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**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: AUG 06 2020

ORDINANCE NO. 237 (2020)

Short Title: an ordinance adding a new Chapter 55C to the Cherokee Code to establish the Cherokee Indian Gaming and Entertainment Authority (CIGEA) to provide for the pursuit and governance of commercial gaming and commercial non-gaming business opportunities.

WHEREAS, the Eastern Band of Cherokee Indians needs to expand and diversify its sources of revenue so it can build a stronger, more resilient Tribal economy; and

WHEREAS, currently, almost all of the Tribe’s revenue comes from the Tribe’s two existing casinos located on trust land in Cherokee and Murphy, North Carolina; and

WHEREAS, due to smart management and limited competition in the region, these two casinos have been very successful, but competition is increasing and continued success is not guaranteed; and

WHEREAS, neighboring states are changing their laws to allow commercial gaming and other Tribes are likely to enter the region to conduct commercial gaming or gaming Indian Gaming Regulatory Act. That competition will likely reduce Tribal revenues and threaten the financial well-being of our citizens; and

WHEREAS, due to careful budgeting, the Tribe is well-positioned to take advantage of changes in the marketplace that make it financially wise and attractive for the Tribe to identify, pursue and engage in commercial business opportunities in gaming and non-gaming industries; and

WHEREAS, this ordinance amends the Cherokee Code by adding thereto a new chapter to establish the Cherokee Indian Gaming and Entertainment Authority through which the Tribe will pursue and provide for the governance and successful operation of the Tribe’s efforts to expand into commercial gaming and commercial non-gaming industries wheresover located.

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that the Cherokee Code shall be amended by adding thereto the following new Chapter 55C, to read as follows:

1 **Chapter 55C**

2 **CHEROKEE INDIAN GAMING AND ENTERTAINMENT AUTHORITY**

3 **Sec. 55C-1. – Establishment.**

4 By virtue of the inherent sovereign authority of the Eastern Band of Cherokee Indians to
5 provide for the health and welfare of its citizens through economic development, and as such
6 authority is now or may be further expressed in the Tribe’s Charter and Governing Document
7 and the Cherokee Code of Ordinances, the Tribal Council hereby establishes the Cherokee
8 Indian Gaming and Entertainment Authority, hereafter referred to as the “CIGEA”.

9 **Sec. 55C-2. – Purpose.**

10 The purpose of the CIGEA shall be to create, find, acquire, examine, approve upon due
11 diligence, and provide for the lawful operation of, commercial gaming and commercial non-
12 gaming businesses that are located on or off the Tribe’s trust land, and by such actions to
13 expand and diversify the Tribe’s economy and revenue sources, and through those efforts to
14 return some amount of net revenue to the Tribe.

15 **Sec. 55C-3. - Declaration of need.**

16 It is hereby declared:

- 17 (a) For many years, Tribe’s primary source of revenue has been the two casinos located on
18 the Tribe’s trust land in Cherokee, North Carolina and Murphy, North Carolina. Both
19 casinos are operated under the Indian Gaming Regulatory Act administered by the
20 National Indian Gaming Commission and under a gaming compact between the Tribe
21 and the State of North Carolina.
- 22 (b) Due to smart management and limited competition in the region, these two casinos have
23 been very successful and have enabled the Tribal government to provide a wide range
24 services and benefits to its citizens and employees, which was not possible previously.
- 25 (c) Competition in the Indian gaming and commercial gaming markets is increasing and
26 continued success at the level experienced by the Tribe to-date is not guaranteed; and
- 27 (d) Neighboring states are changing their laws to allow commercial gaming and other
28 Tribes are likely to enter the region to conduct Indian gaming or commercial gaming.
29 That competition will likely reduce Tribal revenues, diminish the Tribe’s ability to help
30 its citizens, and threaten the financial well-being of Tribal citizens; and
- 31 (e) Due to careful budgeting, the Tribe is well-positioned to take advantage of changes in
32 the marketplace that make it financially wise and attractive for the Tribe to identify,
33 pursue and engage in commercial business opportunities in gaming and non-gaming
34 industries, and the CIGEA is created for that purpose.

35 **Sec. 55C-4. - TCGE board of advisors to be bridge entity.**

36 The Board of Advisors of the Tribal Casino Gaming Enterprise (TCGE) established in C.C.
37 Chapter 16A shall perform the functions of the CIGEA Governing Board until such time as

1 the members of the CIGEA Governing Board are appointed as provided in this chapter, to
2 the extent consistent with applicable law and regulation.

3 **Sec. 55C-5. – Governing board membership and term of office.**

4 (a) The CIGEA shall be managed by a Governing Board. Neither the Tribal Council or the
5 Principal Chief or Vice Chief shall have any authority to direct the business affairs of the
6 CGEA, except through the Governing Board, and as a representative of the Tribal
7 government in its capacity as one of the members of the Board.

8 (b) The Board shall have seven voting members.

9 (c) The members of the Board shall be appointed by the Principal Chief and confirmed by
10 weighted vote of the Tribal Council.

11 (d) Each member of the Board shall serve a term of five years, subject to removal based on
12 just cause by a majority of the Board. Nothing in this chapter shall be construed to
13 preclude a member of the Board from serving successive terms, but no member may
14 serve more than ten years total on the Board. There shall be a six-month probationary
15 period for each new appointee to be reviewed by the Board.

16 (e) Any member of the Board may be removed by the Board for just cause. Just cause
17 includes, but is not limited to, failure or inability to be licensed by a gaming regulatory
18 authority, insanity, conviction of a felony, excessive absence from meetings, alcohol or
19 substance abuse, conviction of any misdemeanor involving "deceit, untruthfulness,
20 dishonesty, including, but not limited to, bribery, extortion and embezzlement...", breach
21 of duties, malfeasance or misfeasance.

22 (f) No member of the Board may be an employee of any company formed by the Board,
23 except by unanimous vote of the voting members of the Board.

24 (g) The initial appointees to the Board shall serve terms of two, three, four and five years,
25 respectively, to provide for continuity and rotating succession on the Board. The
26 Principal Chief shall state the term of each appointee nominated, subject to approval by
27 the Tribal Council. After the initial terms expire, all Board members shall serve terms of
28 five years.

29 (h) Any member of the Board who serves based on their employment position shall continue
30 in office until he or she resigns or is removed from those employment positions, or is
31 removed for cause from the Board.

32 (i) No member of the Governing Board shall be finally selected until he or she has
33 completed a background investigation, including a criminal and financial background
34 check, conducted by the Eastern Band of Cherokee Indians.

35 (j) A member of the Governing Board may resign at any time by providing the Principal
36 Chief and the Tribal Council with written notice of his or her intention to resign on a date
37 certain. The resignation shall become effective on the date stated and need not be
38 accepted by the Principal Chief or Tribal Council to be effective.

39 (k) The Principal Chief shall nominate a person to fill a vacancy in the Board within 30 days
40 after the date on which the vacancy becomes effective. The Principal Chief shall then

1 submit the nominee's resume to the Tribal Council for their approval. Action by the
2 Tribal Council shall occur within 30 days after receipt of the nomination from the
3 Principal Chief.

4 **Sec. 55C-6. – Qualifications of board members.**

5 (a) No elected official of the Tribe may be a member of Governing Board during their term
6 of elected office. No former elected official of the Tribe may be a member of the
7 Governing Board who has been formally found by resolution duly passed by Tribal
8 Council to have violated his or her oath of office or to have violated C.C. § 17-45.3
9 (Code of Ethics).

10 (b) No member of the Tribal Gaming Commission (TGC) or employee of the TGC may be a
11 member of the Board while also being a member of the TGC or employee of the TGC.
12 No gaming management contractor who is also currently under contract with the Tribal
13 Casino Gaming Enterprise (TCGE) for the management of the Tribe's casinos located on
14 the Tribe's trust land in Cherokee and Murphy, North Carolina, may be a member of the
15 Board while also being under such contract.

16 (c) No person who is ineligible to be a key employee or primary management official and no
17 person convicted of a felony, embezzlement, theft, or any other money-related crime or
18 honesty-related crime (such as fraud) may serve on the Governing Board.

19 (d) Board members are prohibited from:

20 (1) gambling in any gaming operation owned or operated by the CIGEA or
21 subsidiaries; accepting complimentary items from any gaming owned or operated
22 by the CIGEA. For purposes of this subsection, complimentary items shall not
23 include ceremonial gifts or meals provided at the expense of a Tribal gaming
24 operation, provided that such items do not each exceed \$50.00 in value and are
25 not offered as an inducement or reward for gambling in the operation.

26 (2) providing contractual services of any kind to any gaming operation owned or
27 operated by the CIGEA.

28 (3) providing management services to any gaming operation owned or operated by
29 the CIGEA pursuant to a management contract.

30 (4) accepting gratuities or any other thing of value from any gaming licensee or
31 applicant for a gaming license.

32 (5) engaging in outside employment or activities, including seeking or negotiating for
33 future employment, which conflict with their official duties and responsibilities as
34 a member of the CIGEA.

35 (6) all members of the Board must be eligible to be licensed by the federal and state
36 gaming regulatory authorities, as appropriate, in the state or states in which the
37 CGEA obtains or attempts to obtain an interest in a commercial gaming operation.

38 (7) Each Board member must have attained at least a bachelor's degree or the
39 appropriate post-graduate degree, or an applicable license required for practicing

1 his/her profession pursuant to section 87-1 of the Cherokee Code if such license is
2 required for the position he or she is filling on the Board.

3 (8) At least one member of the Board shall be or shall have been a regional president
4 or higher of a national or international gaming business; at least one member of
5 the Board shall be or shall have been a general manager of a casino; at least one
6 member of the Board shall be an attorney; at least one member of the Board shall
7 have extensive experience as a financial advisor to a gaming business or a Tribal
8 government conducting gaming operations; at least one member of the Board
9 shall be an auditor or certified public accountant; and at least two members of the
10 Board shall be Eastern Band of Cherokee community representatives and enrolled
11 members of the Eastern Band.

12 (9) The Secretary of the Treasury of the Eastern Band of Cherokee Indians or his or
13 her designee shall serve as a voting member of the Governing Board by reason of
14 his/her employment position and shall perform such duties without additional
15 compensation as a part of his/her job duties.

16 (10) Voting members of the Board shall not hold other positions of employment with
17 the Eastern Band of Cherokee Indians except as otherwise provided in this
18 chapter, and except for voting members who may also be members of the Tribal
19 Casino Gaming Enterprise; provided however, that persons serving in such dual
20 roles shall not be compensated by the Board but the Board may pay the
21 reasonable and common expenses of these individuals incurred in the
22 performance of Board duties.

23 (11) Each Board member's character and personal history shall be appropriate to
24 management of the business affairs of CIGEA on behalf of the Tribe.

25 (12) Each appointment to the Board shall be subject to confirmation or withdrawal by
26 the Principal Chief, subject to approval by Tribal Council, for a period of 60 days
27 from the date of appointment, based on background check and credit report.
28 Pending any action by the Principal Chief and Tribal Council under the preceding
29 sentence, each appointee shall serve in a temporary capacity, entitled to exercise all
30 of the powers, and subject to all duties. Withdrawal of an appointment during the
31 review period shall terminate the temporary appointment and leave the affected
32 members position vacant. Confirmation of the appointment or expiration of the
33 review term without action by the Principal Chief and Tribal Council shall make
34 the appointment final and fully effective.

35 (13) Members of the Board and its employees and agents shall not be
36 considered employees of the Tribe for purposes of the Tribal Personnel Policy.
37 Board Members shall be reimbursed from CIGEA funds for all reasonable and
38 approved out-of-pocket expenses incurred while acting on behalf of the CIGEA.

39
40 **Sec. 55C-7. - Elections of officers.**

41 The Board shall, at the first meeting of each fiscal year, elect from among themselves a
42 Chairperson, a Vice-Chairperson and a Secretary. The Board appointed on the basis of
43 his or her experience in auditing or accounting shall be designated as the Treasurer.

1 **Sec. 55C-8. – Duties of officers.**

2 (a) *Positions and selection.* From among the Board members, the Board shall appoint the
3 following Officers of the Board ("Officers"): a Chairperson, a Vice-Chairperson,
4 Secretary, and Treasurer.

5 (b) *Terms of office.* The Board shall appoint its Officers at each annual meeting of the
6 Board in the first week of October.

7 (c) *Powers and duties.* Subject to the supervisory authority of the Board, Officers shall
8 have the following powers and duties, in addition to such other powers and duties as
9 may be set for the office in this article or applicable law, or as may be assigned by the
10 Board:

11 (1) *Chairperson.* The Chairperson shall preside over all Board meetings; sign on
12 behalf of the Board all documents, contracts, or other instruments approved for
13 such execution by the Board; and be responsible, jointly with the Treasurer, for
14 the authorized and secure receipt, maintenance, execution, endorsement,
15 disbursement, and other disposition of all funds, checks, drafts, other order or
16 demands for money, notes other evidence of indebtedness, securities and other
17 valuable instruments and shall have such other powers and duties as may from
18 time to time be assigned to him by the Board.

19 (2) *Vice-Chairperson.* The Vice-Chairperson shall exercise the powers and perform
20 the duties of Chairperson when the Chairperson is absent or disabled, sign on
21 behalf of Board all documents, contracts, or other instruments approved for such
22 execution by the Board, and shall have such other powers and duties may from
23 time to time be assigned to him or her by the Board.

24 (3) *Secretary.* The Secretary shall issue notices for all Board meetings; keep minutes
25 of all meetings; and serve as custodian of and maintain all minutes or meetings
26 and associated records and correspondence of the Board. The Secretary shall
27 make such reports and perform such other duties as are incident to the office, or
28 are property required or assigned to him by the Board.

29 (4) *Treasurer.* The Treasurer shall be responsible, jointly with the Chairperson, for
30 the authorized and secure receipt, maintenance, execution, endorsement,
31 disbursement, and other disposition of all funds, check, drafts or other order or
32 demands for money, notes, other evidence of indebtedness, securities and other
33 valuable instruments be responsible for the maintenance of comprehensive
34 financial books and records of transactions, prepared in accordance with generally
35 accepted accounting principles. The Treasurer shall have principal oversight
36 responsibilities for all financial functions and affairs of the Board and shall serve
37 as the Board's principal financial liaison with the Tribal Council and other
38 members of Board management having financial management responsibilities
39 with the Board with any Contract Manager, accounting firm and financial
40 advisors. The Treasurer shall perform such other duties incident to the office or
41 that are properly required by the Board.

1 (5) The Board may temporarily delegate the Board's powers or duties as an officer to
2 another Board member, until the Board member is available or no longer disabled
3 or until the Tribal Council fills the vacancy.

4 (6) *Duties upon termination of office.* Upon termination from office, each Board
5 member, employee and agent of TCGE shall turn over to his or her successor or to
6 the Chairperson, in a timely fashion and in good order, all monies, books, records,
7 minutes, documents contracts or other property of TCGE in his or her custody. If
8 such property is not turned over or is damaged or missing, the Board may charge
9 each Board member and any employee or agent a reasonable replacement fee.

10 **Sec. 55C-9. Reports to Tribal Council.**

11 The Chairman of the Governing Board shall submit reports to Tribal Council and Executive
12 Committee reports every two months and annually, showing the following:

- 13 (a) A summary of the period activities.
14 (b) The financial condition of the companies.
15 (c) The condition of the properties under the Board's management or control.
16 (d) A summary of any unprofitable ventures and plans for correction.
17 (e) Any significant problems and accomplishments.
18 (f) Plans for the future.

19
20 **Sec. 55C-10. - Preservation of board records.**

- 21 (a) The Secretary of the Board shall prepare and maintain complete and accurate records of
22 all meetings and actions taken by the Board.
23 (b) The Treasurer shall keep complete and accurate financial records of the Board's
24 expenses and receipts, report at least every fiscal quarter to the Board and shall submit a
25 complete annual report to the Board.

26 **Sec. 55-11. - Decision making by board.**

27 The Board shall meet and decide all matters by majority vote of the Board. The Chairperson
28 shall vote on all issues. A majority vote shall be binding on the Board. The Chairperson, or
29 the Vice-Chairperson in the Chairperson's absence, shall preside at each meeting.

30 **Sec. 55-12. - Minutes of board meetings.**

31 The Secretary shall cause to be kept a complete and accurate record of all Board meetings,
32 copies of which shall be furnished to the Board members. The Principal Chief, Vice Chief
33 and Tribal Council may request copies of the minutes and such minutes shall be provided in
34 a timely manner. Personnel matters and financial matters that would put the CIGEA in a
35 competitive disadvantage if disclosed may be redacted by the Board, but oral explanation of
36 the material information redacted shall be provided by the Board to the requesting party or
37 Tribal Council upon request of the party or Council.

38 **Sec. 55-13. - Compensation of board members.**

1 The Board members shall receive compensation and benefits at a level determined by the
2 Principal Chief subject to approval by Tribal Council resolution. This compensation shall be
3 included in the Board's annual budget. Board members shall be reimbursed for actual
4 expenses incurred on Board business, including necessary travel expenses.

5 **Sec. 55-14. - Sub-committees of board.**

6 The Board may from time to time establish consultant groups and advisory Boards which
7 shall have such duties and the members of which shall hold office for such periods as the
8 Board may determine.

9 **Sec. 55C-15. - Ownership of property.**

10 All real and personal property assets used in the operation of the CIGEA whether now
11 existing or hereafter acquired shall be titled in the name of the Cherokee Indian Gaming and
12 Entertainment Authority or subsidiary entity and shall be administered by the CIGEA for
13 the benefit of the CIGEA. If the property (which includes all land, buildings, improvements
14 or fixtures) is used in gaming that is regulated by the Indian Gaming Regulatory Act and
15 subject to restrictions on alienation imposed by federal Indian law, all such real property
16 shall be held in a manner to maintain restrictions upon alienation imposed by the United
17 States, or in the name of the United States in trust for the CIGEA or EBCI, and the title to
18 such real property shall always remain in trust status.

19 **Sec. 55C-16. - Severability of provisions.**

20 If any provision of this chapter or the application thereof to any person or circumstances
21 shall be adjudged by any court of competent jurisdiction to violate applicable law or
22 otherwise to be invalid, then that provision shall be severable and considered null and void,
23 but such judgment shall not affect, impair or invalidate the remainder of this chapter or its
24 application to other persons and circumstances, but shall remain in full force and effect, and
25 such judgment shall be confined in its operation to the

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27 **Sec. 55C-17. – Board process.**

28 (a) The Board shall meet not less than once a month and shall meet more frequently as need
29 requires.

30 (b) Four voting members of the Board shall constitute a quorum.

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32 **Sec. 55C-18. – Compensation.**

33 Members of the Board shall receive compensation for their services at a rate to be
34 established by the Principal Chief with agreement of the Tribal Council, and reimbursement
35 for expenses, including traveling expenses, when incurred in the discharge of their duties.
36 Expenses may be advanced with the approval of the Board. No member of the Board shall
37 have his compensation reduced during his term of office, except that if funds be unavailable

1 for appropriation, the compensation of all board members may be reduced proportionally to
2 the availability of funds.

3
4 **Sec. 55C-19. - Powers and duties of board.**

5 The Board shall have the power and duty to perform all acts that are necessary and proper
6 for the lawful, efficient and profitable operation of commercial gaming operations,
7 including but not limited to the following:

8 (a) The Governing Board shall be responsible for direction and oversight of the CIGEA and
9 is authorized to undertake any and all actions necessary and proper for the execution of
10 such duties consistent with the purposes for which the CIGEA is established.

11 (b) Authorizing the formation of business entities for undertaking and managing the Tribe's
12 commercial gaming activities separate from the general affairs of the Tribal Council,
13 with the ability to enter into legally-binding contracts and commercial relationships
14 without the need for formal Tribal Council action so long as the sovereign immunity of
15 the Tribe is preserved and the assets of the Tribal government (distinguished from
16 CIGEA assets) are protected.

17 (c) To hire such officers and employees as may be required or advisable to to manage the
18 day-to-day operations of the CIGEA, including a CEO.

19 (d) The Board shall establish personnel policies and procedures for its employees, shall have
20 authority to set rates of pay after consideration of comparable rates in the industry.
21 Tribal Council shall not be involved in any individual employee hiring, firing, and
22 discipline decisions.

23 (e) The Board shall establish policies and procedures for the orderly and predictable conduct
24 of its internal business.

25 (f) The Board shall develop short and long range plans for improvement of business
26 opportunities in commercial gaming and commercial non-gaming businesses, access to
27 capital, and other measures consistent with the CIGEA's charge and purpose.

28 (g) The Board shall establish and from time to time amend a budget consistent with
29 available funds and responsive to CIGEA needs.

30 (h) Approve the establishment of bank accounts as required;

31 (i) Approve the establishment of investment accounts that minimize risk and maximize
32 prudent financial return for the purposes of increasing funds to provide improved and expanded
33 services.

34 (j) Authorize the expenditure of funds in the accounts of CIGEA as necessary for the
35 operation and maintenance of the business and properties of CIGEA and the timely payment of
36 financial liabilities and obligations of CIGEA;

37 (k) Enter into agreements, contracts, understandings with any government agency, person,
38 partnership, corporation or Indian Tribe, which may include, but are not limited to, establishing
39 and maintaining a separate indirect cost rate with the Federal government;

1 (l) Lease property for such periods as are lawfully authorized to hold and manage or
2 sublease such properties.

3 (m) The Governing Board may adopt by-laws, provided that such by-laws shall not
4 contain provisions inconsistent with or in violation of the provisions of this chapter and
5 applicable law.

6 (n) Limitations of authority. The CIHA Governing Board shall possess only those powers
7 arising under this chapter, and the authority and power of the Board is constrained by the
8 limitations contained in this chapter.

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10 BE IT FINALLY RESOLVED that this ordinance shall be effective upon ratification by
11 the Principal Chief and all prior ordinances or portions thereof that conflict with this
12 ordinance are rescinded to the extent necessary to resolve the conflict.

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14 *Submitted by the Office of the Attorney General.*