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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JAN 09 2020

ORDINANCE NO.: 85 (2020)

Short Title: an ordinance to amend the laws governing Tribal elections.

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Indian tribe with sovereign powers of self-government; and

WHEREAS, Section 6 of the Charter and Governing Document empowers the Tribal Council to enact rules and regulations for the conduct of Tribal elections and the Tribe has codified its election laws at Cherokee Code Chapter 161; and

WHEREAS, in 2019, the Cherokee Supreme Court issued rulings in response to appeals from decisions of the Board of Elections that caused the Board, Tribal officials and the community generally to scrutinize the election ordinance to ensure that the Board fully complied with the Court's rulings; and

WHEREAS, consistent with the requirements imposed on the Cherokee Supreme Court in C.C. Sec. 7-12(2), the Court has reported to Tribal Council that there are several subjects within the election ordinance that should be clarified to give better guidance to the Board of Elections, to candidates and to the Court; and

WHEREAS, in light of the foregoing, the Board of Elections has conducted a thorough review of the election laws and the amendments expressed herein are made to ensure that the election laws more clearly comply with the Tribe's Charter and Governing Document and relevant decisions from the Cherokee Supreme Court, and by doing so will better facilitate fair and efficient elections.

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 Chapter 161 shall be amended as follows:

Chapter 161 – Elections

ARTICLE I. – OFFICES

Sec. 161-1. - Election dates.

(a) The Cherokee General Election shall be held on the first Thursday in September 2019, and each two years thereafter.

- 1 (b) The Primary Election for the office of Principal Chief and Vice-Chief shall be held on the
2 first Thursday in June, 2019, and each four years thereafter.
- 3 (c) The Primary Election for the offices of Tribal Council shall be held on the first Thursday in
4 June, 2019, and each two years thereafter.
- 5 (d) A Primary Election run-off shall be held on the third Thursday in June, 2019, and each two
6 years thereafter, if necessary.
- 7 (e) A General Election run-off shall be held on the third Thursday in September 2019, and
8 each two years thereafter, if necessary.
- 9

10 **Sec. 161-2. - Tribal Offices.**

- 11 (a) The Principal Chief and Vice-Chief shall be elected and hold office for terms of four years
12 but shall not be eligible to hold office for more than two consecutive terms.
- 13 (b) The representatives elected to the Tribal Council shall be elected and hold office for terms
14 of two years. The Tribal Council will consist of 12 members as follows: from Big Cove
15 Township, two members; from Birdtown Township, two members; from Wolfetown
16 Township, two members; from Yellowhill Township, two members; from Painttown
17 Township, two members; from Graham and Cherokee Counties constituting one Township,
18 two members.
- 19 (c) The members of Cherokee School Board shall be elected to hold terms of office for four
20 years. The terms of office shall be staggered, with one representative elected from Birdtown,
21 Wolfetown, and Big Cove in 2001, and each four years thereafter, and one representative
22 elected in Yellowhill, Painttown, and Big Y Community in 1999, and each four years
23 thereafter.
- 24

25 **Sec. 161-3. - Qualification for offices.**

- 26 (a) In order to run for or serve as the Principal Chief or Vice-Chief, a candidate must:
- 27 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 28 (2) Be at least 35 years of age by the date of the **primary general** election; and
- 29 (3) Have resided on Cherokee trust land continuously for at least two years immediately
30 preceding the date of the **primary general** election; and
- 31 (4) Continue to reside on Cherokee trust land during their term of office; and
- 32 (5) Be a registered voter with the Tribal Election Board.
- 33 (b) In order to run for or serve as a member of the Tribal Council, a candidate must:
- 34 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 35 (2) Be at least 18 years of age by the date of the **primary general election**; and
- 36 (3) Have resided in the township which he or she is to represent for at least 90 days
37 immediately preceding the date of the **primary general** election; and
- 38 (4) Continue to reside in the township in which the candidate was elected during their
39 term of office; and
- 40 (5) Be a registered voter with the Tribal Election Board.
- 41 (c) In order to run for or serve as a member of the Cherokee School Board, a candidate must:
- 42 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 43 (2) Be at least 21 years of age by the date of the primary election; and
- 44 (3) Reside in the community the candidate represents for at least one year immediately
45 preceding the date of the primary election and continue to reside in that community
46 during the term of office; and

- 1 (4) Have received a high school diploma or the equivalent; and
2 (5) Be a registered voter with the Tribal Election Board.
- 3 (d) No person shall ever be eligible to file for or serve in any of the above Tribal Offices, if:
4 (1) The person has been convicted of, ~~pled guilty to, or entered a no-contest plea to~~ a
5 felony; or
6 (2) The person has aided, abetted, counseled, or encouraged any person or persons guilty
7 of defrauding the Eastern Band of Cherokee Indians or has defrauded the Tribe, or who
8 may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band
9 of Cherokee Indians; or
10 (3) The person has been impeached and removed by the Tribal Council from any elected
11 ~~office or appointed office, for having violated his or her oath of office or being guilty of~~
12 ~~any offense making the person ineligible to hold said office; or or found guilty in any~~
13 ~~jurisdiction to have violated a law that would constitute a violation of Section 17 of the~~
14 ~~Charter and Governing Document of the Eastern Band of Cherokee Indians; or~~
15 ~~(4) The person resigned from Tribal elected or appointed office while under criminal~~
16 ~~investigation or under pending charges for fraud, or a violation of Section 17 of the~~
17 ~~Tribal Charter or Tribal Law; or~~
18 ~~(5) The person is more than 90 days in default of an obligation to pay a debt to the Tribe,~~
19 ~~which obligation is imposed by law, contract or court order and the default has not been~~
20 ~~eured; or~~
21 ~~(6)-(4)~~ The person fails to meet the residency requirements for elected office.
- 22 (e) No person may file for, run for, or hold more than one Tribal elective office at any one
23 time. However, a person may run for Tribal elected office while holding a different Tribal
24 office, so long as the person resigns from the current elected office prior to taking the oath
25 of office for the newly elected office.
- 26 (f) No person is eligible to hold the office of Principal Chief, Vice-Chief or Tribal Council
27 member while simultaneously being a Tribal employee or an employee of a Tribal entity. A
28 Tribal employee may run for office, but if elected must resign prior to taking the oath of
29 office for Principal Chief, Vice-Chief, or Tribal Council.
- 30 (g) No person is eligible to hold the office for Cherokee School Board Member while
31 simultaneously being an employee or student of the Cherokee Central School System. An
32 employee of the Cherokee Central School system may run for a seat on the Cherokee School
33 Board, but that employee must resign from employment before taking the oath of office on
34 the School Board.
- 35 (h) Where this section requires a person to reside or to have resided on Cherokee trust land
36 generally or in a particular Cherokee township or community, that requirement shall mean
37 that the person has made that place their primary, permanent place of abode for the required
38 period. It is where ~~they~~ the person lives full-time except for temporary absences of relatively
39 short duration. All candidates and elected officials must continue to meet residency
40 requirements of their elected office for the duration of their candidacy and, if elected, for the
41 duration of their term(s). Any elected official who violates the residency requirement shall
42 be ineligible to hold the office, ~~and shall be removed therefrom by process of applicable law.~~
43 Suspected violations of the residency requirement shall be reported to the Board of Elections
44 in writing by the constituency of that elected office, e.g., Principal Chief or Vice-Chief
45 residency violations must be made by any enrolled member of the Tribe; Tribal Council or

1 School Board member residency violations must be made by an enrolled member of the
2 Tribe registered to vote in the township of the elected office.

3
4 **Sec. 161-4. - Filing for office – Certification of candidates.**

5 (a) All persons filing to be a candidate for Tribal elected office shall do so under his or her
6 own name and his or her original signature. All documents required to be filed with the
7 Board of Elections must bear the original signature of the candidate/principal and shall not
8 be signed by any person as an agent acting on behalf of the candidate/principal through a
9 power of attorney or other delegation of authority. This requirement applies to all
10 applications for candidacy and all other documents required to be filed with the Board of
11 Elections by candidates. Nothing in this subsection applies to the marking of ballots.

12 (b) All persons filing to be a candidate for election to the office of Principal Chief, Vice-Chief,
13 Tribal Council, or School Board shall do all of the following:

14 (1) Pay the required filing fees at the Tribal Finance Office no sooner than the first
15 Monday in March March-1 and no later than the first Friday in March March-15 of the
16 year of the election. Persons paying such fees are advised to inform themselves of the
17 hours of operation of the Tribal Finance Office.

18 a. The filing fee to be a candidate for the office of Principal Chief or Vice Chief is
19 \$700.00.

20 b. The filing fee to be a candidate for a seat on Tribal Council is \$500.00.

21 c. The filing fee to be a candidate for a seat on the School Board is \$350.00.

22 Filing fees are non-refundable and shall be paid by cash, cashier's check, or money
23 order. A receipt from the Tribal Finance Office, showing that the applicable filing fee
24 has been paid, shall be submitted with the candidate application forms described in
25 subparagraph (2), below.

26 (2) Submit to the Board of Elections completed and properly executed candidate
27 application forms (also known as filing forms). The same deadline that applies for
28 payment of the filing fees above applies to submission of the candidate application
29 forms.

30 (c) The Board of Elections shall review all applications and other required information,
31 including but not limited to background checks, and ensure that the required filing fees have
32 been paid in order to certify ~~that whether or not~~ each applicant is eligible to be a candidate
33 for Tribal elected office. If necessary, any applicant may be required to appear before the
34 Board at a hearing to answer an inquiry about any matter related to an application for
35 candidacy for Tribal elected office. The Board of Elections shall notify each applicant of its
36 decision by one of the means listed in Section 161-29 of this Chapter by registered mail on
37 or before March 31 of the election year, or may be picked up in person from the Board of
38 Elections Office on or before the March 31 deadline provided the person signs, at the Board
39 office, proof of receipt of the notice of decision. Any adverse decisions shall include a clear
40 and concise statement as to the reason(s) for denial of an applicant's eligibility and shall
41 include the following information:

42 (1) ~~That the applicant may appeal the denial of certification and may request a hearing~~
43 ~~before the Board of Elections for the appeal. The request for a hearing before the Board~~
44 ~~shall be in writing, signed by the applicant, and shall be filed with the Chairman of the~~
45 ~~Board within five (5) business days of receipt of notice of the denial. The person~~

1 appealing the decision of the Board shall pay the appeal filing fee expressed by the
2 Board in its schedule of fees.

3 (2) ~~If an appeal is timely and properly filed, the Board shall schedule a hearing and that~~
4 ~~hearing shall be held within five business days of the date the Board received the notice~~
5 ~~of appeal. The Board shall give the person whose eligibility was denied notice of the~~
6 ~~date and time for the hearing. Notice of the scheduled hearing shall be provided as~~
7 ~~described in C.C. Sec. 161-29 ("Service of communications by the Board of Elections")~~
8 ~~within two business days of the date the Board received the request for hearing.~~

9 (3) ~~At the appeal hearing before the Board, the appellant shall have the right to present~~
10 ~~written evidence and/or oral testimony to address the deficiency in their application that~~
11 ~~was identified by the Board's decision which deficiency rendered the appellant~~
12 ~~ineligible.~~

13 (4) ~~The Board shall issue a written decision within five business days following the~~
14 ~~hearing. The written decision shall express whether or not the prospective candidate~~
15 ~~satisfies the requirements for the office for which candidaey is sought. The final written~~
16 ~~decision from the Board of Elections shall be provided to the applicant in any of the~~
17 ~~ways described in C.C. Sec. 161-29 ("Service of communications by the Board of~~
18 ~~Elections"). A decision by the Board of Elections to affirm its prior decision that the~~
19 ~~person is ineligible may be appealed by that person to the Cherokee Supreme Court for~~
20 ~~error of law. The only person with standing to appeal to the Court shall be the person~~
21 ~~whose eligibility was denied.~~

22 (d) If the applicant meets all of the qualifications to run for Tribal office, and is not ineligible
23 to hold Tribal office pursuant to Section 161-3(d), the Board of Elections shall certify
24 the applicant as eligible to run for the Tribal office sought by the applicant. The Board
25 of Elections shall notify the applicant of its decision by one of the means listed in
26 Section 161-29 of this Chapter on or before March 31 of the election year.

27 (e) If the applicant does not appear to meet all of the qualifications to run for Tribal office,
28 or it appears the applicant may be ineligible to run for Tribal office, the Board of
29 Elections shall order a hearing to be held to determine whether the applicant should be
30 certified as a candidate for Tribal office.

31 (1) Prior to March 31 of the election year, the Board of Elections shall issue a Notice of
32 Hearing informing the applicant of the date and time the hearing will be held. The
33 hearing shall be held no later than ten business days following issuance of the Notice
34 of Hearing. Notice of the scheduled hearing shall be provided as described in Section
35 161-29 of this Chapter. The Notice of Hearing to the applicant shall clearly and
36 concisely state the issue or issues identified by the Board which might render the
37 applicant unqualified or ineligible to run for Tribal office and must be addressed by
38 the applicant before the Board.

39 (2) The applicant may request that the Board issue subpoenas for persons or documents
40 which the applicant expects to be relevant to the issue or issues identified in the
41 Notice of Hearing. In its discretion, the Board may issue subpoenas for documents or
42 any person it identifies as having information relevant to the issue or issues contained
43 in the Notice of Hearing provided by the Board. At the hearing before the Board, the
44 applicant shall have the right to present written evidence or oral testimony to address
45 the issue or issues identified by the Board. The North Carolina Rules of Evidence do
46 not apply.

- 1 (3) The burden of proof shall be on the applicant to prove by a preponderance of the
2 evidence of the record as a whole that he or she meets all of the qualifications to be
3 certified as a candidate for Tribal office and is otherwise eligible to hold Tribal office
4 under the law.
- 5 (4) The Board shall issue a final written decision within five business days following the
6 hearing. The panel may:
- 7 (a) find that the applicant meets all of the qualifications for office and is otherwise
8 eligible under the law to hold Tribal office and certify the applicant to be a
9 candidate for Tribal office; or;
- 10 (b) find that the applicant meets all of the qualifications for office but is otherwise
11 ineligible under the law to be a candidate for Tribal office, and deny certification;
12 or
- 13 (c) find that the applicant does not meet the qualifications for office and deny
14 certification.
- 15 (5) A final decision by the Board of Elections to deny certification to an applicant to
16 be a candidate for Tribal office may be appealed by the applicant to the Cherokee
17 Supreme Court. The decision issued by the Board is not required to take any
18 particular form or to formally express findings of facts and conclusions of law as
19 might be written in a court decision; provided, however, the final decision shall
20 contain sufficient information to enable the Court on appeal, if an appeal is filed, to
21 make an informed judgment as to facts considered by the Board of Elections in
22 making its decision so that the Court can determine whether the Board committed an
23 error of law. The only person with standing to appeal to the Court shall be the person
24 whose certification was denied. Notice of appeal to the Cherokee Supreme Court
25 must be given no later than three business days after the final decision is served on
26 the applicant.
- 27 (f) By April 15 of each election year, the Board of Elections shall publish in the Cherokee
28 One Feather the list of candidates certified to run for each Tribal elected office. In
29 the event a candidate is certified later than April 15 in response to a Court Order, the
30 Board shall then re-publish the list of all certified candidates, including the name(s) of
31 those certified in response to a Court Order, in the next edition of the Cherokee One
32 Feather.
- 33 (g) At the time the applicant files an application to be a candidate for Tribal office, or no later
34 than ~~Within~~ three (3) business days ~~of following~~ receipt of notice of certification as a
35 candidate for Tribal office, the candidate shall do the following:
- 36 (1) sign an agreement under oath to use the voter registration list provided to the
37 candidate pursuant to Section 161-11.3 of this Chapter only for truthful communications
38 with eligible voters in connection with the election and to clearly identify
39 himself/herself in all such election-related communications;
- 40 (2) affirm in writing and under oath ~~that they~~ that the candidate has reviewed and is ~~are~~
41 aware of, understands and agrees to follow the Tribe's election law, requirements of this
42 ~~Chapter~~ including, but not limited to, the following:
- 43 (i) the residency requirements for the office sought;
- 44 (ii) the eligibility criteria to be a candidate for the office sought;
- 45 (iii) that communications by the candidate with the Board and with public shall be
46 truthful; and

1 ~~(iv) — applicable financial and ethics reporting requirements expressed in this Chapter~~
2 ~~and C.C. Section 117-45.3(9) (Code of Ethics).~~

3 ~~(v)(d)~~ that any violations of the requirements for candidacy or the oaths or attestations
4 shall be grounds for de-certification by the Board of Elections.

5 (h) Any claims or complaints of violation of the requirements of ~~this subpart subsection (g)(2)~~
6 shall be directed to the Board of Elections for investigation.

7
8 **Sec. 161-4.1. - Decertification of a candidate.**

9 (a) If at any time before the primary, general or special election at issue, a candidate for
10 electd office is no longer qualified or eligible to hold Tribal office, no longer meets the
11 applicable eligibility requirements, the Board of Elections may decertify that person as a
12 candidate. ~~A decertified candidate may request a hearing as provided in this section.~~

13 (b) Once the Board has certified a candidate to run for Tribal office, ~~Only the following shall~~
14 ~~have standing to file a protest seeking decertification of a candidate whom the Board has~~
15 ~~already determined is eligible to run for office in that election cycle:~~

16 ~~(1) — The Board of Elections upon its own initiative and investigation; or~~

17 ~~(2) — Any~~ (1) Any enrolled member of the EBCI who is registered to vote in ~~the~~ Tribal
18 election (s) may file a protest seeking to decertify the candidate from running for Tribal
19 office. All protests must be submitted to the Board of Elections in writing and on forms
20 provided by the Election Board or, if not on forms provided by Board, then in a typed or
21 legible writing. Each protest shall contain sufficient detail to give the Board notice of
22 the facts that the protester asserts support decertification. All protests shall, at a
23 minimum, contain the following information: (1) the name, mailing address, physical
24 address, telephone number and email address (if one is available) of the protester; (2)
25 the dates and approximate times of the act(s) being protested; (3) a description of the
26 subject of the protest; (4) the name, mailing address, telephone number and email
27 address (if one is available) of all witnesses known to the protester; and (5) copies of all
28 supporting records, photos and other documentary evidence in the possession or control
29 of the protester that the protester wants the Board to consider. All protests must include
30 a sworn statement signed by the protester, before a notary, that the allegations presented
31 in the protest are true or that the protester, upon information and belief, believes them to
32 be true.

33 (2) The Board of Elections may on its own initiative begin an investigation into the
34 decertification of a candidate at any time before the election at issue.

35 (c) Such protest ~~shall~~ should be filed with the Board no later than ~~five~~ ten business days after
36 the Board publishes in the Cherokee One Feather the ~~preliminary—unofficial~~ list of
37 candidates certified for the election at issue. The person filing the protest shall pay the
38 protest filing fee expressed by the Board in its schedule of fees.

39 (d) Acting on its own investigation or upon receipt of a timely filed protest to decertify a
40 candidate, the Board of Elections shall give written notice to the candidate at issue within
41 two business days which notice shall inform the candidate that:

42 (1) The Board has, upon its own investigation, determined that the candidate ~~does~~ may
43 not meet the qualification or eligibility requirements and ~~should be~~ is subject to being
44 decertified, and the notice shall state the particular grounds supporting decertification,
45 and shall ask the candidate to file a written response to the notice within five business

1 days which addresses the grounds identified by the Board which may support
2 decertification ; or

3 (2) The Board has received a written protest from a properly registered voter and the
4 protest alleges that the candidate is not qualified or not eligible to be a candidate for
5 Tribal office and should be de-certified. A copy of the protest and all supporting
6 documents submitted by the protestor shall be included with the notice. The Board
7 shall ask the candidate to file a written response to the allegations of the protestor
8 within five business days.

9 (3) Notice shall be provided in any of the ways described in C.C. Sec. 161-29 ("Service of
10 communications by the Board of Elections").

11 (e) ~~The candidate or the challenger may request a hearing before the Board. The request shall~~
12 ~~be in writing and shall be filed with the Chairman of the Board within five business days of~~
13 ~~receipt of the notice of the complaint from the Board. Once the Board has reviewed the~~
14 ~~written response of the candidate, the Board may thereafter order a hearing if there is an~~
15 ~~issue which has not been resolved by the written response of the candidate.~~

16 (f) ~~Within five business days of the date the Board received the request for hearing, If the~~
17 ~~Board orders a hearing, the~~ Board shall schedule a hearing to be held within ten business
18 days. The Board shall give the candidate and the challenger notice of the hearing in any of
19 the ways described in C.C. Sec. 161-29 ("Service of communications by the Board of
20 Elections").

21 (g) At the hearing before the Board, the parties shall have the right to present written evidence
22 and/or oral testimony to address the alleged grounds for decertification. At the hearing, the
23 burden of proof is on the moving party to prove by a preponderance of the evidence in the
24 record as a whole that the candidate for Tribal office does not meet the qualification or
25 eligibility requirements under Tribal law and should be decertified as a candidate.

26 (h) The Board shall issue a final written decision within five business days following the
27 hearing, or if no hearing is ordered, within five business days following receipt of the
28 candidate's written response. The written decision shall express whether or not the candidate
29 satisfies the requirements for the office for which candidacy is sought. The final written
30 decision from the Board of Elections shall be sent to the candidate and the challenger, if any,
31 in any of the ways described in C.C. Sec. 161-29 ("Service of communications by the Board
32 of Elections"). The decision of the Board of Elections affirming its decision that the person
33 is eligible and remains certified as a candidate, or reversing its decision and decertifying the
34 candidate, may be appealed to the Cherokee Supreme Court by the non-prevailing party.
35 Notice of appeal to the Cherokee Supreme Court must be given no later than three business
36 days after the final decision is served on the non-prevailing party. The Supreme Court shall
37 review the decision of the Board for error of law.

38 (i) ~~A protest of a person's certification as a candidate by the Board of Elections shall be filed~~
39 ~~within 30 days of the last date on which the Board of Elections may issue such a~~
40 ~~certification. The protest is void if it is not filed within that 30-day period.~~

41
42 **Sec. 161-4.2. - Write-in candidates.**

43 (a) All persons wishing to run as write-in candidates in the primary election must declare their
44 candidacy by filing with the Board of Elections between the first Monday in April and the
45 first Friday in April April 1 and April 15 of before a primary election. All candidates must

1 complete a filing form to establish that they meet the qualifications of the office for which
2 they file.

3 (b) Write in candidates shall pay a filing fee in the amount as required by the registered
4 candidate as specified in Subsection 161-4(c) of this Chapter.

5 (c) The Board of Elections shall review all write-in forms and shall certify each applicant as
6 either eligible or ineligible and notify the applicant of its decision by April 30.

7 (d) Write-in votes will not be counted unless the first and last name of the candidate is written
8 on the ballot. The name of the candidate for purposes of write-in voting is the name filed by
9 the candidate with the Board of Elections. The Board of Elections shall make public the
10 names of write-in candidates certified as eligible for each Tribal office no later than seven
11 days before the primary election.

12 (e) Unless a person has filed with and been certified as a write-in candidate by the Board of
13 Elections pursuant to Subsection (a) thru (c) of this Section, no write-in votes for that person
14 shall be counted or reported by the Board of Elections.

15 (f) No write-in voting is permitted in the general election, and no write-in votes cast in the
16 general election shall be counted or reported.

17 (g) No stickers preprinted with a candidate's name are permitted for write-in voting.
18

19 **Sec. 161-5. - Primary elections.**

20 (a) The two candidates receiving the most votes for the office of Principal Chief and Vice-
21 Chief and the four candidates receiving the most votes for the two Tribal Council seats in
22 each township shall be certified by the Board of Elections, and their names shall be placed
23 on the ballot for the general election.

24 (b) The two candidates receiving the most votes for the office of School Board in each district
25 shall be certified by the Board of Elections, and their names shall be placed on the ballot for
26 the general election.

27 (c) If two or fewer candidates file and are certified eligible under Section 161-4 for Principal
28 Chief, Vice-Chief, or a district School Board position, then no primary election shall be held
29 for that office, and those candidates shall have their names placed on the ballot for the
30 general election.

31 (d) If four or fewer candidates file and are certified eligible under Section 161-4 for Tribal
32 Council in a particular township, then no primary election for Tribal Council shall be held in
33 that township, and those candidates shall have their names placed on the ballot for the
34 general election.

35 (e) A candidate may voluntarily withdraw his or her name from the election by submitting a
36 written letter to the Board of Elections which clearly and unequivocally states the candidate's
37 desire to no longer be considered as a candidate for office. If a candidate withdraws, and
38 ballots for the election have not been printed, the Board of Elections shall remove the
39 candidate's name from consideration, and it shall not appear on the ballot. If a candidate
40 withdraws after ballots have been printed, the candidate's name shall remain on the ballot,
41 however all votes for that candidate shall be considered null and void. This subsection shall
42 apply to primary, general, special, and run-off elections as applicable.
43

44 **Sec. 161-6. - Recounts.**

45 (a) If the vote count in any Tribal election results in a tie, the Board of Elections shall conduct
46 a recount of all ballots cast for that particular office or seat. Such recount shall be conducted

1 by the Board of Elections within two business days after the closing of the polls for that
2 election. The recount shall be performed by the members of the Board of Elections. A "tie"
3 is defined as two or more candidates for the same seat receiving the same number of votes.

4 (b) If any unsuccessful candidate in any Tribal election is defeated by no more than two
5 percent of the total number of votes cast for that particular office or seat, such candidate may
6 request a recount by filing a written request with the Board of Elections within two business
7 days after the closing of the polls for that election. The recount shall be conducted by the
8 Board of Elections within three business days of filing of the request by the unsuccessful
9 candidate.

10 (c) The two percent threshold necessary for a recount shall be measured by answering the
11 following question: is the difference between the number of votes received by the
12 unsuccessful candidate who is seeking the recount, and the immediately closest successful
13 candidate, within two percent of all the votes cast for those two candidates? If the difference
14 is within two percent, the Board of Elections shall conduct a recount if a request for a
15 recount is filed pursuant to this section. Any fraction of a percent over two percent shall be
16 considered outside the two percent threshold requiring a recount.

17 (d) At the conclusion of any such recount, the Board of Elections shall announce the unofficial
18 results of the recount for that office pending official certification of the results of the
19 election to the Tribal Council pursuant to Section 161-16.1 of this Chapter.

20 (e) Any candidate on a ballot subject to a recount by the Board of Elections may personally
21 observe the recount which will be televised and in a controlled environment to observe the
22 recount. Should the candidate choose to not attend, they may designate one representative to
23 observe the recount. Such representation must be designated in writing, with such written
24 appointment delivered to the Board of Elections prior to the commencement of the recount.
25 Such observers shall not participate in or interfere with the recount activities of the Board of
26 Elections and may be ejected by the chairman if they interfere with or disrupt the recount
27 process.

28 (f) Regardless of any other expression in this section, nothing in this section shall prohibit the
29 Board of Elections from recounting ballots upon its own initiative as part of an investigation
30 or for quality control purposes.

31
32 **Sec. 161-7. - Run-off elections.**

33 (a) The Board of Elections shall have the authority to conduct run-off elections to fill the
34 offices for Principal Chief, Vice-Chief, Tribal Council, and School Board.

35 (b) A run-off election shall be held within 15 calendar days of the decision of the Board of
36 Elections to hold such a run-off.

37 (c) The Board of Elections shall have authority to conduct run-off elections if any of the
38 following occur:

39 (1) The Board determines that a recount of ballots would not produce an accurate vote
40 count; or

41 (2) The Board determines upon research and investigation conducted on its own initiative,
42 or in response to a timely filed protest under C.C. Sec. 161-16, that irregularities ~~in the~~
43 ~~conduct of the election affected the actual outcome of the election or rendered the~~
44 ~~results contrary to the Tribal Charter or this Chapter; or unfairly and improperly or~~
45 ~~illegally affected the actual outcome of the election, and but for the irregularity, the~~
46 winning candidate would not have prevailed at the polls.

- 1 (3) The Board determines upon research and investigation conducted on its own initiative,
2 or in response to a timely filed protest under C.C. Sec. 161-16, that irregularities in the
3 conduct of the election rendered the results unreliable by clear and convincing evidence.
- 4 (d) If, after a recount of ballots by the Board of Elections, two or more candidates running for
5 elected office receives the same number of votes and the individual number of votes cast for
6 each candidate represents the largest vote total by any candidate in the primary election for
7 the last available position on the general election ballot, the Board shall conduct a primary
8 run-off election between such candidates. The candidate receiving the greatest number of
9 votes in that primary run-off election shall be deemed eligible to stand for the general
10 election.
- 11 (e) If, after a recount of ballots by the Board, in the Tribal Council general election, two
12 candidates receive the same number of votes and the individual number of votes cast for
13 each candidate represents the largest vote total by any individual candidate for that
14 township, there will be no run-off election. The two candidates with the highest vote totals
15 shall be deemed elected to the two Council seats for that township.
- 16 (f) If, after a recount of ballots by the Board of Elections in the Tribal Council general
17 election, two or more candidates receive the same number of votes that constitute the second
18 highest vote totals by any individual candidate for that township, the Board shall conduct a
19 run-off election between such candidates. The candidate receiving the greatest number of
20 votes in the run-off election shall be deemed elected to the second Council seat for that
21 township.
- 22 (g) If, after a recount of ballots by the Board of Elections, two or more candidates running for
23 a seat on the School Board, or for the office of Vice Chief, or the office of Principal Chief,
24 receive the same number of votes in the general election and the individual votes totals
25 represent the largest vote total by any individual candidate for that race, the Board shall
26 conduct a run-off election between such candidates. The candidate receiving the greatest
27 number of votes in the run-off election shall be deemed elected to office.
- 28 (h) Should the Board of Elections determine that a recount of ballots would not determine the
29 accurate vote count or make either of the determinations described in subsection (c)(2) or
30 (c)(3) of this section, the Board shall conduct a run-off election between only the candidates
31 that the Board deems necessary to resolve any issues concerning the accuracy of the vote
32 count or to remedy irregularities in the conduct of the election. All decisions made by the
33 Board of Elections in regard to run-off elections shall be final.
- 34 (i) The Board of Elections shall not provide absentee ballots for run-off or special elections.
35

36 **Sec. 161-8. - Reserved.**

37
38 **Sec. 161-9. - Referendums/initiatives.**

- 39 (a) *Purpose.* A referendum is the people's ability to refer newly enacted law by petition, from
40 the legislation to the ballot for final approval. The following rules shall apply,
- 41 (b) *Definitions.*
42 *Initiative* shall mean the right and procedure by which citizens can propose a law by petition
43 and ensure its submission to the electorate.
44 *Referendum* shall mean the submission of a proposed public measure or actual statute to a
45 direct actual vote.
- 46 (c) *Process.*

- 1 (1) A referendum/initiative issue shall only be established by resolution of the Tribal
2 Council, duly ratified by the Principal Chief.
 - 3 a. A referendum initiated by Tribal Council does not need a petition.
- 4 (2) A petition requesting the Tribal Council to authorize an election on a
5 referendum/initiative question shall require:
 - 6 a. Twenty-five percent of registered voters to sign a petition in support of a
7 referendum/initiative on a proposed ordinance or action by the Tribal Council or
8 Principal Chief.
 - 9 b. Thirty-three percent of registered voters to sign a petition the Tribal Council for
10 resolution for a referendum/initiative election on a proposed change to the Charter
11 or Governing Document.
- 12 (3) Only natural persons may petition for a referendum on an issue.
- 13 (4) A petition shall be on a standardized form provided by the Board of Elections and
14 shall include the designation of three signatories comprising the Petitioner's Committee
15 with their names, addresses and enrollment numbers; multiple lines for the signee's
16 printed name, signature, date of signature, address, and enrollment number of
17 supporters of the petition; and a full explanation of the proposed action sought by
18 referendum and shall include the full text of the proposed action. The Petitioner's
19 Committee shall be responsible for the content of the proposed legislation. This
20 proposed legislation shall appear on all signature sheets.
- 21 (5) The Petitioner's Committee shall submit the proposed referendum language and the
22 text explaining the proposed action to the Board of Elections for review to pre-certify
23 the referendum issue/question as consisting of only one issue or question prior to
24 collecting signatures on the petition. The Board shall have 60 days from the date the
25 Petitioner's Committee submits the referendum language to review the information
26 submitted and to pre-certify the question for the petition. If the Board makes a negative
27 finding, the Petitioner's Committee can revise and resubmit the proposed referendum to
28 the Board.
- 29 (6) Petition Certification by the Board of Elections.
 - 30 a. Once the Petitioner's Committee has collected all the required signatures, the
31 signed petitions shall be submitted to the Board of Elections for verification that all
32 information required on the petition, including the required number of signatures
33 and all associated information, is contained on the petition. The Board of Elections
34 shall have 90 days to approve or deny certification of the petition. If the Board
35 denies certification, the Petitioner's Committee may attempt to cure the deficiencies
36 and resubmit the signed petitions to the Board.
 - 37 b. Any signature more than one year old on a petition, and any signature of a person
38 who is no longer a registered voter, shall be void and not counted.
- 39 (7) Submission of Certified Petition to Tribal Council and the Principal Chief.
 - 40 a. After the Board of Elections certifies the petition, the Petitioner's Committee shall
41 submit the certified petition to the Tribal Council. The Tribal Council Chairman
42 shall place the petition on the agenda of the next regularly scheduled Tribal Council
43 session. Nothing in this section requires an immediate decision by Tribal Council
44 assembled, and nothing herein prohibits Tribal Council from tabling the matter for
45 review and other actions within its authority.
- 46 (8) Required votes.

- 1 a. Not less than 51 percent of registered voters must vote in a referendum/initiative
2 election on a proposed amendment to the Charter or Governing Document or the
3 election is deemed void.
- 4 b. Not less than 30 percent of registered voters must vote in a referendum/initiative
5 election to enact or repeal an ordinance or resolution or the election is deemed void.
6 No decision approved or denied by the voters on an issue shall be reconsidered by
7 Tribal Council for two years.
- 8 (9) All registered voters shall be eligible to vote on a referendum issue.
- 9 (10) Referendums for any purpose of this Section shall be conducted by the following
10 procedures:
- 11 a. The Board of Elections shall conduct a referendum election for any purpose other
12 than that of modifying the Charter and Governing Document within 90 days of
13 ratification of the resolution approving the issue for a referendum vote.
- 14 b. Within ten business days of ratification of the resolution the Board of Elections
15 shall provide public notice for the upcoming referendum by advertising in the
16 Cherokee One Feather, Graham Star, and Cherokee Scout and by mailing notice to
17 all eligible voters. The notice shall contain an election schedule which shall notify
18 all voters of the date of the election, the question to be voted on and the date in
19 which the voter registration rolls will close.
- 20 c. The Board of Elections shall close the voter registration books 30 days prior to the
21 referendum election.
- 22 d. The Board of Elections shall appoint all election officials 30 days prior to the
23 election. The Board shall conduct an orientation for election officials prior to the
24 election.
- 25 e. The Board of Elections shall issue ballots for referendum in accordance with the
26 absentee ballot application process pursuant to the procedures set out in this
27 Section.
- 28 f. Persons desiring to vote by absentee ballot may begin applying for such ballot
29 immediately after receiving notice of the referendum election and all applications
30 to vote by absentee ballot must be submitted or post-marked by the U.S. Postal
31 Service not less than 15 days prior to the election.
- 32 g. All absentee ballots for referendum election must meet the same criteria for any
33 other election and must be returned to and received by the Board of Elections not
34 less than five days prior to the referendum election.
- 35 (11) The outcome of the referendum vote, if it has first met the minimum threshold of
36 voters, shall be certified by the Board of Elections and shall be deemed a binding action
37 or law duly passed and ratified by the Principal Chief. Any decision made by
38 referendum vote cannot be overturned unless there is another referendum.
- 39 (12) Any protest regarding an election irregularity shall be conducted C.C. Section 161-
40 16.
- 41 (13) An issue that has been brought before eligible voters and voted upon by resolution on
42 a referendum/initiative, regardless if the vote is later deemed void for lack of the
43 required percentage of voters, may not be voted upon again by voters in a
44 referendum/initiative election until a period of two years has passed from the date of the
45 immediately preceding vote by eligible voters.
- 46

1 **ARTICLE II. - VOTERS**

2
3 **Sec. 161-10. - Qualifications.**

4 To be eligible to vote in any Cherokee election, a person must:

- 5 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
6 (2) Be at least 18 years of age on the date of the applicable election; and
7 (3) Be registered with the Cherokee Board of Elections as set forth in Section 161-11
8 prior to the applicable election.
9

10 **Sec. 161-11. - Registration.**

11 (a) Voter registration shall be conducted in such offices as may be designated by the Board of
12 Elections. The office designated by the Board shall be open for registration on all regular
13 business days, except as otherwise provided in this section. All voter registration shall only
14 be made in person or through the United States Postal Service (USPS) mail. All voter
15 registration cards submitted to the Board must have the tribal member's signature notarized
16 and must include a copy of the voter's government issued photo ID card.

17 (b) Persons who are eligible to vote in EBCI Tribal elections shall register in the township in
18 which they currently reside. Tribal members not living on Cherokee Trust Land shall
19 register in the township in which they last resided, if applicable. Tribal members who have
20 never resided on Cherokee Trust Lands but who are eligible to vote shall register in the
21 township in which his/her enrolled mother last resided. If the voter's mother was not an
22 enrolled member or never held a residence on Cherokee Trust Land, then the Tribal member
23 shall register in the township his/her enrolled father last resided, if applicable.

24 In the case that neither the eligible voter's mother or father held a residence on Cherokee
25 Trust Land, then the eligible voter shall register in the township where their nearest
26 matrilineal ancestor last resided. If the voter's mother's side of the family is not of Cherokee
27 descent, then the first matrilineal line on the father's side shall be used to determine
28 township, as information permits.

29 For the purpose of this section the terms "mother" and "father" shall mean biological mother
30 and biological father, unless a legal adoption has occurred, in which case "mother" and
31 "father" shall mean adoptive mother and adoptive father. Eligible voters moving from one
32 township to another must reregister in the new township. Failure to re-register before an
33 election may prohibit the voter from participating in an election for Tribal Council or School
34 Board.

35 (c) The Board of Elections may conduct special registrations within any township if it is
36 deemed advisable. All such special registration shall be published at least one week in
37 advance in the Cherokee One Feather, Cherokee Scout, and Graham Star.

38 (d) The Board of Elections shall close the voter registration books at the close of business on
39 the Friday immediately preceding the date set for early voting and the books shall remain
40 closed until the first Monday immediately following the primary election. Tribal members
41 who have not registered to vote prior to the closing of the registration books shall not be
42 eligible to vote in the primary election. Those registered voters who change their residence
43 during the period in which voter registration books are closed are not required to update
44 their registrations until the registration rolls reopen. The residency requirement of C.C. Sec.
45 161-11.1(a) shall be waived during the period in which voter registration books are closed
46 pursuant to this section to resolve any conflicts with C.C. Sec. 161-11.1(a).

- 1 (e) The Board of Elections shall open the voter registration books on the Monday following
2 the primary election and the books shall remain open until the close of business on the
3 Friday immediately preceding the date set for early voting during the general election and
4 the books shall remain closed until the first Monday immediately following the general
5 election. During the period when the registration rolls are closed those registered voters who
6 change their residence are not required to update their registration until the registration rolls
7 reopen. This residency requirement of Subsection 161-11.1(a) of this Chapter shall be
8 waived during this period to resolve any conflicts within this Chapter.
- 9 (f) The Board of Elections shall reopen the voter registration books on the next business day
10 following the certification of the results of the general election to Tribal Council.
11

12 **Sec. 161-11.1. - Changes in voter registration.**

- 13 (a) Once a person is registered by the Board of Elections, they shall remain registered until
14 such time as they move to a different township, or an investigation made by the Board of
15 Elections has found an improper township registration, at which time they must register in
16 the new township pursuant to Subsection 161-11(b) of this section.
- 17 (b) Registered voters may terminate their registration by presenting a notarized request to the
18 Board of Elections. This action shall be final upon notification of termination by the Board
19 of Elections.
- 20 (c) Persons living in long-term care facilities and those who are displaced due to emergency
21 situations may petition the Board of Elections for a waiver for the change of township
22 requirement in Subsection (a) of this section. Waivers may be issued upon proof of
23 displacement.
- 24 (d) The Board of Elections shall purge its lists of voters annually for deceased voters in each
25 community.
26

27 **Sec. 161-11.2. - Challenges to voter registration.**

- 28 (a) When the Board of Elections has or receives evidence demonstrating to the Board's
29 satisfaction that a voter is not registered in the correct township, the Board shall notify the
30 voter in writing and give the voter five business days to submit a township change or to
31 request a hearing as provided below to present information as to why the township should
32 not be changed.
- 33 (b) A challenge to a voter's township registration may be made by any enrolled member who
34 is registered to vote in the Tribal election, as provided in Section 161-11.1 through 161-11.3.
35 No protests of a voter's township registration shall be accepted or acted upon by the Board
36 of Elections between April 14 and the first business day following the certification of the
37 general election results. Such challenge the Board shall weigh the evidence provided
38 accordingly and issue the proper investigation required. See C.C. Section 161-16 for proof
39 of residency. The Board shall determine the voter's correct voting township based on the
40 evidence. The Board has the authority to move the voter's registration to the correct
41 township and notify each voter in writing of any changes. No changes shall be made to a
42 voter's township when the registration rolls are closed.
- 43 (c) The Board of Elections is authorized to utilize all resources available to properly document
44 a voter's residence for registration purposes. The burden is placed upon the voter to dispute a
45 decision made by the Board of Elections to the registration books regarding a voter's
46 township. Any affected voter may request a hearing before the Board of Elections within

1 five business days from receipt of a change of township notice. The Board shall afford any
2 voter a hearing within five business days from receipt of hearing request. The affected voter
3 has the right to present any witnesses or documentation to the Board of Elections during the
4 hearing. The Board will issue its decision within five business days from the date of the
5 hearing to either rescind or uphold its decision.
6

7 **Sec. 161-11.3. - Notice of voter registration.**

- 8 (a) The Board of Elections shall maintain a list of all registered voters in the office of the
9 Board of Elections. The Board of Elections shall mail registered voters notice of any new
10 voter registration laws in order to give voters the opportunity to make corrections to their
11 voter registration as may be necessary.
- 12 (b) The Board of Elections shall prepare and provide to each candidate a printed and electronic
13 listing of each registered voter within the candidate's precinct. This list shall contain the
14 name and current mailing address for each voter and shall be accessible by the candidate to
15 be utilized electronically for its intended purpose. The voter list shall be furnished to each
16 candidate in printed form, and if requested by the candidate, in electronic form set by field
17 identifiers in a manner to permit the candidate to utilize the list electronically for the
18 intended purpose of communication with the registered voters. All mailing addresses will be
19 provided by the EBCI Enrollment Department. The Board of Elections shall cross-reference
20 registered voters between townships prior to each Tribal election. Except as provided in this
21 subsection, the Board shall not be required to give any other lists or other database
22 information to candidates. The candidates are authorized to use such lists only for lawful
23 communications with registered voters related to the election campaign pursuant to **Section**
24 **161-4(f)** of this Chapter. Only the most recent lists as dated and issued by the EBCI Board
25 of Elections to the candidate shall be deemed valid. Previously dated lists shall not be used
26 for campaigning or comparative purposes.
- 27 (c) The Board of Elections shall not release any information regarding an individual's personal
28 voting participation to candidates or the general public. Voter registration cards are property
29 of and shall only be issued by the EBCI Board of Elections.
30

31 **Sec. 161-12. - Polling places.**

- 32 (a) All designated polling places will be determined by the Board of Elections; and
33 (b) All polling places shall be located on trust land.
34 (c) No campaign signs of any kind shall be allowed within 100 yards of designated polling
35 places for a period of one week prior to the Election Date.
36 (d) The Board of Elections shall cause all polling places to have operational security cameras
37 onsite and working whenever voting is conducted at the site. Security cameras may record
38 audio, visual, or both. Security cameras shall be used to record activity at the polling place
39 but shall not be placed on ballot equipment or in individual voting booths. Acquisition,
40 control, use and access to the security cameras shall be determined by the Board of
41 Elections, and shall depend on adequate funding for the equipment and personnel being
42 provided by Tribal Council. The security cameras shall be used to provide a visual and/or
43 audio record of activities at the polling place when voting is performed. The records
44 produced by the cameras shall be preserved for not less than one year after the election at
45 issue.

- 1 (e) All polling places shall be managed to provide an opportunity for registered voters to cast
2 their votes in an orderly manner. Minor children may accompany adults to polling places
3 and to the voting machine; provided, however, that no person, regardless of age or any other
4 factor, shall be allowed to disturb or disrupt others who are attempting to cast their vote.
5 Any person causing a disturbance or disruption may be prohibited from entering, or may be
6 removed from, the polling place but such action shall not be used to deny a registered voter
7 their opportunity to vote.
8

9 **Sec. 161-13. - Election officials.**

- 10 (a) The board of elections shall appoint election judges, election clerks, door marshalls, and
11 alternates for each such position, to serve in the polling places.
- 12 (b) Qualifications. In order to serve as an election official, individuals must:
- 13 (1) Be enrolled members of the Eastern Band of Cherokee Indians; and
 - 14 (2) Be at least 18 years of age by the date of the election; and
 - 15 (3) Be able to read and write the English language; and
 - 16 (4) Be a registered voter with the Tribal Election Board; and
 - 17 (5) Not be a candidate and work any poll, nor immediately related to any candidate within
18 the township of service, nor have been an active member of any candidate's campaign
19 during that election year, and shall not express support for any candidate during the
20 term of appointment as an election official; and
 - 21 (6) Must be willing to serve in any polling place; and
 - 22 (7) Attend and complete the mandatory orientation training seminar provided by the
23 Board of Elections prior to each election.
- 24 (c) Election judges.
- 25 (1) Two Election Judges shall be appointed by the Board of Elections for each polling
26 place no later than 30 days prior to all elections, one of whom shall be designated by the
27 Board of Elections as Chief Election Judge.
 - 28 (2) The Chief Election Judge shall be responsible for the overall conduct of the election at
29 the polling place and ensuring the voting process is conducted in accordance with law.
 - 30 (3) The duties of the Chief Election Judge shall include: (a) obtaining the ballot box, tally
31 sheets, and the registration books from the Board of Elections on the day of the election
32 and for returning them to the Board at the close of each election day; (b) confirming the
33 registration of individual voters; and (c) ensuring that election officials assist individual
34 voters who seek assistance marking their ballot.
 - 35 (4) Election Judges shall work with the Election Clerks to reconcile the ballot totals with
36 the ballot tabulator receipts in their respective polling place.
 - 37 (5) Election Judges shall certify the election count totals for each candidate by signing the
38 tally sheets and by signing a separate statement under oath confirming the results of the
39 election in their polling place on election day.
- 40 (c) Election Clerks.
- 41 (1) One Election Clerk shall be appointed by the Board of Elections for each polling place
42 no later than 30 days prior to all elections; provided, however, that two Election Clerks
43 shall be appointed by the Board for each of the Birdtown and Wolfetown (not Big-Y)
44 polling places due to the larger number of registered voters in those townships.
 - 45 (2) The Election Clerk duties shall include: (a) assisting the Election Judges in confirming
46 the registration of individual voters; (b) recording the name of each voter casting a

1 ballot; (c) assisting individual voters who seek assistance in marking ballots; and (d)
2 assisting Election Judges in counting the votes after the polls are closed.

3 (d) Door Marshals.

4 (1) One Door Marshal shall be appointed by the Board of Elections for each polling place
5 no later than 30 days prior to all elections.

6 (2) The Door Marshal shall control the entrance of voters into the polling place to ensure
7 that there is an orderly flow of voters in and out of the polling place and control the
8 entrance of voters so that the election process shall not be compromised.

9 (3) The Door Marshal shall ensure that no candidate, their immediate family, or their
10 campaign workers are within 100 yards of the polling place except to cast their own
11 ballots.

12 (4) The Door Marshal shall ensure that there is no loitering, electioneering, intimidation
13 of voters, or use of alcoholic beverages in and around the polling place.

14 (e) Appointment of Alternates to Serve at Polling Place.

15 (1) At least one alternate shall be appointed by the Board of Elections for each polling
16 place no later than 30 days prior to all elections, for each position for which the Board
17 of Elections believes an alternate is necessary or helpful.

18 (2) If the primary appointee is unable to fill his or her duties, the alternate shall be
19 empowered to perform all the duties enumerated above applicable to the position for
20 which he or she is an alternate.

21 (3) The Board of Elections shall provide training to appointed alternates commensurate
22 with the position in which the alternates are requested to serve.

23 (f) Certification.

24 (1) All election officials shall be appointed and certified by the Board of Elections as
25 being eligible to serve in their respective capacities, prior to the election.

26 (2) All election officials shall before entering on their duties of office take the following
27 oath before a member of the Board of Election: "I [name], having been duly appointed
28 to serve as [title] for the [community] Township in the [year] [type of election]
29 Election, do solemnly swear (or affirm) that I will faithfully perform the duties of that
30 office to the best of my abilities and that I shall serve in a fair and impartial manner
31 without fear or favor to anyone; that I shall comply with Tribal law and shall not engage
32 in or aid, abet or encourage anyone else to engage in any fraud or deceit that would
33 compromise the integrity of my position, the election process or the accuracy of the
34 election results. I make this oath under penalty of perjury." All oaths shall be signed and
35 dated by the respective election officials; such signed oaths shall also include the
36 printed names of the election officials.

37 (3) In the event of a vacancy in any of the election official appointments prior to an
38 election, the Board of Elections shall have authority to appoint and certify a
39 replacement.

40 (g) Early voting.

41 (1) Early voting shall be conducted pursuant to Sec. 161-15.1.

42 (2) Early voting shall be conducted at locations to be determined by Board of Elections.

43 (3) The Board of Elections shall choose election officials for early voting no later than 30
44 days before the date set for early voting.

45 (4) Election officials for early voting shall be certified and trained before the date set for
46 voting.

1
2 **Sec. 161-14. - Voting procedures.**

- 3 (a) When a Tribal member appears at the polling place to vote, the enrolled member shall
4 present an Election Judge with a Tribal, state or federal government issued photo I.D. to
5 verify identification, an Election Judge shall then determine if the name appears on the
6 official list of registered voters furnished by the Board of Elections. If there is any question
7 regarding a voter's eligibility, the Chief Election Judge shall call the Board of Elections to
8 verify. If after confirmation with the Board of Elections, the voter is determined not to be
9 eligible or registered, he/she shall not be allowed to vote. If the name appears on the official
10 list of registered voters, the clerk shall then insure that the voter's name does not also appear
11 on the list of absentee voters, and shall record the voter's name in a record book maintained
12 for the purpose of documenting such fact. A judge shall then give the voter an unmarked
13 ballot.
- 14 (b) The voter shall mark the ballot in a designated private area within the polling place. The
15 voter shall then place the marked ballot into the ballot box and leave the polling place.
- 16 (c) If a voter seeks assistance in marking the ballot, the Election Clerk or other Election
17 official shall mark the ballot as requested by the voter, and shall have two election officials
18 witness the marking. An official Affidavit of Assistance form must be signed by the voter
19 prior to the Election Clerk or other Election Official marking the ballot and noted on that
20 form the signatures of all election staff who in the administration or witnessing of the
21 casting of the ballot. The two election officials shall witness the marking of the ballot and
22 then immediately deposit the ballot in the ballot box.
- 23 (d) The Board of Elections shall not provide absentee ballots for run-off or special elections.
- 24 (e) If any elderly, handicapped, or infirm person is unable to enter the polling place, the person
25 shall be permitted to vote in a motorized vehicle at the polling place. Such elderly,
26 handicapped, or infirm voters shall be permitted to vote by having two of the election
27 officials personally deliver the ballot to such a voter. An official Affidavit of Assistance
28 form must be signed by the voter prior to the voter marking the ballot, and be noted on that
29 form the signatures of all election staff who assisted in the administration or witnessing of
30 the casting of the ballot. The two election officials shall witness the marking of the ballot by
31 the voter and then immediately return the ballot to the polling place and deposit the ballot in
32 the ballot box.
- 33 (f) After the polls are opened, under no circumstances shall a ballot box be opened until the
34 polls are closed. If manual ballots are used, key operated locks shall be installed on the
35 ballot boxes with the keys under the sole control of the Board of Elections. The keys shall be
36 delivered to the Chief Election Judge for the Board of Elections only at the closing of the
37 polls. If electronic tabulators are used, the Board of Elections shall use equivalent
38 procedures consistent with the technical requirements of the ballot tabulators to ensure that
39 no unauthorized ballots are inserted in the ballot box or counted in the election.
- 40 (g) Any voting irregularities observed by the Election Officials must be reported by the Chief
41 Election Judge to the Board of Elections when they occur, but no later than the time when
42 the ballot boxes are returned to the Board of Elections. The Chief Election Judge shall
43 immediately submit a report of the alleged irregularities in writing stating specifically and in
44 detail what the alleged irregularity is. Any alleged irregularities and the manner in which
45 they were handled shall be communicated to each candidate that submits a Protest of
46 Election Irregularity to the Board of Elections within the protest period.

1
2 **Sec. 161-15. - Absentee voting.**

- 3 (a) The Board of Elections shall prepare and administer a separate ballot for absentee voting.
4 The absentee ballot shall be identical to the regular ballot except that it shall be printed on
5 paper of a different color.
- 6 (b) Only enrolled members who are registered to vote and meet one of the following
7 requirements may vote by mail or in person by absentee ballot:
- 8 (1) Tribal members serving on active military duty, including immediate family members
9 who reside in the household, who are unable to return to Cherokee to cast their votes;
 - 10 (2) Tribal members employed with the federal government assigned to duty other than the
11 Cherokee Indian Reservation who are unable to return to Cherokee to cast their votes;
 - 12 (3) Tribal members enrolled in institutions of higher education that are unable to return to
13 Cherokee to cast their votes;
 - 14 (4) Tribal members who are employees of the Tribe and are required to be away from
15 Cherokee for training or for reasons required by their employment on the date of
16 election who are unable to return to Cherokee to cast their votes;
 - 17 (5) Tribal members who: because of illness are in a hospital, nursing home, or other
18 treatment facility and who because of their physical condition and course of treatment
19 are unable to return to Cherokee unable to go to the polling place to cast their votes; or
 - 20 (6) Tribal members who physically reside on Cherokee trust lands but who will be absent
21 from Cherokee on Election Day for business or personal reasons, and are unable to
22 return to Cherokee to cast their votes.
- 23 (c) Person desiring to vote by absentee ballot must apply for such a ballot within the following
24 time periods: Beginning on April 1 and ending on May 15 for the primary election and
25 beginning on July 1 and ending on August 15 for the general election, for requests made by
26 phone, electronic mail, or US mail. Requests may be made in person in the Board of
27 Elections Office by 4:00 p.m. the Friday before said election. The Board of Elections may
28 require appropriate documentation to establish compliance of Subsection 161-15(b) of this
29 Section be submitted with the application.
- 30 (d) Absentee ballots shall be given or mailed to the prospective voter by the Board of
31 Elections beginning on May 1 for the Primary Election and on August 1 for the General
32 Election, together with instructions and an official self-addressed return envelope. Absentee
33 ballots must be witnessed, returned to and received by the Board of Elections on or before
34 4:00 p.m. on the Friday before the Primary Election, and on or before 4:00 p.m. on the
35 Friday before the General Election. All absentee ballots shall be counted by the Board of
36 Elections on Election Day.
- 37 (e) The Board of Elections shall prepare a list of all absentee ballots returned to the Board of
38 Elections and shall make such a list available to the Chief Election Judge in each polling
39 place on the day of election. Election officials shall not permit any person to cast a ballot
40 whose name appears on the absentee voters list.
- 41 (f) The Board of Elections shall print on the face of each application for absentee ballot the
42 following legend with the blank space in the legend to be completed:
43 "This application is issued for the absentee ballots to be voted in the _____ (General
44 Election, Primary Election, etc.) to be held on the _____ day of _____, 20____."
- 45 (g) An application for absentee ballot shall be issued only by mail or in person to the voter.
46 The voter shall provide a copy of his/her enrollment card and a copy of his/her government

1 issued photo ID card with the application for absentee ballot. The application shall require
2 the voter to certify as follows:

3 "I, (Print Full Name), do certify, under penalty of perjury, that I am a voter in the _____
4 Township of the Eastern Band of Cherokee Indians, duly registered in accordance with the
5 Cherokee Code. I understand it is a violation of Tribal law to sign this certificate knowing
6 that what I am certifying is not true.

7 _____
8 Signature of Voter

9 Date: _____

10 Witness: _____

11 Address: _____

12 Witness: _____

13 Address: _____

- 14 (h) No later than May 1 for a primary election and August 1 for a general election, the Board
15 of Elections shall print a sufficient number of envelopes in which persons casting absentee
16 ballots may transmit their marked ballots to the Board of Elections. Each return envelope
17 shall be printed in accordance with the following instructions:

- 18 (1) On one side shall be printed an identified number of the voter and the following
19 statement which shall be certified by one member of the Board of Elections:
20 "Certification of Election Board Member: The undersigned Election Board Member
21 certifies that _____ is a registered and qualified voter of _____ Township and has
22 made proper request to vote under the laws of the Eastern Band of Cherokee Indians.

23 _____
24 Chairman/Member

25 Date: _____

- 26 (2) On the other side shall be printed the return address of the Board of Elections and the
27 following certification:

28 "Certification of Absentee Voter: I, (Print Full Name), do certify, under penalty of
29 perjury, that I am registered voter in _____ Township of the Eastern Band of
30 Cherokee Indians. I further certify that I requested an absentee ballot and that I marked
31 the ballot enclosed herein, or that it was marked for me in my presence and according to
32 my instructions. I understand it is a violation of Tribal law to sign this certificate
33 knowing that what I am certifying is not true.

34 Signature of Voter: _____

35 Date: _____

36 Witness: _____

37 Address: _____

38 Witness: _____

39 Address: _____

- 40 (i) On or before May 1 for a primary election and August 1 for a general election, the Board of
41 Elections shall prepare and print a sufficient number of instruction sheets on how voters are
42 to prepare absentee ballots and return them to the Board of Elections. The instruction sheet
43 shall state the date on which ballots must be received by the Board of Elections to be
44 counted.

- 45 (j) The Board of Elections shall use the following procedures to maintain the Absentee Logs:

- 46 (1) Record the absentee applications and ballots issued.

- 1 a. Name of the voter requesting an absentee ballot.
- 2 b. Number assigned to voters ballot when issued.
- 3 c. The township in which applicant is registered.
- 4 d. Address to which the ballot is mailed.
- 5 e. The date the request for ballot was received.
- 6 (2) When the Board of Elections receives and approves an application for absentee
- 7 ballots, it shall promptly issue and transmit the ballot to the voter only, not to a relative,
- 8 in accordance with the following instructions:
 - 9 a. On a detachable tab, the Board of Elections shall have printed the words "Absentee
 - 10 Ballot No. _____" and insert in the blank space the number assigned to the absentee
 - 11 voter. The Board shall not write, type, or print any other matter upon the ballot.
 - 12 b. The Board shall detach the numbered tab, fold and place the ballot in a return
 - 13 envelope and write or type in the appropriate blanks thereon the absentee voters
 - 14 name, his/her ballot number and the designation of the township in which the voter
 - 15 is registered. The Board of Elections shall leave the return envelope holding the
 - 16 ballots unsealed.
 - 17 c. The Board of Elections shall then place the unsealed return envelope holding the
 - 18 ballot, together with printed instructions for voting and returning the ballot, in an
 - 19 envelope addressed to the voter at the address stated in his/her request, seal the
 - 20 envelope, and mail it at the expense of the Board of Elections. Alternatively, a
 - 21 voter may personally pick up the ballot at the Board of Elections office.
- 22 (3) If the voter does not meet the criteria for absentee voting, the Board of Elections will
- 23 notify the voter in writing of the reason for denial. The decision of the Board of
- 24 Elections to deny an absentee ballot application shall be final.
- 25

26 **Sec. 161-15.1. - Early voting.**

- 27 (a) Any registered voter may vote early under the provisions of this subsection.
- 28 (b) Early voting opens at 9:00 a.m. on the second Monday of May and ends the fourth Monday
- 29 of May before the primary election and the second Monday of August and ends the fourth
- 30 Monday of August before the general election and closes at 4:00 p.m. on regular business
- 31 days except for the last Saturday prior to the closing of early voting; the last Saturday hours
- 32 shall be 9:00 a.m. until 4:00 p.m. The location for early voting shall be determined by the
- 33 Board of Elections and shall be located on Tribal trust lands. The Board of Elections shall
- 34 not extend the dates and times for early voting for any reason.
- 35 (c) All registered voters who desire to vote early shall follow the voting procedures set forth in
- 36 Section 161-14.
 - 37 (1) The early voting ballots shall be marked and distinctly colored from the absentee and
 - 38 regular voting ballots. On a detachable stub, the Board of Elections shall have printed
 - 39 the words "Early ballot No. _____" and insert in the space the number assigned to the
 - 40 early voter. The Board shall not write, type, or print any other matter upon the stub. The
 - 41 Board shall detach the numbered ballot tab.
 - 42 (2) After voting in a private area, the voter shall place the ballot in a sealed envelope
 - 43 provided and witnessed by a Board Member or Election Officials and placed in a locked
 - 44 ballot box.
- 45 (d) The Board of Elections shall prepare a list of all early ballots cast and shall make such a
- 46 list available to the Chief Election Judge in each polling place on the day of the election.

1 Election Officials shall not permit any person to cast a ballot whose name appears on the
2 early voter's list.

- 3 (e) Election irregularities and protests shall be conducted in accordance with the procedures as
4 set forth in Section 161-16 of this chapter.
5

6 **Sec. 161-16. - Election irregularities and protests.**

7 (a) All protests must be submitted to the Board of Elections in writing and on forms provided
8 by the Election Board or, if not on forms provided by Board, then in a typed or legible
9 writing. Each protest shall contain sufficient detail to give the Board adequate notice of the
10 alleged irregularity being protested. All protests shall, at a minimum, contain the following
11 information: (1) the name, mailing address, physical address, telephone number and email
12 address (if one is available) of the protester; (2) the dates and approximate times of the act(s)
13 being protested; (3) a description of the subject of the protest; (4) the name, mailing address,
14 telephone number and email address (if one is available) of all witnesses known to the
15 protester; and (5) copies of all supporting records, photos and other documentary evidence
16 in the possession or control of the protester that the protester wants the Board to consider.
17 All protests must include a sworn statement signed by the protester, before a notary, that the
18 allegations presented in the protest are true or that the protester, upon information and belief,
19 believes them to be true. All hearings for election irregularities and protests shall be set
20 according to this Section.

21 (b) The person filing the protest shall pay the protest filing fee expressed by the Board in its
22 schedule of fees. The person filing the protest must be an enrolled member of the Eastern
23 Band of Cherokee Indians who is registered to vote in Tribal elections.

24 (c) Except as otherwise provided in this section, a protest of irregularities in the conduct of an
25 election must be submitted to the Board of Elections no later than five business days after
26 the close of the polls, ~~and, if~~ If the Board orders a hearing to hear the protest, then a hearing
27 date shall be set by the Board within five two business days after the receipt of the written
28 protest.

29 (1) ~~Pursuant to C.C. Sec. 161-19(g), the~~ The Board has authority to not order a hearing if:

30 a. The Board determines that it can render an informed decision based on the
31 written protest and supporting materials provided by the parties or the Board,
32 including information obtained by the Board through its own independent
33 research and investigation, or

34 b. The Board determines that the written protest fails to meet the minimum
35 requirements set forth in C.C. Sec. 161-16(a), or

36 c. The alleged irregularities complained of, even if taken as true in the light most
37 favorable to the protestor, cannot be shown to have unfairly and improperly or
38 illegally affected the actual outcome of the election and but for the alleged
39 irregularities the winning candidate would not have prevailed at the polls.

40 (2) If the Board orders a hearing on a protest of irregularities, the parties to the protest
41 shall be allowed adequate time to prepare their case and be allowed to call witnesses and
42 subpoena documents, not to exceed ten five business days. It is imperative to proceed in a
43 timely manner, therefore the normal rules of civil procedure are not applicable. ~~However,~~
44 ~~the Board of Elections shall give the parties reasonable consideration and opportunity to~~
45 ~~prepare their case and may extend any deadlines or hearing to assure that it has all the~~
46 ~~facts in order to make a valid final decision.~~ Parties may request that the Board issue

1 subpoenas for persons or documents which the party expects to be relevant to the protest.
2 In its discretion, the Board may issue subpoenas for documents or any witness it
3 identifies as having information relevant to the issue or issues described in the protest. At
4 a hearing before the Board, and subject to C.C. Section 161-32, the applicant shall have
5 the right to present written evidence or oral testimony to address the alleged irregularities.
6 The North Carolina Rules of Evidence do not apply.

7 (3) All persons that the protest may directly affect shall be notified of the scheduled
8 hearing by the Election Board. Notice shall be provided by any means authorized in C.C.
9 Section 161-29 ("Service of Communications by the Board of Elections").

10 (d) Any person filing a protest for election irregularities under this section must establish
11 ~~during a hearing in front of~~ before the Board of Elections that the alleged irregularities
12 unfairly and improperly or illegally affected the actual outcome of the election, and but for
13 the irregularity, the winning candidate would not have prevailed at the polls.

14 (e) All persons who are parties to an election protest shall have the right to have an attorney ~~or~~
15 ~~lay advocate~~ represent them ~~at the hearing~~ before the Board of Elections. Any attorney who
16 represents a person ~~at a hearing~~ before the Board of Elections shall comply with Tribal law
17 governing the practice of law in Cherokee.

18 (f) If the Board orders a hearing, Aafter all parties have had an opportunity to be heard and
19 present evidence the Board of Elections shall issue a final written decision. The decision
20 shall be issued within five four business days after the conclusion of the hearing. If no
21 hearing is ordered, the Board shall issue the final written decision no later than four business
22 days after it determines it will not hold a hearing. The written decision shall be sent to all
23 affected person(s) by means authorized in C.C. Section 161-29 ("Service of
24 Communications by the Board of Elections").

25 (g) The Board has the power to:

26 (1) Find that the protest did not meet the requirements set forth in this Chapter and
27 dismiss the protest; or

28 (2) Find that the protest did meet the requirements set forth in this Chapter and issue the
29 appropriate relief.

30 (3) If the Board of Elections finds that the protester has met the burden expressed in
31 subsection (d) of this section, then the Board of Elections is authorized to issue relief in
32 the form of ordering a new election or a run-off election between two or more
33 candidates affected by the election irregularity. If it is shown by the evidence presented
34 that a crime may have been committed during the course of the election, the Board of
35 Elections may present evidence to the Tribal Prosecutor's Office for possible criminal
36 charges.

37 (4) The Board of Elections shall use the same procedure set out in Section 161-7 of this
38 Chapter, if a new or run-off election is warranted.

39 (5) The powers given to the Board of Elections in this subsection are in addition to, and
40 are a supplement to, the powers given to the Board in C.C. Section 161-19.

41 (h) The Board of Elections shall issue a final, written decision. The decision is not required to
42 take any particular form or to formally express findings of facts and conclusions of law as
43 might be written in a court decision; provided, however, the final decision shall contain
44 sufficient information to enable the Cherokee Supreme Court on appeal, if an appeal is filed,
45 to make an informed judgment as to facts considered by the Board of Elections in making its
46 decision so that the Court can determine whether the Board committed an error of law.

1 Notice of appeal to the Cherokee Supreme Court must be given no later than three (3)
2 business days after the final decision is served on the non-prevailing party.

- 3 (i) No person shall be entitled to receive monetary damages or recover their legal or personal
4 expenses from the Board of Elections or the Tribe.
5

6 **Sec. 161-16.1. - Certification of election results.**

7 (a) At the meeting of Tribal Council on the first Monday of October following a general
8 election, or after the first meeting of the Tribal Council following a special or primary
9 election, the Board of Elections shall certify the election to the Tribal Council.

10 (b) If a formal election protest is filed with and not yet resolved by the Board of Elections
11 pursuant to Section 161-16, the Board of Elections shall only certify the results of the seats
12 or offices not in dispute with the Council by Annual Council.
13

14 **ARTICLE III. - BOARD OF ELECTIONS**

15
16 **Sec. 161-17. - Board established.**

17 (a) The Board of Elections shall be composed of six members, one from each township. Each
18 member of the Board shall be appointed by the Tribal Council effective September 1 in non-
19 election years, with the term of each member to run for four years from that date. The terms
20 shall be staggered with one representative appointed from Painttown, Wolfetown/Big Y,
21 Snowbird/Cherokee County in 2012 and each four years thereafter; and one representative
22 appointed from Big Cove, Birdtown, and Yellowhill in 2014 and each four years thereafter.

23 (b) In order to serve as a member of the Board of Elections, a candidate must:

24 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and

25 (2) Be at least 18 years of age on the date of appointment; and

26 (3) Reside on Cherokee Trust Lands for a least one year prior to the date of appointment
27 and continue to reside on the Cherokee Trust Land for the duration of their term; and

28 (4) Have received a high school diploma or equivalent prior to the date of appointment.

29 (c) No Election Board member shall be a candidate for any Tribal office or actively support
30 any candidate for Tribal office during the term for which the member is appointed to the
31 Board. For purposes of this section, "actively support" means contributing money to,
32 campaigning for, or openly declaring support for any candidate.

33 (d) Every person who is a member of the Board of Elections shall take the same oath required
34 of election officials in C.C. Section 161-13.
35

36 **Sec. 161-18. - Vacancies on election board.**

37 A vacancy on the Board shall be filled by appointment of a replacement by the Tribal
38 Council at the next regular Council session after the vacancy occurs. Such appointee shall serve
39 the remaining term of the Board member being replaced.

40 **Sec. 161-19. - Powers and duties of the election board.**

41 (a) The Board shall have the power to do all things necessary and proper, consistent with this
42 Chapter, to effectuate the intent of this Chapter. Those powers include, but are not limited
43 to, the following: to make final decisions on candidate eligibility, proper voter and candidate
44 registrations and eligibility, absentee voter eligibility, and protest decisions; to provide for
45 the proper conduct of elections; to hire and/or contract with firms and individuals to assist
46 the Board in the conduct of its business; to resist, report and take action against illegal or

1 unethical conduct affecting Tribal elections; to set and impose reasonable filing fees, protest
2 fees and other fees; to provide for the imposition of civil fines and other consequences for
3 unlawful conduct; ~~and~~ to make administrative rules pursuant to Cherokee Code Chapter 150
4 (Administrative Procedure Act); and to develop rules, policies, and procedures pursuant to
5 Cherokee Code Chapter 117-35 (Authority to Make Rules, Policies and Procedures). The
6 Board, in carrying out its decision, shall have the authority to subpoena documents and
7 witnesses and shall have quasi-judicial powers to make the final rulings on all election
8 protests properly before it. The Board If any person or entity fails or refuses to obey a
9 subpoena properly issued and served, the Board may apply to the Cherokee Court for an
10 order requiring compliance with the subpoena. The Cherokee Court shall have jurisdiction to
11 issue such order upon a showing by the Board that a subpoena was properly issue and
12 served, but was not complied with as the terms of the subpoena required. Compliance with
13 the court order may be enforced through the contempt powers of the Court.

- 14 (b) The Board shall appoint all election officials necessary for the proper supervision of Tribal
15 elections as set forth in Article II of this Chapter.
- 16 (c) The Board shall provide to the election officials at each polling place a list of registered
17 voters for their respective polling place.
- 18 (d) The Board shall be responsible for the preparation of the official ballots to be used in each
19 of the polling places for all Tribal elections and shall furnish such ballots to the elections
20 officials in each polling place.
- 21 (e) The Board shall be responsible for certifying each applicant as eligible or ineligible,
22 notifying each applicant of its decision, and holding appeal hearings as set forth in this
23 Chapter. The Board shall make public the names of the candidates certified as eligible on the
24 ballot for each Tribal office no later than ~~May 10~~ April 15 of an election year for the
25 primary election and August ~~10~~ 1 of an election year for the general election,
- 26 (f) The Board, together with the election officials for each polling place shall conduct all ballot
27 counts after the closing of the polls. The Board shall thereafter make public unofficial
28 reports of election returns. The Board shall certify elections as specified in Section 161-16.1.
- 29 (g) The Board shall investigate irregularities and nonperformance of duty and violation of
30 Tribal election rules and regulations by election officials or other persons. The Board may
31 hold hearings in the course of such investigations in accordance with Section 161-16, but is
32 not required to hold a hearing on any particular matter if the Board determines that it can
33 render an informed decision based on the written protest and supporting materials provided
34 by the parties or the Board, including information obtained by the Board through its own
35 independent research and investigation.
- 36 (h) The Board shall have access to all ballot boxes and their contents, all voting machines and
37 their contents, all registration records, and all necessary enrollment records in the Tribal
38 Enrollment Office to carry out its duties under this Chapter. The Board of Elections is
39 authorized to utilize all resources available to properly document a voter's residence for
40 registration purposes.
- 41 (i) The Board shall conduct an instructional meeting for township officials at a location to be
42 determined by the Board and such meeting shall be held no later than the week preceding
43 each election. All election officials shall receive training and instruction in the proper
44 execution of their duties before the beginning of early voting, if possible. All election
45 officials shall receive a copy of a written training handbook detailing the election day
46 process.

- 1 (j) The Board shall keep a tape recording and written record of all Board meetings at which
2 evidence is received or a vote taken regarding a protest filed with the Board.
- 3 (k) The Board shall prepare and submit to the Tribal Council a budget request, which shall
4 include all anticipated Tribal election expenses for the coming fiscal year. The request
5 should include payment of all persons working with elections and all known registration
6 costs.
- 7 (l) The Board shall have the authority to fully implement and carry out all other duties set
8 forth in this Chapter.
- 9 (m) Whenever the Board of Elections votes on a matter, the decision receiving the majority of
10 votes shall prevail. If a vote taken on a matter results in a tie among the members of the
11 Board, the matter fails.

12 13 **ARTICLE IV. - GENERAL PROVISIONS**

14 15 **Sec. 161-20. - Definitions.**

16 The terms defined in this Section shall, for all purposes of this Chapter, have the meanings
17 specified below:

18 *Business day* shall mean any day of the week in which Tribal offices are open for regular
19 business in whole or in part. This does not include Saturday, Sunday, or any other Tribal or
20 federal holiday or Tribal administrative leave day in which Tribal offices are closed for the
21 whole day.

22 *Calendar day* shall mean any day of the week.

23 *Candidate* shall mean the person running for elective office and includes his or her agent.
24 Candidate also includes any person or entity who files a ballot measure including, but not be
25 limited to, initiative questions, referendum questions and amendments to the Tribal Charter and
26 Governing Document or to the adopted constitution of the Tribe if a constitution is adopted.

27 *Election period* shall mean the period beginning October 1 and ending on September 30 of
28 each year of a regularly scheduled primary and general election for Tribal Council. Principal
29 Chief or Vice Chief. In a special election, the election period shall mean the period beginning
30 five months immediately before the date set for the special election called to fill a vacancy in a
31 Tribal office and extending five months beyond the date of the special election.

32 *Election Year* shall mean October 1 through September 30 of the year of a regularly
33 scheduled general election for Tribal Council or Principal Chief or Vice Chief are held.

34 *Government Issued Identification (ID.)* shall mean a valid state issued driver's license, state
35 issued photo I.D., military personnel I.D. card, a United States government issued passport,
36 EBCI and EBCI entities' employee identification with photo, or EBCI Enrollment card with
37 photo.

38 *Immediately related to or Immediate family* shall mean a husband, wife, father, mother,
39 brother, sister, daughter, son, aunt, uncle, grandfather, grandmother, niece, nephew, or
40 grandchild.

41 *Polling Place* shall mean the actual physical location where votes are cast during an
42 elections. The Board of Elections shall authorize and designate one polling place in each voting
43 township, except for the Wolfetown Township, which shall have two polling places — one in
44 Wolfetown and one in Big-Y.

45 *Run-off election* shall mean a second election conducted after a primary or general election
46 usually involving a subset of the candidates who participated the original election and is held for

1 the following purposes: (1) to resolve a tie between candidates who received the same number of
2 votes in the original election; or (2) to re-do the election in whole or in part because the Board of
3 Elections has determined, upon its own independent research and investigation prompted by a
4 properly filed protest, that irregularities in the conduct of the election affected the actual outcome
5 of the election or rendered the results contrary to the Tribal Charter or this Chapter 161, or the
6 Board of Elections has determined that the results are unreliable by clear and convincing
7 evidence.

8 *Township* shall mean the six established communities on the Qualla Boundary recognized by
9 the Tribal Council and in the Charter and Governing Document as having Tribal Council
10 representatives: Big Cove (including Tow String), BirdTown (including 3200 Acre Tract),
11 PaintTown, YellowHill, WolfeTown (including Big Y), SnowBird, and Cherokee County trust
12 lands combined.

13 *Trust Land* shall mean land held in trust by the United States government for the benefit of
14 the Eastern Band of Cherokee Indians or its members.

15 *Tribe* is used inclusively and shall mean the government of the Eastern Band of Cherokee
16 Indians and all of its boards, commissions, entities and enterprises.

17 *Vacancy* shall mean that an elected official has resigned or died, or has been impeached or
18 removed, or has been removed after having been found to be disabled to the extent that he or she
19 is unable to discharge the powers and duties of the office during his or her term of office.

20
21 **Sec. 161-21. - Prosecution.**

22 Any violation of this Chapter that may constitute commission of crime shall be referred by
23 the Board of Elections to the Tribal prosecutor for review and potential prosecution in the
24 Cherokee Court or in federal court depending on the nature and extent of the crime.

25 Any person who, in any official proceeding of the Board of Elections or in any official
26 document submitted to the Board or submitted to another entity or person as required in this
27 Chapter, makes a false statement under oath or affirmation, or who swears or affirms the truth of
28 a statement previously made when the statement is material and the person believes the statement
29 not to be true, shall be subject to prosecution under C.C. Chapter 14, Article XII (Perjury and
30 Obstructing Justice).

31
32 **Sec. 161-22. - Effective date; amendment; severability; weekends.**

33 (a) This Chapter and amendments to it shall be effective upon ratification by the Principal
34 Chief.

35 (b) The provisions of this Chapter that established election requirements or procedures shall
36 not be amended during an election year as defined in Section 161-20, except as provided in
37 Section 161-25.

38 (c) If any provisions of this Chapter are found to be invalid because it is inconsistent with
39 another law, then the inconsistent portion shall be reviewed and amended until all conflicts
40 are resolved. All other provisions of this Chapter shall remain in full force and effect.

41 (d) If the deadline for any action required under this Chapter falls on a weekend or holiday,
42 then the deadline is extended until the next business day.

43
44 **Sec. 161-23. - Appellate review.**

45 The standard of review for an appeal of a final decision by the Board of Elections shall be
46 for error of law.

1
2 **ARTICLE V. - MISCELLANEOUS**
3

4 **Sec. 161-24. - Unlawful campaign practices.**

5 **(a)** In addition to other prohibitions in this Chapter, the following acts are unlawful:

- 6 (1) Campaigning within 100 yards of a polling place. No person shall campaign, attempt
7 to persuade voters, place campaign literature or signs, or otherwise attempt to influence
8 the outcome of a Tribal election within 100 yards of a polling place. This restriction
9 shall be applied in concert with the 100 yard restrictions provided in C.C. Section 161-
10 12 and Section 161-13(d).
- 11 (2) Buying or selling votes. No person, corporation, partnership, or any other legal entity
12 shall attempt to influence a person or obtain his or her vote, or obtain his or her
13 signature on a petition, by making a direct and specific offer to that individual, or to
14 another person on behalf of that individual, of money, goods or services. This
15 subsection is not intended to limit the making of "campaign promises", i.e., generalized
16 suggestions that people will benefit from policies associated with particular candidates
17 or particular issues on the ballot.
- 18 (3) Tampering with ballots. No person shall tamper with, alter, destroy, deface or mutilate
19 ballots that have been cast in an election, or perform any such acts in connection with
20 an official record of ballots cast in an election, except as authorized by law.
- 21 (4) Giving false information in registering or voting. No person shall knowingly or
22 willfully give false information as to his name, address or period of residence in the
23 township for the purpose of establishing his eligibility to register or to vote, or conspire
24 with another individual for the purpose of encouraging his false registration to vote or
25 illegal voting, or pay or offer to pay or accept payment for registering to vote or for
26 voting.
- 27 (5) Falsification or concealment of material facts. It shall be unlawful for any person to
28 knowingly and willfully falsify or conceal a material fact, or make any false, fictitious,
29 or fraudulent statement or representation, or make or use any false writing or document
30 knowing the same to contain any false, fictitious, or fraudulent statement or entry.
- 31 (6) No intimidation. No person, organization, association, corporation or other entity shall
32 use or threaten to use physical force, job discrimination, employment reprisal,
33 employment reward, or financial reprisal or financial reward, to solicit or accept money
34 or any other thing of value for the purpose of influencing the result of an election or to
35 assist a candidate or office holder.
- 36 (7) Voting more than once in an election. No person shall vote more than once in an
37 election, except as provided by law.
- 38 (8) Marking the ballot of another person. No person shall mark the ballot of another voter
39 without that voter's express approval. No person shall execute the signature of another
40 voter on any document submitted to the Board of Elections without that voter's express
41 approval.
- 42 (9) Photographing voters prohibited. - No person shall photograph, videotape, or
43 otherwise record the image of any voter within the voting enclosure. This subsection
44 does not apply to cameras used as a regular part of the security of the facility that is a
45 polling place.
- 46 (10) Photographing voted ballot prohibited. - No person shall photograph, videotape,

1 or otherwise record the image of a voted official ballot for any purpose not otherwise
2 permitted under law.

3 (b) A violation of Cherokee Code Sec. 161-24(a) ("Unlawful campaign practices") shall be a
4 crime punishable by a fine not to exceed five thousand dollars (\$5,000.00), by imprisonment
5 not to exceed a term of one (1) year, or both.
6

7 **Sec. 161-25. - Amendment to this chapter.**

8 No provisions of this Chapter 161, otherwise known as the Election Ordinance, may be
9 amended from October 1 to September 30 of any Election year in which regularly scheduled
10 general elections for Tribal Council or Principal Chief or Vice Chief are held. This restriction
11 does not apply to amendments that are necessary to comply with decisions of the Cherokee
12 Tribal Court, or to amendments that are procedural or administrative that do not alter the
13 substantive requirements for the actions or persons expressed in this Chapter.
14

15 **Sec. 161-26. - Board of elections office.**

- 16 (a) The Board of Elections shall have an office or offices that are secured so that access to the
17 offices is limited to authorized persons only.
18 (b) The Board of Elections offices shall have working security cameras that shall record all
19 persons coming and going from the offices during an election period, and to record the
20 handling and securing of all ballots, and to provide for the security of all ballots.
21 (c) Keys and codes to Board of Election offices shall only be provided to authorized
22 personnel. All access to Election Board offices shall be logged remotely, providing the
23 ability to review who has been in and out of the offices.
24

25 **Sec. 161-27. - Securing and logging ballots.**

- 26 (a) All ballots shall be secured in a locked safe or cabinet with access limited to authorized
27 personnel only. The Board of Elections shall maintain a log indicating who accesses the
28 ballots and the day, date and time (example: "Monday, 08/28/2017, 2:00 p.m.") access was
29 made.
30 (b) If bins or containers are used to store marked or unmarked ballots, the bins or containers
31 shall be sturdy enough to preclude reasonable attempts at unauthorized access and shall have
32 a secure locking system to safeguard sensitive data and to prevent tampering, theft or
33 destruction of documents.
34 (c) If security seals are used to securely lock bins or containers, the security seals shall be
35 secured in a locked cabinet with limited access controlled by the Board of Elections. A log
36 shall be maintained to monitor who has accessed the security seals, as well as reason access
37 to the seals was necessary. The log shall contain day, date and time entries. Two signatures
38 shall be noted on the log each time a bin or container is opened, with one signature being
39 that of a Board of Elections members.
40 (d) Security seals shall be uniform and pre-numbered sequentially.
41 (e) The Board of Elections shall log spoiled ballots.
42

43 **Sec. 161-28. - Poll books.**

44 All poll books shall be reconciled and verified daily by two members of the Board of
45 Elections.
46

1 **Sec. 161-29. - Service of communications by the Board of Elections.**

2 Wherever in this Chapter the Board of Elections is required to serve an official notice, fine
3 or decision on a person, the Board may serve the official communication in any of the ways
4 expressed in this section. Regardless of the manner of service, the Board shall keep records
5 establishing that the communication was made, actually received by the intended recipient, and
6 when it was received. The following methods of service are acceptable:

- 7 (a) By requiring the recipient to personally appear at the Board of Elections office to pick-
8 up and sign for the document; or
9 (b) By mailing the document to the recipient by United States Postal Service certified
10 mail with return receipt requested, or by delivery by FedEx or United Parcel Service; or
11 (c) By personal delivery by an officer of the Cherokee Indian Police Department with
12 proof or return of service to be provided by the officer to the Board. The Cherokee
13 Indian Police Department is hereby authorized and required, if requested by the Board,
14 to deliver such communications and provide proof or return of service to the Board.
15 (d) ~~Any other means agreed to by the recipient;~~ By electronic means such as by email or
16 text message to a mobile telephone number maintained by the candidate; provided,
17 however, that the Board shall preserve all such emails or other electronic
18 communications and shall keep records of all such ~~telephone calls~~ communications with
19 sufficient detail so the Board can show when the communication was made, who
20 received it and when it was received.
21

22 **Sec. 161-30. - Calculation of days.**

23 Unless a different meaning is clearly expressed, wherever in this Chapter a time period of
24 ten days or less is expressed for the performance of an act (such as for filing a required
25 document, scheduling a hearing or providing notice of an event), those days shall mean business
26 days; and any time period greater than ten days shall mean calendar days.
27

28 **Sec. 161-31. - Legal representation at hearings.**

29 Parties to hearings before the Board of Elections shall have the right to have an attorney ~~or~~
30 ~~lay advocate~~ represent them at the hearing. Any attorney who represents a person at a hearing
31 before the Board shall comply with Tribal law governing the practice of law in Cherokee.
32

33 **Sec. 161-32. - Control of hearings.**

34 The Board of Elections shall have authority to control the conduct of hearings before the
35 Board. The Board may impose reasonable restrictions on the presence of parties, witnesses and
36 other persons, the sequestration of the same, the presentation of evidence and the duration of
37 hearings. Such control shall be exercised to provide a safe and orderly hearing and to minimize
38 disruption and delay.
39

40
41 **BE IT FINALLY ORDAINED** that all ordinances which are inconsistent with this ordinance
42 are rescinded, and that this ordinance shall become effective upon ratification by the
43 Principal Chief.
44

45 *Submitted by: the Board of Elections.*