

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA
MAR 05 2020

Date: _____

ORDINANCE NO.: 153 (2020)

Short Title: an ordinance to amend three sections in the Tribal Election ordinance, as follows:
C.C. § 161-24 (unlawful campaign practices), C.C. § 161-29 (service of communications by the Board of Elections) and C.C. § 161-31 (legal representation at hearings).

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. § 161-24 should be amended to state the range of punishments for persons who commit unlawful campaign practices that are already prohibited in that code section, and to make it illegal to photograph voters and marked ballots in polling places, the latter to curb vote buying and voter coercion; and

WHEREAS, C.C. § 161-29 should be amended to allow for faster communications between the Board of Elections and candidates, such as by email and text message, particularly during protest periods where time is short and regular communication by U.S. Mail is too slow for the tight deadlines imposed by law; and

WHEREAS, C.C. § 161-31 should be amended to bring the election ordinance into conformity with all other chapters of the Cherokee Code which do not permit the use of lay advocates because there is no way to ensure that lay advocates will undertake their responsibilities with any degree of professionalism.

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:

Sec. 161-24. - Unlawful campaign practices.

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

- (1) Campaigning within 100 yards of a polling place. No person shall campaign, attempt to persuade voters, place campaign literature or signs, or otherwise attempt to influence the outcome of a Tribal election within 100 yards of a polling place. This restriction shall be applied in concert with the 100 yard restrictions provided in C.C. Section 161-12 and Section 161-13(d).

- 1 (2) Buying or selling votes. No person, corporation, partnership, or any other legal entity
2 shall attempt to influence a person or obtain his or her vote, or obtain his or her signature
3 on a petition, by making a direct and specific offer to that individual, or to another person
4 on behalf of that individual, of money, goods or services. This subsection is not intended
5 to limit the making of "campaign promises", i.e., generalized suggestions that people will
6 benefit from policies associated with particular candidates or particular issues on the
7 ballot.
- 8 (3) Tampering with ballots. No person shall tamper with, alter, destroy, deface or mutilate
9 ballots that have been cast in an election, or perform any such acts in connection with an
10 official record of ballots cast in an election, except as authorized by law.
- 11 (4) Giving false information in registering or voting. No person shall knowingly or willfully
12 give false information as to his name, address or period of residence in the township for
13 the purpose of establishing his eligibility to register or to vote, or conspire with another
14 individual for the purpose of encouraging his false registration to vote or illegal voting,
15 or pay or offer to pay or accept payment for registering to vote or for voting.
- 16 (5) Falsification or concealment of material facts. It shall be unlawful for any person to
17 knowingly and willfully falsify or conceal a material fact, or make any false, fictitious,
18 or fraudulent statement or representation, or make or use any false writing or document
19 knowing the same to contain any false, fictitious, or fraudulent statement or entry.
- 20 (6) No intimidation. No person, organization, association, corporation or other entity shall
21 use or threaten to use physical force, job discrimination, employment reprisal,
22 employment reward, or financial reprisal or financial reward, to solicit or accept money
23 or any other thing of value for the purpose of influencing the result of an election or to
24 assist a candidate or office holder.
- 25 (7) Voting more than once in an election. No person shall vote more than once in an
26 election, except as provided by law.
- 27 (8) Marking the ballot of another person. No person shall mark the ballot of another voter
28 without that voter's express approval. No person shall execute the signature of another
29 voter on any document submitted to the Board of Elections without that voter's express
30 approval.
- 31 (9) Photographing voters prohibited. - No person shall photograph, videotape, or otherwise
32 record the image of any voter within the voting enclosure. This subsection does not
33 apply to cameras used as a regular part of the security of the facility that is a polling
34 place.
- 35 (10) Photographing voted ballot prohibited. - No person shall photograph, videotape,
36 or otherwise record the image of a voted official ballot for any purpose not otherwise
37 permitted under law.
- 38 (b) A violation of Cherokee Code Sec. 161-24(a) ("Unlawful campaign practices") shall be a crime
39 punishable by a fine not to exceed five thousand dollars (\$5,000.00), by imprisonment not to
40 exceed a term of one (1) year, or both.

41
42 **Sec. 161-29. - Service of communications by the Board of Elections.**

43 Wherever in this Chapter the Board of Elections is required to serve an official notice, fine or
44 decision on a person, the Board may serve the official communication in any of the ways expressed
45 in this section. Regardless of the manner of service, the Board shall keep records establishing that

1 the communication was made, actually received by the intended recipient, and when it was
2 received. The following methods of service are acceptable:

- 3 (a) By requiring the recipient to personally appear at the Board of Elections office to pick-
4 up and sign for the document; or
5 (b) By mailing the document to the recipient by United States Postal Service certified mail
6 with return receipt requested, or by delivery by FedEx or United Parcel Service; or
7 (c) By personal delivery by an officer of the Cherokee Indian Police Department with proof
8 or return of service to be provided by the officer to the Board. The Cherokee Indian Police
9 Department is hereby authorized and required, if requested by the Board, to deliver such
10 communications and provide proof or return of service to the Board.
11 (d) ~~Any other means agreed to by the recipient,~~ By electronic means such as by email or
12 text message to a mobile telephone number maintained by the candidate; provided,
13 however, that the Board shall preserve all such emails or other electronic communications
14 and shall keep records of all such ~~telephone calls~~ communications with sufficient detail
15 so the Board can show when the communication was made, who received it and when it
16 was received.
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18 **Sec. 161-31. - Legal representation at hearings.**

19 Parties to hearings before the Board of Elections shall have the right to have an attorney ~~or~~
20 ~~lay-advocate~~ represent them at the hearing. Any attorney who represents a person at a hearing
21 before the Board shall comply with Tribal law governing the practice of law in Cherokee.
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23 **BE IT FINALLY ORDAINED** that all ordinances which are inconsistent with this ordinance are
24 rescinded, and that this ordinance shall become effective upon ratification by the Principal
25 Chief.
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29 *Submitted by the Board of Elections.*