

TABLED

Cherokee Council House
Cherokee, North Carolina

MAR 14 2019

Date

ORDINANCE NO. 515 (2017)

WHEREAS, the Charter section 23 authorizes and empowers the Eastern Band of Cherokee Indians (EBCI) Tribal Council to adopt laws and regulations for the general government of the Tribe.

WHEREAS, there is a need to abolish the TERO Commission and replace with a Project Manager.

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present that the Tribal Council of the Eastern Band of Cherokee Indians amends Cherokee Code, Ch. 92, Tribal Business Preference Law, as follows in EXHIBIT A.

BE IT FURTHER ORDAINED the provisions of the Ordinance which amend or adopt new sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall incorporate such amended provisions in the next codification of the Cherokee Code.

BE IT FURTHER ORDAINED should any provisions of this Ordinance be determined invalid by the Cherokee Supreme Court, or the Cherokee Court without appeal to the Cherokee Supreme Court, or any other court of competent jurisdiction, those portions of this Ordinance which are not determined invalid shall remain the law of the Eastern Band of Cherokee Indians.

BE IT FINALLY ORDAINED that all ordinances inconsistent with this ordinance are rescinded, and that this ordinance shall become effective when ratified by the Principal Chief or Vice-Chief.

Submitted by: Jacob Ivey

Cherokee Code

Chapter 92 – TRIBAL BUSINESS PREFERENCE LAW
ARTICLE I. – POLICY, APPLICATION, DEFINITIONS

Sec. 92-4. – Definitions.

~~Commission means the Tribal Employment Rights Commission.~~

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

ARTICLE II. – TERO COMMISSION AND OFFICE

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

~~a. There is hereby created the Tribal Employment Rights Commission.~~

~~b. The Commission shall have seven members, all of whom shall be members of the Tribe chosen to serve as follows:~~

~~1. Two members shall be appointed by the Principal Chief to serve four year terms concurrently with the term of the Principal Chief who appoints them;~~

~~2. Two members shall be appointed by the Tribal Council to serve two year terms;~~

~~3. One member shall be appointed by the Tribal Planning Board to serve three year terms; and~~

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- ~~4. Two liaisons shall be elected by TERO certified economic entities under rules adopted by the Commission to serve three year terms. These members shall serve as vendor liaisons and shall not vote.~~
- ~~e. Elected officials, Executive staff and Program Directors may not serve as Commissioners during their tenure in those offices.~~
- ~~d. 1. Commissioners may not serve more than two consecutive terms.~~
 - ~~2. Commissioners shall serve until their terms expire and they are replaced by their appointing authority, until they resign, or if appointed as interim, by their appointing authority when a vacancy arises until replaced by their duly appointed successor. Commissioners may only be replaced by their appointing authority.~~
 - ~~3. Except for the vendor liaisons, TERO certified economic entities are not eligible for appointment to the Board. If a Commissioner subsequently becomes a TERO certified economic entity that Commissioner is no longer eligible to serve on the Board and must be replaced by the appointing authority. Commissioners in office at the effective date of this article are entitled to complete their current term despite their status as TERO certified economic entities.~~
- ~~e. The Commissioners shall, by majority vote, choose one of their own members to serve as chairperson.~~
- ~~f. Commissioners shall be paid a monthly amount to be established by the Principal Chief and Tribal Council in the annual budget process. The vendor liaisons shall not be eligible for such payments.~~
- ~~g. The Commission shall meet at least once a month and minutes of each meeting shall be maintained.~~
- ~~h. The Commission shall act by majority vote. A majority of the Commission constitutes a quorum to transact business. If a commissioner leaves a meeting and his absence destroys the quorum, then no business may be transacted until a quorum is re-established. When a position on the Commission is vacant, the~~

1 remaining members may exercise the powers of the Commission until the
2 vacancy is filled.

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

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

10
11 **Sec. 92-65. – Creation and Powers of the Commission TERO Project Manager.**

12 The ~~Commission~~ TERO Project Manager shall perform all acts necessary to accomplish
13 the examinations, certifications and other actions authorized in this Chapter, and to that end may:

- 14 1. Adopt, amend and repeal rules, regulations, procedures and guidelines necessary
15 to carry out this Chapter, provided, however that:
 - 16 a. Unless an emergency exists, the ~~Commission~~ TERO Project Manager
17 shall provide the public and the certified economic entities with a
18 reasonable time for comment before adopting final rules, regulations,
19 procedures and guidelines.
 - 20 b. Rules, regulations, procedures and guidelines adopted by the ~~Commission~~
21 TERO Project Manager are encouraged to be designed to promote
22 qualification of certified economic entities as Disadvantaged Business
23 Enterprises as described by the federal Small Business Administration
24 pursuant to 13 C.F.R. 124, or similar programs.
- 25 2. Suggest changes to this Chapter to the Tribal Council.
- 26 3. Require economic entities to submit to the ~~Commission~~ TERO Project Manager
27 acceptable plans indicating how they will comply with this Chapter, and to submit
28 business development plans and other plans.

- 1 4. Impose contract and subcontract preference requirements, as set forth in this
2 Chapter, and establish and operate a system for certifying economic entities
3 eligible for Indian preference.
- 4 5. Impose limits on the certification of an economic entity restricting the entity to
5 bidding or performing on jobs of a limited type, size or value, according to the
6 certified economic entity's size, history, experience, capabilities and other factors
7 deemed appropriate by the ~~Commission~~ TERO Project Manager.
- 8 6. Enforce this Chapter and rules, regulations, guidelines and orders adopted by the
9 ~~Commission~~ TERO Project Manager, conduct hearings in accord with rules,
10 regulations and guidelines and order adopted by the ~~Commission~~ TERO Project
11 Manager, order relief or sanctions as set forth in this Chapter, and petition the
12 Cherokee Court for orders that are necessary and appropriate to enforce the
13 decisions of the ~~Commission or manager~~ TERO Project Manager and sanctions
14 they impose.
- 15 7. Establish procedures for the suspension or termination of certification of
16 economic entities that do not abide by the requirements of this Chapter or rules,
17 regulations, guidelines or orders of the ~~Commission~~ TERO Project Manager.
- 18

19 **Sec. 92-76. – Tribal Employment Rights Office.**

- 20 a. There is hereby created the Tribal Employee Rights Office (TERO). The TERO
21 shall operate as an independent and autonomous entity under the direction of the
22 TERO Project Manager ~~Commission~~.
- 23 b. The purpose of the TERO is to conduct the day-to-day business ~~of the~~
24 ~~Commission, as delegated by the Commission,~~ and to administer the rules,
25 regulations, procedures, guidelines and orders adopted by the former
26 Commission. The TERO Project Manager may amend the rules, regulations,
27 procedures, guidelines and orders as needed.
- 28 c. The TERO Project Manager ~~Manager/Director of the TERO~~ may obtain and
29 expend funding from federal, state or other sources to carry out the purposes of
30 TERO ~~the Commission~~. The staff employed by TERO, including the Project

1 Manager Director/Manager shall have the benefits and protections of the
2 personnel policy applicable to all Tribal employees, including procedures for
3 corrective actions. In order to maintain a clear separation of duties, all staff
4 serving TERO shall be separate from the administrative authority of the Principal
5 Chief, the Executive Committee, and Tribal Council. It shall be the responsibility
6 of the TERO Project Manager Director/Manager, with approval of the TERO
7 ~~Commission~~ to modify such Tribal personnel policies and procedures, as needed,
8 in order for such policies and procedures to be effective for the personnel needs of
9 TERO. The TERO Project Manager Commission shall have exclusive supervisory
10 responsibility over the ~~Director/Manager~~, and the ~~Director/Manager~~ shall have
11 supervisory and personnel responsibilities over all other TERO staff.

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13 **Sec. 92-7B. – Office administration.**

- 14 a. *Budget.* The TERO Project Manager Commission shall establish a budget for the
15 support and operations of the office during the budget year and shall manage its
16 budget in coordination with the Tribe's financial management system. The TERO
17 shall be supported by the Tribe's established system for payroll, procurement of
18 capital assets, hiring assistance, drug testing and other administrative processes as
19 may be requested by the TERO Project Manager Chairman in order to have the
20 TERO function within existing administrative and support resources.
- 21 b. *Project Manager Director and staff.* The Project Manager Director shall be
22 responsible for the administration of the staff. The Project Manager Director shall
23 ~~work closely with the Commission~~ to set goals, priorities and initiatives for the
24 organization. The staff members are not Tribal employees subject to the
25 Executive Committee's hiring and daily management.
- 26 c. Application of Tribe's personnel policy. ~~It is the intent of the Commission that all~~
27 All hired staff, including the Project Manager Director, shall have the benefits and
28 protections of the personnel policy applicable to all Tribal employees, including
29 procedures for corrective actions. In order to maintain a clear separation of duties
30 and administration of the preference law, however, all staff serving the TERO

1 shall be separate from the administrative authority of the Principal Chief and the
2 Executive Committee. It shall be the responsibility of the Project Manager
3 ~~Director, with the approval of the Chairman,~~ to modify such Tribal personnel
4 policies and procedures, as needed, in order for such policies and procedures to be
5 effective for the personnel needs of the TERO. The ~~Chairman shall have~~
6 ~~exclusive supervisory responsibility of the Director and the Director~~ Project
7 Manager shall have supervisory and personnel responsibilities over all ~~other~~
8 TERO staff.
9

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

11 The Project Manager may delegate ~~Commission delegates to the manager~~ the authority to
12 carry out the day-to-day operations of the TERO Commission and other authority that is
13 convenient or necessary for the efficient administration of this Chapter, when he or she is on
14 leave. However, the Project Manager Commission may not delegate their ~~its~~ authority to:

- 15 1. Approve or deny any economic entity's application for certification or
16 impose disciplinary action against a certified economic entity or procuring
17 entity;
- 18 2. Adopt, amend, or repeal rules, regulations, procedures and guidelines; and
- 19 3. Conduct hearings or impose relief or sanctions pursuant to this Chapter.
20

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

- 22 a. A ~~Commissioner or~~ TERO employee may not participate in any action or decision
23 which presents a conflict of interest. "Conflict of interest" means a situation in
24 which one's private interest, usually of an economic nature, conflicts or raises a
25 reasonable question of conflict with their public duties and responsibilities. A
26 conflict of interest is a concern whether the conflict is real or only perceived.
- 27 b. A ~~Commissioner or~~ TERO employee may not participate in any action or decision
28 ~~by the Commission or TERO~~ if the ~~Commissioner or~~ employee has a direct
29 personal or financial interest in the outcome of the matter.
30

- 1 c. A ~~Commissioner or~~ TERO employee may not participate in any action or decision
2 by the ~~Commission or TERO~~ directly involving himself, or a member of his
3 immediate family, or an economic entity of which he or a member of his
4 immediate family is an employee, or an economic entity in which he or a member
5 of his immediate family has a substantial ownership interest, or with which he or
6 a member of his immediate family has a substantial contractual relationship.
- 7 d. A ~~Commissioner or~~ TERO employee shall recuse himself from any action or
8 decision by the ~~Commission or TERO~~ in which he has a conflict of interest or
9 when the ~~Commissioner or~~ TERO employee believes that he cannot act fairly or
10 without bias.
- 11 1. All ~~Commissioners and~~ TERO employees shall have the duty to inform
12 the TERO Project Manager ~~Chairman~~ of any actual or perceived conflict
13 of interest affecting any other ~~Commissioner or~~ TERO employee.
- 14 e. The TERO Project Manager ~~Commissioners~~ may, ~~by majority vote,~~ determine
15 that a ~~Commissioner or~~ TERO employee has a conflict of interest and may
16 preclude that ~~Commissioner or~~ TERO employee from participating in the decision
17 or circumstance at issue.
- 18 f. This section does not preclude a ~~Commissioner or~~ TERO employee from
19 participating in an action or decision by the ~~Commission or TERO~~ which
20 generally affects a class of persons, regardless of whether ~~the Commissioner,~~
21 TERO employee, or immediate family is a member of the affected class.

22 23 ARTICLE III. – CERTIFICATION

24 25 **Sec. 92-10. – Certification requirements.**

- 26 a. To be certified as an Indian owned economic entity entitled to preference under
27 this Chapter the following requirements shall be met.

28 ***

- 29 10. The economic entity and its principals shall submit to and pay for the
30 following background checks, which may be requested or performed by

1 the Project Manager Commission upon submission of an application to the
2 Project Manager Commission or at any time after certification:

- 3 a. Licensing history.
- 4 b. Criminal history.
- 5 c. Debt and credit history.
- 6 d. Litigation involving the economic entity and/or principals as
7 defendants.

8 11. An economic entity shall have been operational for at least one year in the
9 trade in which the economic entity wants to be certified. If the economic
10 entity has not been operational for one year, the Project Manager
11 Commission shall consider one of the following when determining
12 certification:

- 13 a. Education/training/licensure/certification in a related field; or
- 14 b. Experience in a related field; or
- 15 c. Completion of a related course(s) through the EBCI Enterprise
16 Development program.

17 12. The economic entity shall have the following minimum insurance:

- 18 a. Workers compensation insurance as required by law in the State of
19 North Carolina;
- 20 b. General liability insurance sufficient to meet Tribal contracting
21 requirements;
- 22 c. Vehicle insurance;
- 23 d. At the time of applying for certification, the economic entity shall
24 show proof of insurance coverage sufficient to meet Tribal
25 contracting requirements; and
- 26 e. The Project Manager Commission may require more or additional
27 insurance including, but not limited to, professional liability or
28 malpractice insurance.

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1 b. If, at any time, an economic entity fails to meet the requirements imposed in this
2 section the Project Manager Commission shall, after a hearing, suspend the
3 economic entity's certification and give it an opportunity to meet the
4 requirements. Repeated failure to meet requirements will result in termination of
5 certification.

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

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10 d. The Indian individual(s) who owns and controls the economic entity does not
11 have to have the technical expertise and hold the critical license in order to
12 demonstrate that he or she controls and manages the economic entity. However,
13 the Indian individual(s) owning and controlling the economic entity shall have
14 management experience to the extent and of the complexity necessary to run the
15 economic entity. The Indian individual shall demonstrate that he has the ultimate
16 managerial and supervisory control over those in the economic entity with the
17 technical or licensing expertise. If the critical license is held by a non-Indian
18 individual who has an equity interest in the economic entity, the Project Manager
19 Commission may find that the non-Indian individual controls the economic entity
20 and may deny certification. (See CC § 87-1 Licenses Required)

21
22 **Sec. 92-12. – Fronts are prohibited.**

- 23 a. In addition to the requirements in section 92-11, and to limit the formation of
24 fronts, the Project Manager Commission shall evaluate an economic entity using
25 the following general criteria:
- 26 1. Is the economic entity structured in a manner consistent with sound and
27 prudent management principles?
 - 28 2. Would the economic entity have been structured in the manner it is if there
29 were no Indian preference program?
- 30

- 1 3. Would the Indian owners have been given the amount of ownership and
2 control they have been given if there were no Indian preference program?
3 4. Do the Indian owners bring something of value, such as managerial or
4 technical expertise, capital and equipment or marketing opportunities? The
5 ability to qualify for Indian preference is not considered such a marketing
6 opportunity.

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- 8 e. If, based upon the elements expressed in subsections (a) through (d), the Project
9 Manager Commission reasonably determines that the economic entity has been
10 structured managerially or financially in a manner that is convoluted or
11 inconsistent with sound business practice in order to qualify for Indian preference,
12 the economic entity will be denied certification, even if it satisfies other specific
13 criteria expressed in other sections of this Chapter.

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15
16 **Sec. 92-13. – Partnerships, corporations and joint ventures.**

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- 18 c. If the certified economic entity or an applicant for certification enters into a joint
19 venture with another economic entity in which the certified economic entity or
20 applicant receives substantial labor, capital or other assets or assistance from the
21 other economic entity, the following minimum requirements apply:
22 1. Twenty-five percent of the work performed on a job awarded pursuant to
23 this Chapter shall be performed by enrolled members of the Tribe.
24 2. Twenty-five percent of the work shall be performed by the employees of
25 the certified economic entity or applicant.
26 3. The percentages expressed in this subsection may be waived by the
27 Project Manager Commission for good cause.

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

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

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

22 This list is not comprehensive and other circumstances may exist that demonstrate bad
23 character sufficient to deny, suspend or terminate certification.

24
25 **Sec. 92-16. – Failure to pay debts to Tribe.**

26 If an economic entity or any of its principals is past due on any personal or business debt
27 owed to the Tribe, it shall not be certified, or its certification may be suspended until those debts
28 are paid in full. This section does not apply to debts that are de minimus, as defined by the
29 former Commission or Project Manager. The Project Manager ~~Commission~~ and the Budget and
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1 Finance Office shall coordinate a method for the timely exchange of information regarding
2 certified and uncertified firms that are past due on business and personal debts owed to the Tribe.

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5 **ARTICLE IV. – APPLICATIONS**
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7 **Sec. 92-18. – Applications and fees.**

8 a. Applications for certification shall be presented in a form prescribed by the former
9 Commission or Project Manager.

10 ***

11 f. Applications made under this Chapter are continuing applications and the applicant is
12 responsible for notifying the Project Manager ~~Commission~~ of changes that may affect the
13 applicant's ability to become or remain certified.

14 ***

15
16 **Sec. 92-19. – Processing applications.**

17 a. The Project Manager ~~Commission~~ shall adopt rules, procedures and guidelines for
18 processing applications.

19 b. Applications determined to be complete by the Project Manager ~~Commission~~ shall be
20 examined and a decision made on the application within a reasonable time.

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

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

28 e. The Project Manager ~~Commission~~ shall impose a probation period of one year after
29 initial certification.
30

1 f. If an application is denied, the Project Manager Commission shall provide basis of denial
2 to applicant in a written format.
3

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

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

15 b. Any party may appeal the approval of an application. The appeal must be written and
16 filed within 30 calendar days of the date of approval. The burden is on the appellant to
17 establish that the Project Manager's Commission's approval was contrary to this Chapter.

18 c. The decision of the Project Manager Commission is final. The Cherokee Court has no
19 subject matter jurisdiction to hear an appeal on this issue from the Project Manager
20 Commission.
21

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

23 a. The Project Manager Commission shall annually review certified economic entities for
24 compliance with this Chapter and rules, regulations, guidelines and orders. As part of an
25 annual review, each certified economic entity shall submit the following certifications to
26 the Project Manager Commission:

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28 8. Other information the Project Manager Commission may request.

29 b. If a certified economic entity fails or refuses to provide true and accurate information
30 required for annual review or a Compliance Officer finds poor business practices, the

1 Project Manager Commission may suspend or terminate the economic entity's
2 certification.

3
4 **Sec. 92-22. – Effect of denial of certification.**

5 If an economic entity is denied certification, the Tribe, ~~the Commission,~~ or the TERO
6 shall not be held liable for the decision. The economic entity may continue to participate in the
7 bidding process; however, the entity may not use the designation and qualify for any preference
8 as a certified economic entity.

9
10 **ARTICLE V. – PREFERENCES**

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

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

27
28 **ARTICLE VI. – ENFORCEMENT AND SANCTIONS**

29
30 **Sec. 92-29. – Complaints.**

- 1 a. Before filing a complaint, parties shall attempt to resolve differences informally. The
2 Project Manager ~~manager~~ and the ~~Commission~~ may refuse to hear a complaint if the
3 parties have not made a good faith effort to resolve differences any may order mediation
4 or other steps to attempt to resolve the issues.
- 5 b. If a resolution is not forthcoming pursuant to actions taken under subsection (a), a
6 complaint may be filed by any person who believes any certified economic entity,
7 procuring entity, Project Manager, the former manager or the former ~~Commission~~ has
8 violated this Chapter or the rules, regulations, guidelines or orders issued pursuant to this
9 Chapter; or any person who has received unsatisfactory services or goods from a certified
10 economic entity in a contract awarded under this Chapter.

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12 [Intentionally left blank]

13
14 **Sec. 92-30. – Investigations.**

15 On his own initiative or pursuant to a written complaint, the compliance officer shall
16 perform investigations within the territory of the Tribe as he or the Project Manager ~~Commission~~
17 deems reasonably necessary to determine whether a procuring entity or certified economic entity
18 has violated this Chapter. The compliance officer may enter, during business hours, the place of
19 business or employment of any certified economic entity or procuring entity for the purpose of
20 the investigations, and may require the certified economic entity or procuring entity to submit
21 reports the compliance officer deems necessary to monitor compliance with this Chapter. The
22 Project Manager ~~Commission~~ shall establish procedures for investigations which will identify
23 how to handle confidential materials, time frames, and other procedures necessary to provide a
24 fair and comprehensive investigation.

25
26 **Sec. 92-31. – Power to require testimony.**

- 27 a. For investigations or hearings which, in the opinion of the Project Manager ~~Commission~~,
28 are necessary and proper for the enforcement of this Chapter, the Project Manager
29 ~~Commission~~ may administer oaths or affirmations, subpoena witnesses, take evidence,
30 and require the production of books, papers, contracts, agreements or other documents,

1 records or information which the Project Manager Commission deems relevant or
2 material to the inquiry.

- 3 b. Any state or federal tax records, trade secrets, or privileged or confidential commercial,
4 financial, or employment information subpoenaed pursuant to this Chapter and used in an
5 investigation, compliance hearing or subsequent appeal to the Cherokee Court, shall be
6 kept confidential and shall not be opened by the ~~Director Commission~~ to public
7 inspection.

8
9 **Sec. 92-32. – Enforcement.**

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

17 ***

- 18 d. The former Commission or Project Manager shall develop procedures for holding a
19 hearing if a hearing is requested pursuant to this section. The procedures shall be
20 designed to protect the due process rights of the parties and shall, at a minimum, specify
21 the following:
- 22 1. The alleged violator shall respond within 30 days to the formal notice.
 - 23 2. The alleged violator, within 30 days, may request a hearing with the Project
24 Manager Commission.
 - 25 3. The circumstances under which the alleged violator may be required to post bond
26 to prevent it from removing itself or property from the jurisdiction of the Tribe.
 - 27 4. The circumstances under which the Cherokee Court may be petitioned for
28 injunctive relief.
- 29 e. Hearings held pursuant to this section shall be conducted by the Project Manager
30 Commission. The Project Manager Commission may consider evidence in deems

1 relevant to the hearing, under rules of practice and procedure adopted by the former
2 Commission or Project Manager. The Project Manager Commission shall not be bound
3 by technical rules of evidence in the conduct of hearings under this Chapter, and no
4 informality in any proceeding, as in the manner of taking testimony, may invalidate any
5 order, decision, rule or regulation made, approved or confirmed by the former
6 Commission or Project Manager. No stenographic record of the proceedings and
7 testimony is required except upon arrangement by, and at the cost of the party charged
8 with the violation.
9

10 **Sec. 92-33. – Sanctions.**

11 a. If, after a hearing is held, or if no hearing is requested by the alleged violator, and the
12 Project Manager Commission determines that the alleged violation occurred and that the
13 violator has no adequate defense in law or fact, the Project Manager Commission shall
14 uphold the findings of the compliance officers including affirming or modifying the
15 sanctions determined by the compliance officer.

16 b. If the violator is a certified economic entity the Project Manager Commission may
17 suspend or terminate the certification of the economic entity. If multiple complaints are
18 received, the following provisions apply:

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

24 ***

- 25 4. The Project Manager Commission may recommend to the Tribal Business
26 Committee that the violator's Trader's License be suspended or terminated.

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

29 ***
30

1 8. Impose other sanctions the Project Manager Commission determines are
2 appropriate.

3 d. If the violator's failure to immediately comply with the Project Manager's Commission's
4 orders will cause irreparable harm, the Project Manager Commission may petition the
5 Cherokee Court for injunctive relief necessary to preserve the rights of the beneficiaries
6 of this Chapter, pending the party's appeal or expiration of the time for appeal.

7 e. The Project Manager's Commission's decision shall be in writing and provide actual
8 basis of decision, and shall be provided in writing to the violator no later than 30 days
9 after the close of the hearing.

10 f. The Project Manager Commission may sanction a party to a complaint for failure to
11 respond in a timely manner to requests of the compliance officer, Project Manager,
12 former manager or former Commission for documents and information.

13
14 **Sec. 92-34. – Suspension or termination of certification.**

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

20 1. Submitting false information to ~~the Commission or~~ TERO, knowing the
21 information to be false, regardless of whether correct information was given in
22 accompanying documents or by other means.

23 ***

24 15. Willful violation by an entity, or any of its principals, of this Chapter or any rule,
25 procedure, guideline or order adopted by the former Commission or Project
26 Manager, if the violation pertains to material issues.

27
28 **Sec. 92-35. – Appeal from action on complaint.**

29 a. An appeal to the Cherokee Court may be taken from any final order of the Project
30 Manager Commission by a party adversely affected by the final order. The appeal shall

1 be filed with the Court no later than 20 days after the party receives formal notice of the
2 Project Manager's Commission's decision as evidence by certified mail or other delivery
3 mechanism where a signature shows receipt.

4 b. The Cherokee Court shall uphold the decision of the Project Manager Commission unless
5 the appellant proves that the decision of the Project Manager Commission is arbitrary,
6 capricious or in excess of the authority of the Project Manager Commission.

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

10 ***

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

- 15 1. Sufficient to cover monetary damages that the Project Manager Commission
16 assessed against the party;
- 17 2. To assure the party's compliance with other sanctions; or
- 18 3. To assure remedial actions imposed by the Project Manager's Commission's
19 order if that order is upheld by the Court.

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

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

29
30 **Sec. 92-36. – Attachment of property.**

- 1 a. If at any stage in the enforcement process, the Project Manager Commission has reason
2 to believe there is a danger that a party will remove itself or its property from the
3 jurisdiction of the Cherokee Court, so that the Project Manager Commission or the Court
4 will not be able to collect monetary damages that are: (1) owed by that party pursuant to
5 any outstanding order of the Project Manager Commission or Court; or (2) which may be
6 owed if the charges set out in any outstanding notice of violations are upheld, the Project
7 Manager Commission may petition the Cherokee Court pursuant to the rules and
8 procedures of that Court to attach and hold sufficient property of the party to secure
9 compliance or for other relief necessary and appropriate to protect the rights of the
10 Project Manager Commission and affected parties.
- 11 b. The former Commission or Project Manager shall develop procedures for the sale or
12 disposition of property which has been held in compliance with a Court order pursuant to
13 this Chapter.

14
15 **Sec. 92-37. – Orders of police.**

- 16 a. The Cherokee Police Department shall enforce cease and desist and related orders as may
17 be properly issued by the former Commission or Project Manager manager.
- 18 b. The orders do not require a judicial decree or order to render them enforceable. The
19 Cherokee Police Department shall not be civilly liable for enforcing the orders so long as
20 the order is signed by the Project Manager manager and or the former Commission.
- 21 c. Notwithstanding subsection (b), the Cherokee Police Department shall not enforce an
22 order of the Project Manager manager and or the former Commission ordering the
23 removal of a certified economic entity or procuring entity from the territory of the Tribe
24 or attachment of property unless the order is accompanied by a judicial decree by the
25 Cherokee Court.

26 ***

27
28 **Sec. 92-41. – Sovereign immunity.**

29 Nothing in this Article shall be construed as waiving the sovereign powers or immunities
30 of the Eastern Band of Cherokee Indians. The TERO ~~Commission~~, as an instrumentality of the

1 Tribe, retains all of the Tribe's rights, privileges, and immunities, including sovereign immunity
2 from suit.

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