

TABLED

Cherokee Council House

Cherokee, (NC)  
FEB 06 2020

ORDINANCE NO. 126 (2020)

WHEREAS, Tribal Council passed Ordinance No. 2 (2019) containing laws essential for the accreditation of the Tribe's Public Health Department; and

WHEREAS, as part of the public health law initiative there are other chapters of the Tribal Code that require updating in order to ensure accuracy in cross-referencing, language use and to reflect changes that would support efficiencies in the current government structure; and

WHEREAS, these proposed changes are the result of the collaborative efforts of the tribal programs that would benefit from the changes proposed.

NOW THEREFORE BE IT ORDAINED in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapters 87 and 131 shall be amended as set forth in Exhibit A.

BE IT FURTHER ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

*Submitted by: Office of the Attorney General for the Division of Public Health and Human Services*

EXHIBIT A

Chapter 87 - PROFESSIONS AND OCCUPATIONS

1 Sec. 87-1. - Licenses required.

2 (a) Except as otherwise provided in Tribal law, the following professionals, in order to practice their  
3 profession within the territory of the Eastern Band, must have a current license issued by the  
4 appropriate state regulatory agency authorizing them to practice their profession in the State of North  
5 Carolina, and must be in good standing with that regulatory agency:

6 (1) Professionals in the construction trades required to be licensed in Chapter 87 of the North  
7 Carolina General Statutes;

8 (2) Health care professionals required to be licensed in Chapter 90 of the North Carolina General  
9 Statutes;

10 (3) Alarm systems contractors;

11 (4) Architects;

12 (5) Attorneys;

13 (6) Certified public accountants;

14 (7) Engineers;

15 (8) Fire sprinkler contractors;

16 (9) Geologists;

17 (10) Land surveyors, except BIA staff members certified under federal law to perform their duties;

18 (11) LP gas technicians;

19 (12) Notaries public;

20 (13) Real estate appraisers;

21 (14) Pesticide applicators and other parties applying pesticide chemicals intended for use by a  
22 licensed professional for hire or in public places must be licensed in structural pest control and  
23 wood destroying organisms or work under the direct supervision of a licensed holder; ~~and-~~

24 (15) Water Treatment Facilities Operators

25 (b) Territory of the Eastern Band means all lands held by the United States in trust for the Eastern Band  
26 of Cherokee Indians or its enrolled members, and all other lands owned or acquired by the Eastern  
27 Band, notwithstanding the issuance of any right-of-way.

28 Sec. 87-2. - Violations.

29 Persons practicing the professions described in section 87-1 in violation of this chapter:

30 (a) Shall be guilty of a misdemeanor punishable by a fine of up to \$5,000.00, by a term of  
31 imprisonment for up to one year, or both;

32 (b) Shall be subject to civil actions and sanctions set forth in section 14-1.2, Cherokee Code, and  
33 other criminal and civil actions as may apply; and/or

34 (c) Shall be reported to the appropriate state licensing board.

35 Sec. 87-3. - Reports by health care professionals; treatment of minors.

36 Health care professionals who in good faith rely on Tribal or North Carolina law in treating minors or  
37 in making reports to law enforcement, government agencies, regulatory bodies, etc. or who give  
38 testimony about an individual's mental or physical condition as required by Tribal or North Carolina law

1 shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the  
2 result of such testimony.

3

EXHIBIT A

Chapter 131 - CHEROKEE WATER CODE

ARTICLE I. - IN GENERAL

1 Sec. 131-1. - Declaration of rights.

2 In order to promote the general welfare of the Eastern Band of Cherokee Indians and to  
3 develop, manage and preserve the waters and other resources of the Cherokee trust lands, to  
4 provide for the exercise of inherent sovereign power of self-government by the Tribe and to  
5 further the preservation and development of the resources of the Tribe, the Tribe hereby asserts  
6 its prior, exclusive and supreme rights in, ownership of and jurisdiction over the waters of the  
7 Cherokee trust lands.

8 Sec. 131-2. - Nature of ownership.

9 (a) The Eastern Band of Cherokee Indians is the owner of the full equitable title of the rights  
10 to and the use of all of the waters of Cherokee trust lands and that title remains undiminished  
11 in the Tribe. The United States of America owns only the naked legal title to such waters  
12 and rights solely as trustee for the Tribe.

13 (b) All rights to the use of Cherokee waters are held by the Tribe in perpetuity for the use and  
14 benefit of the Tribe and the lands and other resources of the Tribe. No rights or privileges of  
15 any kind shall be recognized except as they are subject to the overriding, prior and supreme  
16 right and interest of the Tribe and the policies and provisions of this Chapter, together with  
17 any regulations established thereunder. No agent of the Tribe, the Tribal Council or the  
18 United States shall take any action or recognize any right affecting the water resources of the  
19 Tribe and its trust lands which shall in any way decrease or threaten to decrease the prior  
20 and supreme rights and interests of the Tribe.

21 Sec. 131-3. - Waters defined.

22 The waters of the Eastern Band of Cherokee Indians are defined as:

23 (a) All waters located upon or bordering Cherokee trust lands, whether flowing or  
24 stationary, whether above or below the surface of the ground, and whether diffused or  
25 contained within a defined watercourse or water body of any kind;

26 (b) All waters reserved or granted to the Tribe or to Cherokee trust lands by the United  
27 States and the Tribe; and

28 (c) All water which in the course of nature or as the result of artificial works, flows into or  
29 otherwise enhances such waters.

30 Sec. 131-4. - Water policy.

31 In taking any action under this Chapter, the Tribal Council ~~and Executive Branch or the~~  
32 ~~Tribal Business Committee~~ shall be guided by the following policy guidelines:

33 (a) Whenever practicable, action should benefit the Tribe and its members and further the  
34 objective for which Cherokee lands were placed in trust, namely to provide a permanent

1 home for the Tribe and its members, now and in the future. Alternatives to existing or  
2 proposed uses shall be considered whenever practicable.

3 (b) In taking any action under this Chapter which may impose substantial economic  
4 hardship on persons or entities presently using water, or which threaten the degradation  
5 of other economic, historical, aesthetic, natural, health or environmental values, the  
6 Tribal Council and the Executive Branch Business Committee shall consider and give  
7 weight to:

8 (1) The economic impact/dislocation and hardship which will be imposed by its  
9 actions;

10 (2) The investment in time, money and other resources made by the parties affected  
11 in reliance upon the existing system of distribution and use of water;

12 (3) Such other burdens as may be imposed by the action; and

13 (4) The nature and extent of degradation of other economic, cultural, historical,  
14 aesthetic, natural, health and economic values.

15 (c) Unless otherwise provided, the Tribal Council or Executive Branch Business  
16 Committee shall give preference in the following order:

17 (1) Domestic use,

18 (2) Municipal/Tribal use,

19 (3) Fish and wildlife,

20 (4) Agriculture,

21 (5) Industry,

22 (6) Power,

23 (7) Other uses.

24 Sec. 131-5. - Guidelines for effective use of resources.

25 In addition to policy guidelines contained in Section 131-4, the Tribal Council establishes  
26 the following priorities for guidance in the administration of this Chapter and Business  
27 Committee may take appropriate action, in its discretion, to:

28 (a) Ensure an adequate supply of safe drinking water,

29 (b) Maintain water levels for the public water system,

30 (c) Maintain pressure in surface and underground water,

31 (d) Prevent or reduce obstruction of surface water or groundwater flow,

32 (e) Maximize use of the available supply,

33 (f) Create and enhance the efficiency of storage,

34 (g) Prevent or reduce pollution or the effects of pollution,

35 (h) Shape use of available supplies to promote economic, scenic, aesthetic, historical,  
36 cultural, natural or domestic values,

- 1 (i) Provide for long term development,
- 2 (j) Penalize misuse,
- 3 (k) Prevent interference with Tribal administration of water,
- 4 (l) Retain a base flow of rivers, streams and springs necessary to provide for the
- 5 preservation of wildlife, fish, scenic, aesthetic and other environmental values, or
- 6 (m) Otherwise ensure conformity with the provisions of this Chapter.

Sec. 131-6. - Rights reserved to Tribe.

- (a) The following rights shall be reserved by the Tribe when possessory holdings are issued to individual Tribal members:
  - (1) All rights to issue water rights in or through leases and permits and to draw the income therefrom or allocate the income therefrom between the Tribe and the possessory holder;
  - (2) The power and responsibility to control and regulate the use of water on the possessory holding.
- (b) The following rights shall be reserved by the Tribe when leases or other use permits are issued to individuals or other legal entities, whether Tribal members or not:
  - (1) To negotiate any lease fees, permit fees, royalty fees or use fees and rates for consumption or for commercial or industrial use;
  - (2) The power and responsibility to control and regulate the use of water on the leased property.

Sec. 131-7. - Rights granted to member when possessory holding issued.

The following rights shall be granted by the Tribe to a Tribal member when a possessory holding is issued:

- (a) Riparian rights to use of water standing or flowing through or along the possessory holding, subject to the right of other riparian possessory holdings to make reasonable use of the water and subject to reasonable regulations of the Tribe;
- (b) Use of any surface or subsurface water for domestic purposes, subject to health and sanitation regulations of the Tribe or other governmental agencies with lawful authority within Cherokee trust lands.

Sec. 131-8. - Prohibited acts and penalties.

- (a) ~~Any Indian person or firm~~ who shall willfully violate any provision of this Chapter ~~or the water policy, including the violation of any use permit, license or right exercised under a lease,~~ shall be guilty of a criminal offense and, upon conviction, shall be fined and imprisoned in the discretion of the court, with each offense not to exceed a fine of \$1,000.00 and imprisonment not to exceed six months.
- (b) All persons or ~~entities firms~~ whose employees, owners or agents are responsible for violations of this Chapter~~convicted of any such offense~~ shall be subject to the revocation,



cancellation or termination of ~~the rights to hold a business license their use permit, license, lease~~ or other use rights granted by the Tribal Business Committee.

- (c) Any person or ~~firm entity not subject to the criminal jurisdiction of the Cherokee Court~~ who shall willfully violate any term or provision of this Chapter, ~~the water policy, any use permit, license, lease or use right granted by or through the Tribe,~~ shall be subject to a civil fine of up to \$2,000.00 per violation. ~~, together with being subject to revocation of Trader's License, use permit, license, lease or other use right by the Tribal Business Committee.~~ All such civil fines shall be administered under rules adopted for the administration of this Chapter and in accordance with Chapter 150. ~~assessed by the Tribe through the Tribal Business Committee and may be enforced by civil suit in the Cherokee Court.~~

## ARTICLE II. - WATER CONSERVATION

### Sec. 131-9. - Proclamation of shortage.

In the event it appears that water demand on the Tribe's water system may exceed supply and transmission capabilities, the Principal Chief may declare a Stage I Water Shortage Condition Advisory, requiring water conservation by consumers. In the event that Stage I conservation measures fail to relieve the demand on the system, the Tribe may advance to a Stage II or Stage III Water Shortage Condition.

### Sec. 131-10. - Stage I: Water Shortage Advisory.

- (a) In the event a Stage I Water Shortage Advisory is declared, the following shall apply:
- (1) An extensive publicity campaign will be initiated using public media and specialized methods to inform the public of an impending or existing water shortage.
  - (2) Conservation measures will be encouraged year round for efficient water use.
- (b) In the event a Stage I Water Shortage Advisory is declared, the public shall be required to adhere to the following:
- (1) Limit car washing to the minimum.
  - (2) Limit lawn and garden watering to that which is necessary for plants to survive—pulling river water for this use if in vicinity recommended and encouraged.
  - (3) Washing outside areas such as sidewalks, patios, parking lots, service bays is limited to three days out of a seven-day period.
  - (4) Do not leave faucets running while shaving or rinsing dishes.
  - (5) Water shrubbery to the minimum required, reusing household water when possible.
  - (6) Limit use of clothes washers and dish washers and when used operate fully loaded.
  - (7) Use showers, rather than bathtub, for bathing and limit showers to no more than four minutes.
  - (8) Limit flushing of toilets by multiple usage.
  - (9) Use disposable and biodegradable dishes when possible.
  - (10) Use flow-restrictive and water-saving devices.

- (11) Limit hours of operation of water-cooled air conditioners.
- (12) Limit use for industrial purposes.
- (c) GOAL: To reduce water consumption by three to five percent.

Sec. 131-11. - Stage II: Mandatory Water Restriction.

- (a) Compliance: In the event the Principal Chief issues a proclamation of a Stage II Mandatory Water Restriction, it shall be unlawful for any person, firm or corporation to use or permit the use of water from the tribal water system for any purpose hereinafter set forth until such time as the proclamation of water shortage has been rescinded. In exercising the authority for declaring a Mandatory Water Restriction, consideration shall be given to water storage levels and available sources of supply, available usable storage on hand, draw down rates, the projected supply capability, outlook for precipitation, daily water use patterns and availability of water from other sources.
- (b) In the event that a Stage I Water Shortage Advisory is in effect and any tribal storage tank drops to 15 feet or less of storage, a Stage II Mandatory Water Restriction may be declared. In addition to the Stage I requirements already in effect, it shall be unlawful to use water supplied by the Tribe's water system in the following manner:
  - (1) To water lawns, grass, shrubbery, trees, flowers and vegetable gardens except by hand-held hose or drip irrigation system only.
  - (2) To fill newly constructed swimming and/or wading pools or refill swimming and/or wading pools which have been drained.
  - (3) To wash automobiles, trucks, trailers, boats or any other type of mobile equipment, with the exception of construction, emergency or public transportation vehicles if necessary to preserve the proper functioning and safe operation of the vehicle. Businesses that require large amounts of water to operate shall adhere to restrictions set by the Utilities Commission.
  - (4) To wash outside areas such as streets, driveways, service station aprons, parking lots, office buildings, exteriors of existing or newly constructed homes or apartments, sidewalks or patios, or to use water for other similar purposes.
  - (5) To operate or induce water into any ornamental fountain, pool or pond or other structure making similar use of water.
  - (6) To serve drinking water in restaurants, cafeterias or other food establishments, except upon request.
  - (7) To operate water-cooled air conditioners or other equipment that does not recycle cooling water, except when health and safety are adversely affected.
  - (8) To use water for any unnecessary purpose or to intentionally waste water.
  - (9) To use water for commercial/industrial purposes in an amount in excess of that amount set by the Utilities Commission.
  - (10) Athletic fields and fairways may submit an alternative watering plan to achieve conservation goals.

(c) GOAL: To reduce water consumption by five to ten percent.

Sec. 131-12. - Stage III: Mandatory Water Shortage Crisis.

- (a) Compliance: In the event the Principal Chief issues a proclamation of Stage III Mandatory Water Shortage Crisis it shall be unlawful for any person, firm or corporation to use or permit the use of water from the tribal water system for any purpose hereinafter set forth until such time as the declaration of a water shortage has been rescinded. In exercising the authority for declaring a Mandatory Water Shortage Crisis, consideration shall be given to water storage levels and available sources of supply, available usable storage on hand, draw down rates, the projected supply capability, outlook for precipitation, daily water use patterns and availability of water from other sources.
- (b) At this stage a State of Emergency may be issued.
- (c) In the event a Stage II Mandatory Water Shortage is in effect and any tribal storage tank drops to ten feet or less of storage, a Stage III Mandatory Water Shortage Crisis may be declared. In addition to restrictions for Stage I and Stage II Water Shortage Conditions, fire protection shall be maintained by drafting of ponds, rivers, and the like wherever possible, the use of throw-away utensils and plates shall be encouraged and recommended at all eating establishments, and it shall be unlawful:
- (1) To induce water into any pool, fountain or pond.
  - (2) To use water outside a structure for any use other than an emergency involving a fire.
  - (3) No burning permits will be issued during this time.
  - (4) To operate an evaporative air conditioner which recycles water, except during operating hours of business.
- (c) GOAL: To reduce water consumption by 20 to 25 percent.

Sec. 131-13. - Priority uses.

- (a) *Essential water use*: Essential water use means water necessary to maintain public health and safety. All entities charged with ensuring those services are deemed essential functions. In emergencies, water delivery may be limited to specific locations.
- (1) Place medical facilities, nursing homes, elderly and disabled individuals at the highest priority standing for available water;
  - (2) Fighting fires;
  - (3) Testing for public safety standards;
  - (4) Essential water use customers (hospitals, nursing homes, emergency care providers, etc.) are asked to monitor their use for opportunities to conserve.
- (b) *Community/business water use*: Community/business use defines any use of water that is to the function of a business or institution that has a significant value to the community. These activities are the first to be regulated when restrictive measures are enacted.
- (1) Watering plant stock at nurseries, tree farms, etc.;
  - (2) Commercial car washing;

- (3) Maintaining community pools;
- (4) Agriculture applications;
- (5) Water used in production of a product;
- (6) Ornamental water use—foundations, decorative use;
- (7) Water to fill or re-fill pools;
- (8) Noncommercial car/vehicle washing;
- (9) Water applied to impervious surfaces - driveways, streets, sidewalks, parking lots.

(Ord. No. 235, 5-9-2008)

Sec. 131-14. - Enforcement of mandatory water restrictions.

The Division of Operations shall administer and eEnforce this Chapter through rules adopted pursuant to Chapter 150.ment will be accomplished through The Division may coordinate enforcement objectives through collaboration with other tribal divisions, departments and programs daily patrol by all Tribal Utilities employees and public safety staff, including patrol officers. Any resident or business that violates waterthese restrictions imposed under this chapter may be subject to civil or criminal penalties. Willful disregard of these restrictions will also result in water service being temporary disconnected. A reconnect fee will be imposed before restoration of service.

Sec. 131-15 – Sec. 131-19. – (reserved).

### Article III. Water and Wastewater Treatment Facilities.

#### Sec. 131-20. Purpose and Authority.

- A. It is the purpose of this Article to protect the public health and to conserve and protect the water resources of the Tribe; to protect the public investment in the Tribe’s public wastewater system and water treatment facilities; and to require that the water treatment facility operators are certified by the North Carolina Board of Certification and are competent to supervise the operation of the Tribe’s water treatment facilities. Further, it is the purpose of this Article to provide for the certification of personnel operating the distribution portion of a water treatment facility.
- B. The Division of Operations shall be responsible for the Tribe’s raw water and wastewater treatment facilities and for the maintenance of the public infrastructure of water and sewer lines that comprise the Tribe’s public water system. It is authorized to adopt administrative rules that will ensure the Division’s proper administration of this law and to collaborate with the Division of Agriculture and Natural Resources and the Division of Public Health and Human Services.

#### Sec. 131-20.1. Definitions.

In this Article, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Board" or "Board of Certification" means the North Carolina Water Treatment Facility Operators Board of Certification.
- (2) "Operator" means a person who operates, maintains or inspects water treatment facilities or "Operator" means a person who holds a currently valid certificate as a water pollution control system operator issued by the State of North Carolina.
- (3) "Operator in responsible charge" means a person designated or hired by the Division of Operations to be responsible for the total operation and maintenance of a water treatment facility and its functions.
- (4) "Public water system" means a system for the provision of piped water for human consumption as defined in N.C.G.S. 130A-313(10).
- (5) "Wastewater system" means a system for the collection, treatment or disposal of waste water and is sometimes called "sewer system".
- (6) "Wastewater treatment facility" means a mechanical or chemical treatment facility serving a site with multiple wastewater sources.
- (7) "Water treatment facility" means any facility or facilities used or available for use in the collection, treatment, testing, storage, pumping, or distribution of water for a public water system.
- (8) "Waste" has the same meaning as in N.C.G.S. 143-213.
- (9) "Water pollution control system" means a system for the collection, treatment, or disposal of waste.

**Sec. 131-24. Water Treatment Operator Certification.**

The Tribe's water and wastewater treatment facility operators shall receive certification from the North Carolina Board of Certification and the water and wastewater treatment facilities of the Tribe shall be adequately supervised by certified operators. No person shall perform the duties of a water pollution control system operator in responsible charge without being duly certified by the State of North Carolina.

**Sec. 131-25. Investigation and action of licensing boards have no bearing on employment decisions.**

(a) Misconduct. - A person may refer to the North Carolina Board of Certification charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board. Nothing about the certification or licensing Board of North Carolina, including its decisions or processes, shall interfere with the decisions of the Tribe concerning corrective actions of its employees or contractors carrying out functions or services authorized under tribal law.