

ORDINANCE NO. _____(2016)

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

WHEREAS, previously Tribal Council established Cherokee Code (C.C.) Chapter 49 to govern membership in the Tribe, which was most recently amended by Ordinance No. 277 (2010) ; and

WHEREAS, the current version of C.C. Chapter 49 fails to clarify the application requirements for proof of lineage and DNA testing for enrolled members and first generation descendants; and

WHEREAS, in furtherance of the protection of the Tribe's membership, it has been determined by the voting members of the current Enrollment Committee that it is necessary to require all applicants for Tribal membership and those seeking first generation descendants status, be required to submit specific DNA results and documentation, as applicable, to prove eligibility for membership or recognition as a first generation descendant as part of the application process.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled, at which a quorum is present, that Cherokee Code Section 49-5 be amended to read as follows:

Sec. 49-5. - Applications for enrollment.

(a) *Who must file.* All persons who meet the membership requirements contained in section 49-2 but who are not listed on the membership roll of the Eastern Band of Cherokee Indians, who request membership in the Eastern Band of Cherokee Indians must file an enrollment application. Applications for minors or incompetents may be filed by parents, guardians, or other sponsors such as social workers. No one will be considered for enrollment unless an enrollment application has been filed by the individual or a sponsor.

(a1) First Generation Descendants.

(1) *Definition.* The Charter and Governing Document of the Eastern Band of Cherokee Indians, as enacted and adopted May 8, 1986, and amended by Tribal referendum on October 8, 1987, provides in section 16 for the First Generation of an enrolled member to enjoy all property, both real and personal, that is held in an enrolled member's possession at their death. By definition in the Charter, a First Generation Descendent ("First Descendent") shall include all children born to or adopted by an enrolled member.

(A) For purposes of this section, all reference to applications refers to both enrollment and First Descendent applications.

(2) *Biological First Descendants.* In order to request First Descendent status as defined in this section and the Charter, a person must apply in the same manner as those seeking membership

status and meet all requirements of this section. Application shall be made on a form created and distributed by the Enrollment Office in compliance with this Section.

(3) *Adopted First Descendants.* In order to request First Descendent status as defined in this section and the Charter, a person adopted by an enrolled member must apply in the same manner as those seeking membership status and meet all requirements of this section with the following exceptions:

(A) In lieu of providing lineage and DNA test results, the adopted person shall provide documentation establishing proof of legal adoption, in any jurisdiction, in the form of a final court order or decree of adoption.

(B) Application shall be made on a form created and distributed by the Enrollment Office in compliance with this Section.

(4) *Effective date.* This section will become effective on January 1, 2017 and will apply to all persons seeking First Descendent recognition born on or after this date and under no circumstances shall this section be applied retroactively.

(b) *When and where to file an application.* All enrollment applications must be filed with the Enrollment Clerk or such other person as may be designated by the membership committee of the Eastern Band of Cherokee Indians. Application forms may be obtained by oral or written request from the Eastern Band Tribal Enrollment Office. Applications for membership may be filed at any time. There are deadlines for applications to be considered for inclusion in distribution of per capita payments.

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

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

(3) Any applications received after September 15 or March 15, or any applications received before September 15 or March 15 without all the required documentation, will be processed for consideration for inclusion on the membership roll to be used for distribution of subsequent per capita payments.

(c) *What the application must contain.* Each enrollment application must be completed in its entirety and must contain sufficient personal information to properly determine the applicant's eligibility for enrollment. Applications must show the following:

(1) All names by which the applicant is known;

(2) The address of the applicant;

(3) The applicant's degree of Eastern Cherokee blood;

(4) The names of Eastern Cherokee ancestors whose names appear on the 1924 Baker Roll of the Eastern Band, together with the names of Eastern Cherokee ancestors in generations between that roll and the applicant;

(5) The name of the Tribe and degree of Indian blood of any Tribe other than Eastern Cherokee, as certified by other Tribe;

(6) The Social Security Number and a copy of the Social Security card of the applicant or a copy of the completed application for a Social Security card. An application shall not be considered incomplete due solely to a delay by the Social Security Administration in issuing Social Security cards;

(7) The county and state of birth and a county certified birth certificate (state certified birth certificates will only be accepted when the county does not issue birth certificates);

(8) The status of natural or adopted applicant;

(9) The signature of the applicant or sponsor;

- (10) The date of the filing of the application; and
- (11) A completed, signed, and dated IRS Form W-9.
- (12) The results of a DNA test, from a lab acceptable to the Enrollment Committee, establishing the probability of paternity and/or maternity by the parent(s) through whom lineage is claimed for an applicant.

(d) *Proof of lineage.* The burden of proof is on the applicant. The application for membership must be accompanied by: a County certified birth certificate issued by the appropriate governmental entity where the birth occurred, and the certified results of a DNA test establishing the probability of paternity and/or maternity of the applicant from a lab acceptable to the Enrollment Committee and establishing the biological connection to any relative claimed in the lineage of the applicant when there has been a generational gap in enrollment status for a direct lineal descendant of the applicant.

(1) DNA Testing Requirements:

(Aa) For testing paternity and maternity the tTesting must occur directly between the applicant and the alleged mother and father. ~~unless the parent is unavailable for testing through no fault of the applicant.~~ For testing biological connection to a direct lineal descendant when a generational gap in enrollment status is present in the enrollment records, testing must occur directly between the applicant and a relative from any source that will provide a sufficient probability of relatedness to the direct lineal descendant for whom a gap in enrollment status is identified in the record.

(Bb) When a parent of an applicant is unavailable for DNA testing the Enrollment Committee may accept the certified results of a DNA test between the applicant and both of the missing parent's biological parents (applicant's grandparents) or other relatives to establish the sufficient probability of ~~lineagerelatedness to the grandparents.~~

(i) For purposes of this section, unavailable shall mean:

(1) The identity or whereabouts of the parent(s) is unknown and/or is unable to be obtained;

(2) The parent(s) is uncooperative and refuses to consent to DNA testing; or

(3) The parent(s) is deceased, as evidenced by a certified death certificate.

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

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

(Ee) DNA testing required for all applicants, including adoptees.

(2) In addition, the Enrollment Committee may, at its discretion, require the submission of one or more of the following documents to establish to its satisfaction that the applicant has the lineage and blood quantum required by Tribal law:

(Aa) Documentary evidence of an adoption or other court orders establishing paternity or maternity.

(Bb) Other documents which are needed for a specific applicant.

(e) *Adopted Eastern Band of Cherokee Indians child.* An adopted person's eligibility for enrollment is determined through one or both of the natural parents. Documentary evidence submitted to support an adopted person's application for enrollment must show relationship to the natural parent through whom eligibility for enrollment is determined. The information shall be contained in locked file cabinets, and adequate safeguards shall be installed to ensure that the confidentiality of these records shall not be violated.

(f) *Adoptions by this Tribe of Indian children from other federally recognized Indian Tribes.* It is recognized that some persons have been adopted into membership in the Eastern Band of Cherokee Indians pursuant to Tribal Resolution 381 (1977) and that such persons are entitled to retain their membership. However, Resolution No. 381 (1977) is hereby rescinded as of the effective date of this amendment to the enrollment ordinance (8-9-1996), and persons who do not possess the required lineage and the required degree of Eastern Cherokee Indian blood shall not be adopted into membership regardless of their degree of other Tribal blood or their status as legally adopted children of Eastern Band members.

(g) *Temporary cessation of enrollment until determined appropriate.*

(1) Tribal enrollment, with the exception of newborns to three years of age, and 18 to 19 year olds, will cease until the enrollment audit process is complete.

(2) Tribal enrollment will resume upon completion of enrollment audit process, or within one year or less.

(Ord. No. 284, 8-2-1996; Ord. No. 566, 1-12-2001; Ord. No. 670, 4-6-2001; Ord. No. 277, 6-8-2010)

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

Submitted by: Enrollment Committee of the Eastern Band of Cherokee Indians