

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA
APR 09 2020

DATE

ORDINANCE NO. 170 (2020)

- WHEREAS, the Eastern Band of Cherokee Indians is a sovereign Indian Nation with the authority to make and administer laws, policies, and regulations to protect and further the interests of the tribal government and tribal citizens; and
- WHEREAS, the Eastern Band of Cherokee Indians has established an Investment Committee under Cherokee Code Section 117-41 with enumerated duties, delegated powers and substantive responsibilities; and
- WHEREAS, the Eastern Band of Cherokee Indians has a well-established aim to diversify sources of revenue to achieve a long-term vision of self-governance and self-sufficiency to protect and preserve the interests of and essential services to tribal citizens thereby promoting the concept of economic sovereignty; and
- WHEREAS, the Eastern Band of Cherokee Indians has developed over time a diversified investment portfolio to maximize earnings potential while protecting financial assets that is under the general direction of the Investment Committee; and
- WHEREAS, the Eastern Band of Cherokee Indians has authorized the Investment Committee to engage in private equity investing, in addition to the traditional investment strategies of the tribe, to further diversify the tribe's investment portfolio and extend the reach of tribal investment strategies; and
- WHEREAS, in addition to the fund investment strategies of the Eastern Band of Cherokee Indians, the tribe has established a separate tribally chartered corporation being Kituwah, LLC to engage in direct investment of tribal financial resources according to a strategy and business rules developed by the entity; and
- WHEREAS, the tribe is regularly presented with business investment opportunities they may fall outside of the constructs of a traditional investment strategy or that may not fit the business rules established by Kituwah, LLC for investment consideration and the tribe is in need of a mechanism to thoroughly inspect those opportunities for the potential inclusion in an overall diversification strategy; and
- WHEREAS, the Investment Committee can serve as a mechanism to assess those investment opportunities and oversee the deployment of capital toward those investments that are reasonable to the Eastern Band of Cherokee Indians.

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, Cherokee Code Section 117-41 Investment Committee is hereby amended to read as attached.

BE IT FURTHER ORDAINED that any ordinance or resolution that is inconsistent with the amended ordinance is hereby rescinded.

BE IT FINALLY ORDAINED this ordinance shall become effective upon ratification by the Principal Chief and shall remain in effect until amended or rescinded.

Submitted By: Richard G. Sneed, Principal Chief

Sec. 117-41. - Investment committee.

- (a) *Establishment.* The investment committee shall be comprised of four members appointed by Tribal Council upon the recommendation of the Principal Chief. The appointed members shall have demonstrated education and experience with investment, finance and accounting matters, and be enrolled members of the EBCI. The Secretary of the Treasury of the EBCI shall be a permanent voting member, for a total of five voting members.
- (b) *Investment policy statement.* The investment policy statements are designed to operate in support of the investment purposes and objectives of Eastern Band of Cherokee Indians. The primary objective of EBCI's Investment Policies is to provide for the implementation and continuation of a diversified investment program, which balances risk and reward to achieve and maximize a real rate of return from the portfolio to support the Tribe and its members. Implicit in this objective are the prudent administration of the Tribe's assets and the fiduciary responsibility appropriate to the Tribe's obligations with respect to the interests of present and future generations of Tribal members.
- (c) *Role of the investment committee.* The Investment Committee will review and approve the Investment Policy and Manager Guidelines on an annual basis, and will present to the Principal Chief and Tribal Council for approval. The Investment Committee will oversee the selection and/or termination of investment managers and review investment asset performance on a least a quarterly basis. The Investment Committee and the Finance Office will collaborate on the selection and/or termination of investment consultants. The Investment Committee will determine the allocation of investment assets to specific asset class (e.g. equities, bonds, below investment grade bonds, etc.) and define in the investment policy statements. The Investment Committee will also determine appropriate restrictions on investment activity (e.g. no derivatives) and define in the investment policy statements. At least annually, the committee, staff and consultants will review the historical and expected returns and volatility of the aggregate portfolios of the Tribe, as well as alternative portfolio allocations. This review will also be performed for each individual fund.
- (d) *Delegated powers and substantive responsibilities.* The investment committee is empowered to:
- (1) Investigate and make recommendations on all issues referred to Chiefs or Tribal Council relating to investments in the Minors Trust Fund and Endowment #1 Fund, Endowment #2 Fund, and the Debt Service Sinking Fund, as specified in the ordinance for Allocation and Per Capita Distribution of Net Gaming Revenues;
 - (2) Oversee, monitor, and research the condition of funds invested in the funds specified in the ordinance for Allocations and Per Capita Distribution of Net Gaming Revenues;
 - (3) Cause the funds to be invested pursuant to the prudent investor rules, and in a manner that assures the greatest balance of growth and security available for the funds, as specified in the investment policy statements;
 - (4) ~~Reserved.~~ Analyze direct investment and private equity investment opportunities on behalf of the tribe and execute such investments deemed reasonable and appropriate by unanimous approval of the committee through resources available in the Endowment Fund No. 1, Endowment Fund No. 2, Debt Service Sinking Fund, and Cherokee Sovereign Wealth Fund, LLC in accordance with criteria established by the committee and approved by the Tribal Council.
 - (5) Reserved.
 - (6) Oversee the administration of the Minors Fund Trust;
 - (7) Selection and/or termination of investment managers, and other professionals whose expertise the committee believes is needed for prudent investment of the funds will include a search, screening, interview, selection and contract process;
 - (8) Prepare written and oral quarterly reports to Chiefs and Tribal Council on its activities and the condition of the investments under its jurisdiction;

- (9) Develop, for Council approval, policies and procedures for implementation of these powers.
- (e) *Administrative responsibilities of committee and members.*
- (1) The committee shall select its chairman and secretary before proceeding with any business.
 - (2) The Tribal Council may remove any member of the committee only for cause. There shall be a six-month probationary period for each new appointee to be reviewed by the Tribal Council, during which time the appointee may be removed with or without cause. The Secretary shall maintain attendance records and shall initiate removal of any member who misses three consecutive monthly meetings or any ten monthly meetings during any two-year period, except for excused absences. The Chairman shall perform this duty regarding the Secretary.
 - (3) The Committee shall report vacancies to the Principal Chief who shall recommend new candidates for membership to the Tribal Council. Recommendations shall come as a written list of three candidates in order of preference. Recommendations shall be presented to the Council Chairman within 30 days of the creation of the vacancy. Tribal Council shall select one of the candidates within 30 days of the recommendation's submission.
 - (4) A quorum is three members.
 - (5) No person shall be approved for membership, or attend any business of the Committee, without first having signed a confidentiality agreement to maintain the confidentiality of sensitive tribal financial information and personal information of fund constitutes that s/he may encounter during Committee service and until he or she has completed a background investigation conducted by the Eastern Band of Cherokee Indians.
 - (6) Members' terms shall not exceed five years. No member may serve more than two consecutive terms, unless request is made and approved by the Principal Chief and Tribal Council for an additional term. Terms shall be staggered to provide for continuity and rotating succession on the committee. The Principal Chief shall state the term of each appointee nominated, subject to approval by Tribal Council. After the initial terms expire, all committee members shall serve terms of five years. The members who serve by reason of his/her employment position shall continue in office until they resign or are removed from those employment positions, or are removed for cause from the committee by Tribal Council.
 - (7) The committee shall convene at least monthly. If a quorum is not achieved at two or more monthly meetings in a 12-month period the Secretary shall notify the Principal Chief and Tribal Council. The Principal Chief and Tribal Council shall make determinations as to new appointments, dissolution of the committee, or other solutions to assure that investments are adequately monitored to assure the greatest balance of growth and security available for the funds. Notice of each meeting shall be emailed to each member not less than five or more than twenty business days prior to each meeting by the Secretary. The committee may call emergency meetings upon 24 hours' notice to the members specifying the time and place of such meeting and the business to be conducted.
 - (8) Committee members eligible for compensation shall be compensated with payments of \$2,000.00 per month, with the exception of the Chairman who shall be compensated with payments of \$2,500.00 per month in which monthly meetings occurs and minutes are kept. Members of the committee serving by reason of his/her employment position shall perform such duties without additional compensation as part of his/her job duties.
 - (9) The board shall meet and decide all matters by majority vote. The Chairperson shall vote on all issues. A majority vote shall be binding on the committee. The Chairperson or the Secretary in the Chairperson's absence, shall preside at each meeting.
 - (10) The board shall keep formal written minutes of all meetings which shall include all actions and votes.

- (f) *Role of Budget and Finance Office.* The Office of Budget and Finance will conduct the day-to-day operations of the investment portfolio including daily cash investment, asset manager oversight (e.g. compliance with guidelines, and Investment Committee mandates), selection and termination of custodians, and any other activities necessary to fulfill the interest of the Investment Committee. The Investment Committee and the Finance Office will collaborate on the selection and/or termination of investment consultants.

(Ord. No. 33, 1-19-2004; Ord. No. 872, 10-5-09; Ord. No. 110, 4-16-2014; Ord. No. 55, 1-12-2018)