's order shall apply in those portions of tribal land designated in the order, for the duration of the state of emergency. Any order by the Principal Chief under this section shall be directed to the Chairman of the Commission.

§ 18B-111. Nontaxpaid alcoholic beverages

No person may possess, transport, or sell nontaxpaid alcoholic beverages except as authorized by the Tribal ABC law.

§§ 18B-112 through 18B-119 Reserved for future codification purposes.

§ 18B-120. Definitions

As used in this Article:

(1) "Aggrieved party" means a person who sustains an injury as a consequence of the actions of the underage person, but does not include the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(2) "Injury" includes, but is not limited to, personal injury, property loss, loss of means of support, or death. Damages for death shall be determined by the Court. Nothing in subdivision (1) of this section shall be interpreted to preclude recovery under this Article for loss of support or death on account of injury to or death of the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(3) "Underage person" means a person who is less than the age legally required for purchase of the alcoholic beverage in question.

(4) "Vehicle" shall have the same meaning as prescribed by *North Carolina General Statute 20-4.01(49)*.

§ 18B-121. Claim for relief created for sale to underage person

An aggrieved party has a claim for relief for damages against a permittee if:

(1) The permittee or his agent or employee negligently sold or furnished an alcoholic beverage to an underage person; and

(2) The consumption of the alcoholic beverage that was sold or furnished to an underage person caused or contributed to, in whole or in part, an underage driver's being subject to an impairing substance within the meaning of *North Carolina General Statute 20-138.1* at the time of the injury; and

(3) The injury that resulted was proximately caused by the underage driver's negligent operation of a vehicle while so impaired.

§ 18B-122. Burden of proof and admissibility of evidence

The plaintiff shall have the burden of proving that the sale or furnishing of the alcoholic beverage to the underage person, as defined, was, under the circumstances, negligent. Proof of the sale or furnishing of the alcoholic beverage to an underage person, as defined, without request for identification shall be admissible as evidence of negligence. Proof of good practices (including but not limited to, instruction of employees as to laws

regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons concerning laws regarding the purchase or furnishing of alcoholic beverages, or detention of a person's identification documents in accordance with *Section 18B-129* and inquiry about the age or degree of intoxication of the person), evidence that an underage person misrepresented his age, or that the sale or furnishing was made under duress is admissible as evidence that the permittee was not negligent.

§ 18B-123. Limitation on damages

The total amount of damages that may be awarded to all aggrieved parties pursuant to any claims for relief under this Article is limited to no more than five hundred thousand dollars (\$ 500,000) per occurrence. When all claims arising out of an occurrence exceed five hundred thousand dollars (\$500,000), each claim shall abate in the proportion it bears to the total of all claims.

§ 18B-124. Joint and several liability

The liability of the negligent driver or owner of the vehicle that caused the injury and the permittee which sold or furnished the alcoholic beverage shall be joint and several, with right of contribution but not indemnification.

§ 18B-125. Reserved for future codification purposes.

§ 18B-126. Statute of limitations

The statute of limitations is three years from the date of the injury.

§§ 18B-127 & 18B- 128. Reserved for future codification purposes.

§ 18B-129. No liability for refusal to sell or for holding documents

(a) No permittee or his agent or employee may be held liable for damages resulting from the refusal to sell or furnish an alcoholic beverage to a person who fails to show proper identification as described in *Section 18B-302(d)*, or who appears to be an underage person.

(b) No permittee or his agent or employee may be held civilly liable if the permittee or his agent or employee holds a customer's identification documents for a reasonable length of time in a good faith attempt to determine whether the customer is of legal age to purchase an alcoholic beverage, provided the permittee or his agent or employee informs the customer of the reason for his actions.

§§ 18B-130 through 18B-199 Reserved for future codification purposes.

ARTICLE 2. ADMINISTRATION

§ 18B-200. Tribal Alcoholic Beverage Control Commission

(a) **Creation of Commission; Compensation.** -- The Tribal Alcoholic Beverage Control Commission is created to consist of a chairman and four (4) associate members. The Commissioners shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Commission's annual budget. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

(b) **Appointment of Members.** -- Members of the Commission shall be appointed by the Principal Chief subject to approval by Tribal Council. Nominees to the Commission shall be enrolled members and selected on the basis of their commitment to the interests and goals of the Commission without forgetting the interests of the Cherokee community, their preparedness to assume responsibility for the decisions of the Commission and to ensure that said decisions are implemented, and their willingness to devote the time and energy necessary to familiarize themselves with the strategic, financial and operational issues facing the Commission.

(c) **Terms of Members.**--The Interim Commission shall serve for a term of two (2) years. Following the expiration of the Interim Commission's term, the Principal Chief shall appoint a Chairman for a term of four (4) years and four (4) associate members for terms of four (4) years, three (3) years, two (2) years and one (1) year respectively. Thereafter, all Commission members shall be appointed to terms of four (4) years and the established staggered terms shall continue for each Commission position for future new, renewal or replacement appointments. All Commission members may be removed for cause by a majority vote of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Commission from serving successive terms.

(d) **Vacancy.** -- The Principal Chief shall fill any vacancy on the Commission by appointing a successor within thirty (30) days after the date on which the vacancy becomes effective. If the Chairman's seat becomes vacant, the Vice Chairman shall immediately assume the Chairman's seat and complete the remaining term of the vacating Chairman. A new member of the Commission will be appointed by the Principal Chief, subject to approval by Tribal Council, to complete the remaining term of the former Vice Chairman. The Commission will then elect a new Vice Chairman.

(e) **Employees.** -- The Commission may authorize the chairman to employ, discharge, and otherwise supervise subordinate personnel of the Commission.

(f) **Independence.**-- In all matters within its purview and responsibilities, the Commission shall be and shall act independently and autonomously from the Principal Chief, Tribal Council, the Tribal Gaming Commission and the Tribal Casino Gaming Enterprise. No prior or subsequent review by the Principal Chief, Tribal Council, the

Tribal Gaming Commission or the Tribal Casino Gaming Enterprise shall be required or permitted, except as otherwise explicitly provided in this chapter.

(g) Sovereign Immunity of the Commission.-- The Commission, as an instrumentality of the Tribe, retains all of the Tribe's rights, privileges and immunities, including sovereign from suit.

(h) Oath of Office.-- Prior to beginning their official duties, each member of the Commission shall take the following oath before some officer authorized to administer oaths: "I do solemnly swear (or affirm) that I will faithfully execute the duties of Commissioner as a member of the Tribal Alcoholic Beverage Control Commission and will to the best of my ability, preserve, protect and defend the charter and governing document and laws confirmed and ratified by the enrolled members of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained my appointment to this Commission by bribery or any undue or unlawful means or fraud, and that in all measures which may come before me, I will so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of the Eastern Band of Cherokees."

(i) Bonding.-- Each Commissioner and Commission employee shall be bonded in an amount not less than five thousand dollars (\$5,000), secured by a corporate surety, for the faithful performance of his/her duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond(s) shall be payable to the Commission and shall be approved by the Tribal Council. The Tribal Council may exempt from this bond requirement any Commissioner or employee of the Commission who does not handle Commission funds and it may increase the amount of the bond(s). The premiums shall be paid from the Commission's annual budget. The bond(s) shall be effective for the term of each Commissioner and the duration of employment for each employee.

§ 18B-201. Conflict of interest

(a) Financial Interests Restricted. -- No person shall be appointed to or employed by the Commission if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have a Tribal ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. -- The provisions of Article IV, Section 117-45 of the Cherokee Code shall apply to the Commission.

(c) Dealing for Family Members. -- Neither the Commission shall contract or otherwise deal in any business matter so that a member's spouse or any person related to him by

blood to a degree of first cousin or closer in any way benefits, directly or indirectly, from the transaction unless:

(1) The member whose relative benefits from the transaction abstains from participating in any way, including voting, in the decision;

(2) The minutes of the meeting at which the final decision is reached specifically note the member whose spouse or relative is benefited and the amount involved in each transaction;

(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and

§ 18B-202. Reserved for future codification purposes.

§ 18B-203. Powers and duties of the Commission

(a) Powers. -- The Commission shall have authority to:

(1) Administer the Tribal ABC laws;

(2) Provide for enforcement of the Tribal ABC laws, in conjunction with the ALE Division;

(3) Issue ABC permits as allowed under this Ordinance;

(4) Adopt rules and procedures for the issuance and enforcement of ABC permits;

(5) Administer an annual budget with said budget to be approved annually by the Tribal Council;

(6) Act as the distributor of all alcohol on tribal trust lands; and

(7) Engage in negotiations and make application with the State of North Carolina and the North Carolina Alcoholic Beverage Control Commission for any ABC license or permit issued by the North Carolina Alcoholic Beverage Control Commission, including a temporary license or permit; and

(8) Adopt fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, the daily deposit of funds and any other rules necessary to assure the proper accountability of public funds.

(b) Implied Powers. -- The Commission shall have all other powers which may be reasonably implied from the granting of the express powers stated in subsection (a), or which may be incidental to, or convenient for, performing the duties given to the Commission.

§ 18B-204. Reserved for future codification purposes.

§ 18B-205. Accounts, reports and audits required

(a) Accounts and Reports. -- The Commission shall be required to submit to Tribal Council and to the Principal Chief such reports as may be required by Tribal Council.

(b) Annual Independent Audit.-- The Commission shall engage independent auditors for annual audits of its internal operations. Such independent audits must apply generally accepted accounting principles.

§§ 18B-206 through 18B-299 Reserved for future codification purposes.

ARTICLE 3. SALE, POSSESSION, AND CONSUMPTION

§ 18B-300. Purchase, possession and consumption of malt beverages, fortified and unfortified wine, mixed beverages and spirituous liquors.

(a) Generally. -- Except as otherwise provided in this Chapter, the purchase, consumption, and possession of malt beverages, fortified and unfortified wine, mixed beverages and spirituous liquors by individuals 21 years old and older for their own use is permitted upon the premises of Harrah's Cherokee Casino and Hotel without restriction. All alcoholic beverages sold upon the premises of Harrah's Cherokee Casino and Hotel must be consumed or disposed of upon these premises. No off-premises sale of alcoholic beverages from a permittee is allowed.

(b) Prior tribal laws relating to alcohol introduction, possession and consumption being lawful if conducted in accordance with the laws of the State of North Carolina shall remain in full force and effect as specifically ordained herein.

§ 18B-301. Reserved for future codification purposes.

§ 18B-302. Sale to or purchase by underage persons

(a) Sale. -- It shall be unlawful for any person to:

- (1) Sell malt beverages or unfortified wine to anyone less than 21 years old; or
- (2) Sell fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(a1) Give. -- It shall be unlawful for any person to:

- (1) Give malt beverages or unfortified wine to anyone less than 21 years old; or
- (2) Give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase, Possession, or Consumption. -- It shall be unlawful for:

- (1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages; or

(3) A person less than 21 years old to consume any alcoholic beverage.

(c) Aider and Abettor.

(1) By Underage Person. -- Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a), (a1), or (b) of this section shall be guilty of a misdemeanor.

(2) By Person over Lawful Age. -- Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a), (a1), or (b) of this section shall be guilty of a misdemeanor.

(d) Defense. -- It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under *North Carolina General Statute 20-37.7*, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) Fraudulent Use of Identification. -- It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this section, by using or attempting to use any of the following:

(1) A fraudulent or altered driver's license.

(2) A fraudulent or altered identification document other than a driver's license.

(3) A driver's license issued to another person.

(4) An identification document other than a driver's license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section.

(f) Allowing Use of Identification. -- It shall be unlawful for any person to permit the use of the person's driver's license or any other form of identification of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. -- The court shall file a conviction report with the North Carolina Division of Motor Vehicles indicating the

name of the person convicted and any other information requested by the Division if the person is convicted of any of the following:

(1) A violation of subsection (e) or (f) of this section.

(2) A violation of subsection (c) of this section.

(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

(4) A violation of subsection (a1) of this section.

(h) Handling in Course of Employment. -- Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

§ 18B-302.1. Penalties for certain offenses related to underage persons

(a) A violation of *Section 18B-302(a)* or (a1) is a misdemeanor. If the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars (\$ 250.00) and a requirement that the person complete at least 25 hours of community service. If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars (\$ 500.00) and a requirement that the person complete at least 150 hours of community service.

(b) A violation of *Section 18B-302(c)(2)* is a misdemeanor. If the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars (\$ 500.00) and a requirement that the person complete at least 25 hours of community service. If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars (\$1,000) and a requirement that the person complete at least 150 hours of community service.

§§ 18B-303 and 18B-304. Reserved for future codification provisions.

§ 18B-305. Other prohibited sales

(a) Sale to Intoxicated Person. -- It shall be unlawful for a permittee or his employee to knowingly sell or give alcoholic beverages to any person who is intoxicated.

(b) Discretion for Seller. -- Any person authorized to sell alcoholic beverages under this Chapter may, in his discretion, refuse to sell to anyone. It shall be unlawful for any person to knowingly buy alcoholic beverages for someone who has been refused the right to purchase under this subsection.

(c) Notwithstanding subsection (b) of this section, no permittee may refuse to sell alcoholic beverages to a person solely based on that person's race, religion, color, national origin, sex, or disability.

§ 18B-306. Sale and consumption at Harrah's Cherokee Casino and Hotel

It shall be lawful to possess and consume any alcoholic beverage that is purchased from the permittee in any room while a casino game, raffle game or bingo game is being conducted in that room so long as all Class II and Class III games being conducted are within the lawful authority of the Indian Gaming Regulatory Act (IGRA) and the federally approved Tribal-State Compact and all amendments thereto.

§§ 18B-307 through 18B-399. Reserved for future codification purposes.

ARTICLE 4. Reserved for future codification purposes.

ARTICLE 5. LAW ENFORCEMENT

§ 18B-500. Alcohol law-enforcement agents

(a) Appointment. -- The Attorney General of the Eastern Band of Cherokee Indians shall appoint alcohol law-enforcement agents and other enforcement personnel. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents".

(b) Subject Matter Jurisdiction. -- After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the Tribal ABC laws; however, an agent may perform any law-enforcement duty assigned by the Attorney General.

(c) Territorial Jurisdiction. -- An alcohol law-enforcement agent is a Tribal officer with jurisdiction throughout the lands of the Eastern Band of Cherokee Indians.

(d) Service of Commission Orders. -- Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Tribal Alcoholic Beverage Control Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.

§§ 18B-501 through 18B-599. Reserved for future codification purposes.

ARTICLE 6. ELECTIONS

§ 18B-600. Alcoholic beverage elections

All alcohol referendum questions shall be conducted in accordance with Tribal law and its election procedures as set forth in *Section 161-9*.

§§ 18B-601 through 18B-699. Reserved for future codification purposes.

ARTICLE 7. SALES

§ 18B-700 Retail sale of alcoholic beverages.

Spirituous liquor, fortified and unfortified wine and malt beverages may be offered for retail sale only by the Tribal Casino Gaming Enterprise (hereinafter referred to as "TCGE") upon the premises of Harrah's Cherokee Casino and Hotel.

§§ 18B-701 through 18B- 799. Reserved for future codification purposes

ARTICLE 8. OPERATION OF ABC WAREHOUSE

§ 18B-800. All alcohol beverages authorized to be sold shall be purchased by the permittee from the State of North Carolina until such time as the Tribe organizes and establishes a wholesale distribution system for the distribution of alcohol beverages on Tribal land.

§§ 18B-801 through 18B- 899. Reserved for future codification purposes

ARTICLE 9. ISSUANCE OF PERMITS

§ 18B-900. The TCGE shall be eligible to receive and to hold a Tribal ABC permit for the retail sale of alcoholic beverages on the premises of Harrah's Cherokee Casino & Hotel as authorized by the special election referendum held on June 4, 2009.

§§ 18B-901 through 18B-999. Reserved for future codification purposes

ARTICLE 10. RETAIL ACTIVITY

§§ 18B-1000 through 18B-1003. Reserved for future codification purposes.

§ 18B-1004. Hours for sale and consumption

It shall be unlawful to sell alcoholic beverages on any licensed premises from 2:00 A.M. on Sunday morning until 12:00 Noon on that day.

§ 18B-1005. Conduct on licensed premises

(a) Certain Conduct. -- It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

- (1) Any violation of this Chapter;
- (2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons; or
- (3) Any violation of the controlled substances or prostitution statutes, or any other unlawful acts.

(b) Supervision. -- It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

§§ 18B-1005.1 through 18B-1006. Reserved for future codification purposes.

§ 18B-1007. Additional requirements for mixed beverages permittees.

(a) Handling Bottles. -- It shall be unlawful for a mixed beverages permittee or the permittee's agent or employee to do any of the following:

- (1) Store any other spirituous liquor with liquor possessed for resale in mixed beverages or from a guest room cabinet.
- (2) Refill any spirituous liquor container having a mixed beverages tax stamp with any other alcoholic beverage, or add to the contents of such a container any other alcoholic beverage.
- (3) Transfer from one container to another a mixed beverages tax stamp.
- (4) Possess any container of spirituous liquor not bearing a mixed beverages tax stamp, except for containers being brought onto the premises by the host of a private function under a special occasion permit.

(b) Price List. -- Each mixed beverages permittee shall have available for its customers the printed prices of the most common or popular mixed beverages offered for sale by the permittee.

§§ 18B-1008 through 18B-1099. Reserved for future codification purposes.

BE IT FURTHER ORDAINED THAT all prior resolutions and ordinances that are inconsistent with this Ordinance, as amended, are hereby rescinded; and

BE IT FINALLY ORDAINED THAT this Ordinance shall be effective upon ratification by the Principal Chief.

Submitted by TCGE Board of Advisors

Amendments to Ord. No. 903 (2009)

Page 2 change (12)

“Premises” means Harrah’s Cherokee Casino and Hotel.

Insert as the last “WHEREAS”

WHEREAS, alcohol will only be sold on the premises of Harrah’s Cherokee Casino and Hotel, however these regulations do extend to alcohol use throughout the trust lands of the Boundary.

Page 6 (c) shall read:

(c) Terms of Members. -- The Interim Commission shall serve for a term of (2) two years. Following the expiration of the Interim Commission’s term, the Principal Chief shall appoint (5) five Commissioners for a term of four (4) years, four (4) years, three (3) years, two (2) years and one (1) year respectively and at least one (1) appointee will be from the Interim Commission. The Commissioners shall elect their own officers at the start of each fiscal year. Thereafter, all Commission members shall be appointed to terms of four (4) years and the established staggered terms shall continue for each Commission position for future new, renewal or replacement appointments. All Commission members may be removed for cause by a majority vote of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Commission from serving successive terms.

Page 6 (d) add

“subject to approval by Tribal Council” at the end of the 1st sentence.

Page 7 change

“(i) Bonding” to “(j) Bonding”

(i) shall read: All Commissioners will be subject to initial and subsequent random drug testing per the Tribal personnel policy. Refusal to submit to any drug testing or a positive test result shall result in an immediate dismissal from the Commission. Drug testing shall be paid from the annual budget of the Commission.

(j) add before Bonding.

All Commissioners are subject to the same criminal background checks for TCGE and TGC employees. Each Commissioner employee is required to update their information.

Page 8 (7) change

“license or permit” to “license/permit”

Page 13 18B-800. add the following language:

All malt beverages and wine products not inventoried by the NC warehouse shall be purchased directly from the Tribal ABC Commission or the Tribal ABC Commission licensed/permitted distributors authorized to deliver to the casino/hotel properties.

Define Immediate Family to go horizontally as spouses or siblings.

The attached Resolution/Ordinance No. 903 dated July 9, 2009 was:

PASSED (X)

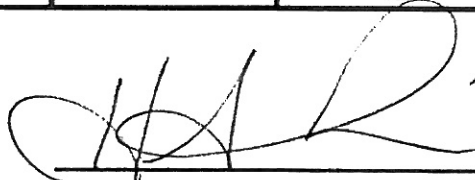
KILLED ()

and ratified in open Council on August 6, 2009 by 70 voting for the act and 18 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT	TABLE
Stephen Watty	X				
Perry Shell	X				
Butch Goings	X				
Alan Ensley	X				
David Wolfe	X				
Jim Owle				X	
Mike Parker	X				
Angie Kephart		X			
Abe Wachacha	X				
Susan Toineeta		X			
Marie Junaluska	X				
Tommye Saunooke	X				
TOTAL	70	18	0	12	0



 TRIBAL COUNCIL CHAIRMAN



 CLERK



 PRINCIPAL CHIEF

APPROVED () VETOED ()

VETO UPHELD () VETO DENIED ()

DATE: 8-19-09

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


PASSED ()

KILLED ()

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

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

 INTERPRETED ()



 OMITTED ()