

Cherokee Council House
Cherokee, North Carolina

Date

ORDINANCE NO. _____(2016)

WHEREAS, Tribal Council has recently passed new legislation to strengthen the Tribal preference law; and

WHEREAS, there is language in the modifications that needs clarification.

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 the following sections of Chapter 92 be modified as follows:

Section 92-7. ~~A~~ Tribal Employment Rights Office.

(a) There is hereby created the Tribal Employment Rights Office (TERO). The TERO shall operate as an independent and autonomous entity under the direction of the TERO Commission. The Commission shall have regulatory oversight responsibilities and shall act as a quasi-judicial entity to work to ensure compliance of the preference laws and regulations for the well-being of enrolled members.

(b) The purpose of the TERO is to conduct the day-to-day business of the Commission, as delegated by the Commission, and to administer the rules, regulations, procedures, guidelines and orders adopted by the Commission in accordance with Chapters 92 and Chapter 95 of the Tribal code.

(c) The manager/Director of the TERO may obtain and expend funding from federal, state or other sources to carry out the purposes of the Commission. The staff employed by TERO, including the Director/Manager shall have the benefits and protections of the personnel policy applicable to all tribal employees, including procedures for corrective actions. In order to maintain a clear separation of duties, all staff serving TERO shall be separate from the administrative authority of the Principal Chief, the Executive Committee, and Tribal Council. It shall be the responsibility of the TERO Director/Manager, with approval of the TERO Commission to modify such tribal personnel policies and procedures, as needed, in order for such policies and procedures to be effective for the personnel needs of TERO. The TERO Commission shall have exclusive supervisory responsibility over the Director/Manager, and the Director/Manager shall have supervisory and personnel responsibilities over all other TERO Staff.

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

~~(a) There is hereby created the Tribal Employment Rights Office (TERO). The TERO shall operate as a program of Tribal government, and its budget and employees shall be governed by Tribal law and policy.~~

~~(b) The purpose of the TERO is to conduct the day-to-day business of the Commission, as delegated by the Commission, and to administer the rules, regulations, procedures, guidelines and orders adopted by the Commission.~~

~~(c) The manager of the TERO may expend funds appropriated by the Tribal Council, and obtain and expend funding from federal, state or other sources to carry out the purposes of the Commission.~~

~~(d) The TERO shall maintain a source list or "TERO list" which will serve as the official list of certified economic entities entitled to a preference under this Chapter. The list shall be updated regularly.~~

~~(Ord. No. 280, 1-29-2002; Ord. No. 562, 1-25-2011)~~

Sec. 92-7.BA. Budget.

(a) TERO shall prepare a budget for its operations as necessary to pay salaries and other expenses, within the limit of funds available to it, which is to be included in budget request submitted annually to Tribal Council for approval.

~~(b) TERO budget shall be partially funded as an operating expense of the Tribal Casino Gaming Enterprises (TCGE). Such payment for the Harrahs' Cherokee Casino Resort shall be the lesser of the actual regulatory cost of an amount which is .50 percent of the gross gaming revenue (win) but in no event more than \$ 2,000,000.00 for the fiscal year. Such payment for the Harrah's Cherokee Valley River Casino and Hotel shall be the lesser of the actual regulatory cost or an amount which is .50 pf the gross gaming revenue (win) but in no event more than \$ 1,000,000.00 for the fiscal year. For each year after fiscal year 2016, the capped amounts shall increase five percent annually to account for growth and economy. Any surplus of such funds over actual expenses at the end of a fiscal year shall be refunded to the TCGE within 120 days of the end of the fiscal year. Upon completion of the TCGE audit, any excess funds will be returned immediately following the per capita distribution.~~

~~(c) If TERO's budget needs exceed the amounts in subparagraph (b) for any fiscal year, then the TERO shall utilize funds obtained through vendor certification fees, regulatory fines, contract fees, or seek additional funding from the Tribal Council. Except as provided in subparagraph (d) below, any surplus remaining in such fees, fines or additional funding at the end of a fiscal year shall be distributed to the Tribe in accordance with Chapter 16C.~~

(d) TERO shall have the authority to establish, fund, and maintain capital/expansion reserve funds for:

- (1) Working capital in an amount recommended by independent auditors; and

(2) For such other purposes as are specifically authorized by Tribal Council ordinance based a detailed plan for use of the funds submitted by the TERO Commission.

92-5(c) Tribal Elected officials, Executive staff and Program Directors may not serve as Commissioners during their tenure in those offices.

~~Sec. 92-4. Definitions.~~

~~Tribal official means any individual serving in an office of the Tribal government, including but not limited to any person holding an elective office or appointed by Tribal Council or the Executive office to carry out actions, provide guidance or assistance to the Tribal Council or Executive office.~~

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

(d)(1) Commissioners may not serve more than two consecutive terms.

(2) Commissioners shall serve until their terms expire, until they resign if before expiration of their term, until removed for cause by their appointing authority, until replaced by their duly appointed successor Commissioners or removed for cause by a quorum vote of Commissioners.

Sec. 92-10. - Certification requirements.

(c) ~~A Tribal~~Any elected officials, Executive staff, Program Directors and currently seated members of other Boards and Commissions that receive monetary compensation may not be TERO-certified.

Sec. 92-11. - Indian ownership required.

(a) To be certified under this Chapter, an economic entity shall be at least ~~51~~ 60 percent (60%) directly and unconditionally owned and controlled by a member of Eastern Band or another federally recognized Indian tribe or a married couple in which one spouse is a member of the tribe.

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

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

(d) The Indian individual(s) who owns and controls the economic entity does not have to have the technical expertise and hold the critical license in order to demonstrate that he or she controls and manages the economic entity. However, the

Indian individual(s) owning and controlling the economic entity shall have management experience to the extent and of the complexity necessary to run the economic entity. The Indian individual shall demonstrate that he has the ultimate managerial and supervisory control over those in the economic entity with the technical or licensing expertise. If the critical license is held by a non-Indian individual who has an equity interest in the economic entity, the Commission may find that the non-Indian individual controls the economic entity and may deny certification. (See CC [§ 87-1](#) Licenses Required)
(Ord. No. 280, 4-29-2002; Ord. No. 562, 4-25-2011)

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

(a) When presented with a need to contract or subcontract, the procuring entity shall communicate with the TERO to determine if there are any economic entities certified to perform the work in the contract. The procuring entity shall notify a Compliance officer of all meetings and shall not conduct any bid openings without the presence of a Compliance officer. At the beginning of each fiscal year, all Tribal enterprises and entities and Program Secretaries, Directors, Manager shall provide a report to a Compliance officer which shall include anticipated projects for the fiscal year including name of the project, location of project, contact person and projected start date. This report is due no later than forty-five (45) days after budget approval. Compliance officers shall be ~~updated as needed~~ informed of new projects, change orders and modifications within five business days. When awarded a Tribal construction contract, a contractor shall submit a compliance plan to a Compliance officer within 14 calendar days of being awarded the contract.

Sec. 92-28.B. TERO fees.

An employee rights fee is necessary to raise revenue for the operation of the TERO. Every covered economic entity that obtains a Tribal contract that section 92-3 applies shall pay a fee of 1.75% for all contracts in excess of \$ 10,000.00. ~~Where good cause is shown, the Commission may authorize a contractor to pay fee in installments over the course of the contract.~~ TERO-certified vendors shall pay a fee of 1.75% for all contracts in excess of \$ 100,000.00.

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

(a) An appeal to the Cherokee Court may be taken from any final order of the Commission by a party adversely affected by the final order. The appeal shall be filed with the Court no later than 20 days after the party receives formal notice of the Commission's decision.

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

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

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

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

(1) Sufficient to cover monetary damages that the Commission assessed against the party;

(2) To assure the party's compliance with other sanctions; or

(3) Remedial actions imposed by the Commission's order if that order is upheld by the Court.

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

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

BE IT FURTHER ORDAINED that this ordinance 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 TERO commission