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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

MAR 05 2020

Date: _____

ORDINANCE NO.: 150 (2020)

Short Title: an ordinance to amend C.C. § 161-4 (certification of candidates) and C.C. § 161-4.1 (decertification of candidates) in the Tribal Elections ordinance.

WHEREAS, Section 6 of the Tribe’s 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, C.C. § 161-4, governing certification of candidates, should be amended to shorten the filing deadline to give the Board time to complete its work in certifying candidates (in recognition of the fact that most candidates file on the first and last days of the filing period), and to give the Board an opportunity to gather necessary information from candidates before making a decision regarding certification, and to clarify the process for certifications and appeals before the Board; and

WHEREAS, C.C. § 161-4.1, governing decertification of candidates, should be amended so that the decertification process is clear to candidates and voters.

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 C.C. § 161-4 and C.C. § 161-4.1 shall be amended as follows:

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

- (a) All persons filing to be a candidate for Tribal elected office shall do so under his or her own name and his or her original signature. All documents required to be filed with the Board of Elections must bear the original signature of the candidate/principal and shall not be signed by any person as an agent acting on behalf of the candidate/principal through a power of attorney or other delegation of authority. This requirement applies to all applications for candidacy and all other documents required to be filed with the Board of Elections by candidates. Nothing in this subsection applies to the marking of ballots.
- (b) All persons filing to be a candidate for election to the office of Principal Chief, Vice-Chief, Tribal Council, or School Board shall do all of the following:
 - (1) Pay the required filing fees at the Tribal Finance Office no sooner than the first Monday in March March-1 and no later than the first Friday in March March-15 of the year of the

1 election. Persons paying such fees are advised to inform themselves of the hours of
2 operation of the Tribal Finance Office.

3 a. The filing fee to be a candidate for the office of Principal Chief or Vice Chief is
4 \$700.00.

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

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

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

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

14 (c) The Board of Elections shall review all applications and other required information,
15 including but not limited to background checks, and ensure that the required filing fees have
16 been paid in order to certify ~~that whether or not~~ each applicant is eligible to be a candidate for
17 Tribal elected office. If necessary, any applicant may be required to appear before the Board
18 at a hearing to answer an inquiry about any matter related to an application for candidacy for
19 Tribal elected office. The Board of Elections shall notify each applicant of its decision by one
20 of the means listed in Section 161-29 of this Chapter by registered mail on or before March
21 31 of the election year, or may be picked up in person from the Board of Elections Office on
22 or before the March 31 deadline provided the person signs, at the Board office, proof of receipt
23 of the notice of decision. Any adverse decisions shall include a clear and concise statement as
24 to the reason(s) for denial of an applicant's eligibility and shall include the following
25 information:

26 (1) ~~That the applicant may appeal the denial of certification and may request a hearing~~
27 ~~before the Board of Elections for the appeal. The request for a hearing before the Board~~
28 ~~shall be in writing, signed by the applicant, and shall be filed with the Chairman of the~~
29 ~~Board within five (5) business days of receipt of notice of the denial. The person~~
30 ~~appealing the decision of the Board shall pay the appeal filing fee expressed by the Board~~
31 ~~in its schedule of fees.~~

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

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

41 (4) ~~The Board shall issue a written decision within five business days following the hearing.~~
42 ~~The written decision shall express whether or not the prospective candidate satisfies the~~
43 ~~requirements for the office for which candidacy is sought. The final written decision from~~
44 ~~the Board of Elections shall be provided to the applicant in any of the ways described in~~
45 ~~C.C. Sec. 161-29 ("Service of communications by the Board of Elections"). A decision~~
46 ~~by the Board of Elections to affirm its prior decision that the person is ineligible may be~~

1 ~~appealed by that person to the Cherokee Supreme Court for error of law. The only person~~
2 ~~with standing to appeal to the Court shall be the person whose eligibility was denied.~~

3 (d) If the applicant meets all of the qualifications to run for Tribal office, and is not ineligible
4 to hold Tribal office pursuant to Section 161-3(d), the Board of Elections shall certify the
5 applicant as eligible to run for the Tribal office sought by the applicant. The Board of
6 Elections shall notify the applicant of its decision by one of the means listed in Section
7 161-29 of this Chapter on or before March 31 of the election year.

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

12 (1) Prior to March 31 of the election year, the Board of Elections shall issue a Notice of
13 Hearing informing the applicant of the date and time the hearing will be held. The
14 hearing shall be held no later than ten business days following issuance of the Notice
15 of Hearing. Notice of the scheduled hearing shall be provided as described in Section
16 161-29 of this Chapter. The Notice of Hearing to the applicant shall clearly and
17 concisely state the issue or issues identified by the Board which might render the
18 applicant unqualified or ineligible to run for Tribal office and must be addressed by the
19 applicant before the Board.

20 (2) The applicant may request that the Board issue subpoenas for persons or documents
21 which the applicant expects to be relevant to the issue or issues identified in the Notice
22 of Hearing. In its discretion, the Board may issue subpoenas for documents or any
23 person it identifies as having information relevant to the issue or issues contained in
24 the Notice of Hearing provided by the Board. At the hearing before the Board, the
25 applicant shall have the right to present written evidence or oral testimony to address
26 the issue or issues identified by the Board. The North Carolina Rules of Evidence do
27 not apply.

28 (3) The burden of proof shall be on the applicant to prove by a preponderance of the
29 evidence of the record as a whole that he or she meets all of the qualifications to be
30 certified as a candidate for Tribal office and is otherwise eligible to hold Tribal office
31 under the law.

32 (4) The Board shall issue a final written decision within five business days following the
33 hearing. The panel may:

34 (a) find that the applicant meets all of the qualifications for office and is otherwise
35 eligible under the law to hold Tribal office and certify the applicant to be a
36 candidate for Tribal office; or;

37 (b) find that the applicant meets all of the qualifications for office but is otherwise
38 ineligible under the law to be a candidate for Tribal office, and deny certification;

39 or

40 (c) find that the applicant does not meet the qualifications for office and deny
41 certification.

42 (5) A final decision by the Board of Elections to deny certification to an applicant to
43 be a candidate for Tribal office may be appealed by the applicant to the Cherokee
44 Supreme Court. The decision issued by the Board is not required to take any particular
45 form or to formally express findings of facts and conclusions of law as might be written
46 in a court decision; provided, however, the final decision shall contain sufficient

1 information to enable the Court on appeal, if an appeal is filed, to make an informed
2 judgment as to facts considered by the Board of Elections in making its decision so that
3 the Court can determine whether the Board committed an error of law. The only person
4 with standing to appeal to the Court shall be the person whose certification was denied.
5 Notice of appeal to the Cherokee Supreme Court must be given no later than three
6 business days after the final decision is served on the applicant.

7 (f) By April 15 of each election year, the Board of Elections shall publish in the Cherokee
8 One Feather the list of candidates certified to run for each Tribal elected office. In the
9 event a candidate is certified later than April 15 in response to a Court Order, the Board
10 shall then re-publish the list of all certified candidates, including the name(s) of those
11 certified in response to a Court Order, in the next edition of the Cherokee One Feather.

12 (g) At the time the applicant files an application to be a candidate for Tribal office, or no later
13 than ~~Within~~ three (3) business days of following receipt of notice of certification as a candidate
14 for Tribal office, the candidate shall do the following:

15 (1) sign an agreement under oath to use the voter registration list provided to the candidate
16 pursuant to Section 161-11.3 of this Chapter only for truthful communications with
17 eligible voters in connection with the election and to clearly identify himself/herself in
18 all such election-related communications;

19 (2) affirm in writing and under oath ~~that they~~ that the candidate has reviewed and is are
20 aware of, understands and agrees to follow the Tribe's election law, requirements of this
21 ~~Chapter~~ including, but not limited to, the following:

22 (ia) the residency requirements for the office sought;

23 (iib) the eligibility criteria to be a candidate for the office sought;

24 (iic) that communications by the candidate with the Board and with public shall be
25 truthful; and

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

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

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

32
33 **Sec. 161-4.1. - Decertification of a candidate.**

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

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

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

42 (2) Any (1) Any enrolled member of the EBCI who is registered to vote in ~~the~~ Tribal
43 election(s) may file a protest seeking to decertify the candidate from running for Tribal
44 office. All protests must be submitted to the Board of Elections in writing and on forms
45 provided by the Election Board or, if not on forms provided by Board, then in a typed or
46 legible writing. Each protest shall contain sufficient detail to give the Board notice of the

1 facts that the protester asserts support decertification. All protests shall, at a minimum,
2 contain the following information: (1) the name, mailing address, physical address,
3 telephone number and email address (if one is available) of the protester; (2) the dates
4 and approximate times of the act(s) being protested; (3) a description of the subject of the
5 protest; (4) the name, mailing address, telephone number and email address (if one is
6 available) of all witnesses known to the protester; and (5) copies of all supporting records,
7 photos and other documentary evidence in the possession or control of the protester that
8 the protester wants the Board to consider. All protests must include a sworn statement
9 signed by the protester, before a notary, that the allegations presented in the protest are
10 true or that the protester, upon information and belief, believes them to be true.

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

- 13 (c) Such protest ~~shall~~ should be filed with the Board no later than five ten business days after
14 the Board publishes in the Cherokee One Feather the ~~preliminary-unofficial~~ list of candidates
15 certified for the election at issue. The person filing the protest shall pay the protest filing fee
16 expressed by the Board in its schedule of fees.
- 17 (d) Acting on its own investigation or upon receipt of a timely filed protest to decertify a
18 candidate, the Board of Elections shall give written notice to the candidate at issue within two
19 business days which notice shall inform the candidate that:
- 20 (1) The Board has, upon its own investigation, determined that the candidate ~~does may~~ not
21 meet the qualification or eligibility requirements and ~~should-be is subject to being~~
22 decertified, and the notice shall state the particular grounds supporting decertification,
23 and shall ask the candidate to file a written response to the notice within five business
24 days which addresses the grounds identified by the Board which may support
25 decertification ; or
- 26 (2) The Board has received a written protest from a properly registered voter and the protest
27 alleges that the candidate is not qualified or not eligible to be a candidate for Tribal office
28 and should be de-certified. A copy of the protest and all supporting documents submitted
29 by the protestor shall be included with the notice. The Board shall ask the candidate to
30 file a written response to the allegations of the protestor within five business days.
- 31 (3) Notice shall be provided in any of the ways described in C.C. Sec. 161-29 ("Service of
32 communications by the Board of Elections").
- 33 (e) ~~The candidate or the challenger may request a hearing before the Board. The request shall~~
34 ~~be in writing and shall be filed with the Chairman of the Board within five business days of~~
35 ~~receipt of the notice of the complaint from the Board. Once the Board has reviewed the written~~
36 ~~response of the candidate, the Board may thereafter order a hearing if there is an issue which~~
37 ~~has not been resolved by the written response of the candidate.~~
- 38 (f) ~~Within five business days of the date the Board received the request for hearing, If the Board~~
39 ~~orders a hearing, the~~ Board shall schedule a hearing to be held within ten business days. The
40 Board shall give the candidate and the challenger notice of the hearing in any of the ways
41 described in C.C. Sec. 161-29 ("Service of communications by the Board of Elections").
- 42 (g) At the hearing before the Board, the parties shall have the right to present written evidence
43 and/or oral testimony to address the alleged grounds for decertification. At the hearing, the
44 burden of proof is on the moving party to prove by a preponderance of the evidence in the
45 record as a whole that the candidate for Tribal office does not meet the qualification or
46 eligibility requirements under Tribal law and should be decertified as a candidate.

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

13 ~~(i) A protest of a person's certification as a candidate by the Board of Elections shall be filed~~
14 ~~within 30 days of the last date on which the Board of Elections may issue such a certification.~~
15 ~~The protest is void if it is not filed within that 30-day period.~~
16

17 **BE IT FINALLY ORDAINED** that all ordinances which are inconsistent with this ordinance are
18 rescinded, and that this ordinance shall become effective upon ratification by the Principal
19 Chief.
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23 *Submitted by the Board of Elections.*