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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

MAR 05 2020

Date: _____

ORDINANCE NO.: 152 (2020)

Short Title: an ordinance to amend C.C. § 161-16 (process for allegations of election irregularities and protests); and to amend C.C. § 161-19 (enforcement of subpoenas issued by Board of Elections).

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, C.C. § 161-16 should be amended to clarify who may file an election protest, when the Board of Elections is required to hold a protest hearing under the law, and to amend the timeline of election protests to ensure all steps of election protests can be completed between an election and the inauguration of winning candidate; and

WHEREAS, C.C. § 161-19 should be amended to clarify the Board of Election's authority to develop rules, policies and procedures in accordance with C.C. § 117-35 and to clarify the Cherokee Court's jurisdiction to enforce subpoenas issued by the Board; 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 C.C. § 161-16 and C.C. § 161-19 shall be amended as follows:

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

- (a) All protests must be submitted to the Board of Elections in writing and on forms provided by the Election Board or, if not on forms provided by Board, then in a typed or legible writing. Each protest shall contain sufficient detail to give the Board adequate notice of the alleged irregularity being protested. All protests shall, at a minimum, contain the following information: (1) the name, mailing address, physical address, telephone number and email

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

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

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

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

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

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

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

28 (2) If the Board orders a hearing on a protest of irregularities, the parties to the protest shall
29 be allowed adequate time to prepare their case ~~and be allowed to call witnesses and~~
30 ~~subpoena documents,~~ not to exceed ten five business days. It is imperative to proceed in a
31 timely manner, therefore the normal rules of civil procedure are not applicable. ~~However,~~
32 ~~the Board of Elections shall give the parties reasonable consideration and opportunity to~~
33 ~~prepare their case and may extend any deadlines or hearing to assure that it has all the facts~~
34 ~~in order to make a valid final decision.~~ Parties may request that the Board issue subpoenas
35 for persons or documents which the party expects to be relevant to the protest. In its
36 discretion, the Board may issue subpoenas for documents or any witness it identifies as
37 having information relevant to the issue or issues described in the protest. At a hearing
38 before the Board, and subject to C.C. Section 161-32, the applicant shall have the right to
39 present written evidence or oral testimony to address the alleged irregularities. The North
40 Carolina Rules of Evidence do not apply.

41 (3) All persons that the protest may directly affect shall be notified of the scheduled hearing
42 by the Election Board. Notice shall be provided by any means authorized in C.C. Section
43 161-29 ("Service of Communications by the Board of Elections").

44 (d) Any person filing a protest for election irregularities under this section must establish ~~during~~
45 ~~a hearing in front of before~~ the Board of Elections that the alleged irregularities unfairly and

1 improperly or illegally affected the actual outcome of the election, and but for the irregularity,
2 the winning candidate would not have prevailed at the polls.

- 3 (e) All persons who are parties to an election protest shall have the right to have an attorney ~~or~~
4 ~~lay-advocate~~ represent them ~~at the hearing~~ before the Board of Elections. Any attorney who
5 represents a person ~~at a hearing~~ before the Board of Elections shall comply with Tribal law
6 governing the practice of law in Cherokee.
- 7 (f) If the Board orders a hearing, Aafter all parties have had an opportunity to be heard and
8 present evidence the Board of Elections shall issue a final written decision. The decision shall
9 be issued within ~~five~~ four business days after the conclusion of the hearing. If no hearing is
10 ordered, the Board shall issue the final written decision no later than four business days after
11 it determines it will not hold a hearing. The written decision shall be sent to all affected
12 person(s) by means authorized in C.C. Section 161-29 ("Service of Communications by the
13 Board of Elections").
- 14 (g) The Board has the power to:
- 15 (1) Find that the protest did not meet the requirements set forth in this Chapter and dismiss
16 the protest; or
- 17 (2) Find that the protest did meet the requirements set forth in this Chapter and issue the
18 appropriate relief.
- 19 (3) If the Board of Elections finds that the protester has met the burden expressed in
20 subsection (d) of this section, then the Board of Elections is authorized to issue relief in
21 the form of ordering a new election or a run-off election between two or more candidates
22 affected by the election irregularity. If it is shown by the evidence presented that a crime
23 may have been committed during the course of the election, the Board of Elections may
24 present evidence to the Tribal Prosecutor's Office for possible criminal charges.
- 25 (4) The Board of Elections shall use the same procedure set out in Section 161-7 of this
26 Chapter, if a new or run-off election is warranted.
- 27 (5) The powers given to the Board of Elections in this subsection are in addition to, and are
28 a supplement to, the powers given to the Board in C.C. Section 161-19.
- 29 (h) The Board of Elections shall issue a final, written decision. The decision is not required to
30 take any particular form or to formally express findings of facts and conclusions of law as
31 might be written in a court decision; provided, however, the final decision shall contain
32 sufficient information to enable the Cherokee Supreme Court on appeal, if an appeal is filed,
33 to make an informed judgment as to facts considered by the Board of Elections in making its
34 decision so that the Court can determine whether the Board committed an error of law. Notice
35 of appeal to the Cherokee Supreme Court must be given no later than three (3) business days
36 after the final decision is served on the non-prevailing party.
- 37 (i) No person shall be entitled to receive monetary damages or recover their legal or personal
38 expenses from the Board of Elections or the Tribe.
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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 to,
43 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 the
45 proper conduct of elections; to hire and/or contract with firms and individuals to assist the
46 Board in the conduct of its business; to resist, report and take action against illegal or unethical

1 conduct affecting Tribal elections; to set and impose reasonable filing fees, protest fees and
2 other fees; to provide for the imposition of civil fines and other consequences for unlawful
3 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 protests
8 properly before it. The Board If any person or entity fails or refuses to obey a subpoena
9 properly issued and served, the Board may apply to the Cherokee Court for an order requiring
10 compliance with the subpoena. The Cherokee Court shall have jurisdiction to issue such order
11 upon a showing by the Board that a subpoena was properly issue and served, but was not
12 complied with as the terms of the subpoena required. Compliance with the court order may be
13 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 primary
25 election and August ~~10~~ 1 of an election year for the general election.
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27 **BE IT FINALLY ORDAINED** that all ordinances which are inconsistent with this ordinance are
28 rescinded, and that this ordinance shall become effective upon ratification by the Principal
29 Chief.

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33 *Submitted by the Board of Elections.*