

TABLED

Cherokee Council House
Cherokee, North Carolina

SEP 03 2020

Date

ORDINANCE NO. 256 (2020)

WHEREAS, the Charter and Governing Document authorizes and empowers the Eastern Band of Cherokee Indians (EBCI) Tribal Council to adopt laws and regulations for the general government of the Tribe. Charter and Governing Document, sect. 23 (Sept. 5, 1995) *see also* C.C. §117-10.

WHEREAS, the Eastern Band of Cherokee Indians' policy is to respect, revere and protect all individuals, their communities, and their unique qualities; and,

WHEREAS, the Eastern Band of Cherokee Indians wants to ensure that individuals with disabilities have full access to employment, housing, and public services; and,

WHEREAS, there are a number of enrolled members with an intellectual or developmental disability who deserve equality and equity in their personal and professional setting; and,

WHEREAS, disability rights are civil rights which, are often overlooked in the workplace; and,

WHEREAS, there is a need to codify provisions to ensure their right to access to employment opportunities with equitable supervision; and,

NOW, THEREFORE, BE IT ORDAINED by the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present that the Eastern Band of Cherokee Indians Tribal Council amends the Cherokee Code Chapters 130A, 95, 96, 115, and 161 as follows in EXHIBIT A.

BE IT FURTHER ORDAINED that the Division of Human Resources shall use the Affirmative Action Plan attached as EXHIBIT B as a benchmark.

BE IT FURTHER ORDAINED the provisions of the Ordinance which amend or adopt new sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall incorporate such amended provisions in the next codification of the Cherokee Code.

BE IT STILL FURTHER ORDAINED should any provision of this Ordinance be determined invalid by the Cherokee Supreme Court, or the Cherokee Court without appeal to the Cherokee Supreme Court, or any other court of competent jurisdiction, those portions of this Ordinance which are not determined invalid shall remain the law of the Eastern Band of Cherokee Indians

BE IT FINALLY ORDAINED that this ordinance shall become effective when ratified.

*Submitted by: Chelsea Saunooke, Wolftown/Big Y Representative
Bo Crowe, Wolftown/Big Y Representative*

Cherokee Code

Chapter 130A – PUBLIC HEALTH AND HUMAN SERVICES

ARTICLE I. – CHEROKEE PUBLIC HEALTH AND HUMAN SERVICES

Sec. 130A-6. – ~~Confidentiality of records~~ Disabled Individuals Civil Rights.

(a) Purpose. The Eastern Band of Cherokee Indians' policy is to respect, revere and protect all individuals, their communities, and their unique qualities.

(b) Definitions. The following definitions shall apply:

(1) Disability shall mean a physical or mental impairment that substantially limits an individual's ability to engage in one or more major life activity.

(2) Major Life Activity shall include, but not limited to, care for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Additional major life activities include the operation of a major bodily function, including but not limited to, function of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Reasonable accommodation shall mean necessary and appropriate modification not imposing a disproportionate or undue hardship, needed to ensure that a person with a disability is able to obtain, access, or participate in a right, benefit, or opportunity.

(4) Undue Hardship shall mean an action requiring significant difficulty or expense, when considering the following factors:

A. The nature and cost of the needed accommodation;

1 B. The overall financial resources of the facility or facilities involved in the
2 provision of the reasonable accommodation; the number of persons
3 employed at such facility; the effect on expenses and resources, or the
4 impact otherwise of such accommodation upon the operation of the
5 facility;

6 C. The overall financial resources of the covered entity; the overall size of the
7 business of a covered entity with respect to the number of its employees;
8 the number, type, and location of its facilities; and

9 D. The operation or operations type of the covered entity, including the
10 composition, structure, and functions of the workforce of such entity; the
11 geographic separateness, administrative, or fiscal relationship of the
12 facility or facilities in question to the covered entity.

13
14 (c) *Definition Application and Burden of Proof.*

15 (1) Medical evidence is necessary to establish that an individual has a disability.
16 Sources of medical evidence may include documentation or testimony from
17 medical facilities, such as the Cherokee Indian Hospital. An individual seeking
18 the protection of the civil rights stated in this section as an individual with a
19 disability will have to demonstrate to the Cherokee Court, by a preponderance of
20 evidence, that he or she has a disability as defined in C.C.130A-6(b)(1).

21 (2) The request denial for reasonable accommodation can only be made by
22 demonstrating undue hardship, as defined in C.C. 130A-6(b)(4), to the Cherokee
23 Court by a preponderance of the evidence.

24
25 (d) *Housing.*

26 (1) Any provider of public housing on the Qualla Boundary must make reasonable
27 accommodations in its policies, practices, premises and provision of services as
28 will afford a tenant or prospective tenant with a disability the opportunity to
29 occupy, use and enjoy a dwelling and its premises to the same extent as any other
30 tenant.

1 (2) No private or public housing provider on the Qualla Boundary shall discriminate
2 against individuals with disabilities when providing housing.

3
4 (e) *Employment.* Any Tribal or private employer shall not deny an individual with a
5 disability selection solely for or retention in employment because of his or her disability
6 so long as reasonable accommodations can be made that will allow the individual to
7 perform his or her employment duties.

8
9 (f) *Education.* No student with a disability attending any school located on the Qualla
10 Boundary shall be denied a free appropriate public education designed to meet his or her
11 unique needs in the least restrictive environment.

12
13 (g) *Voting.* No individual with a disability shall be denied reasonable accommodations in the
14 exercise of their right to vote. Reasonable accommodations shall be given in all processes
15 required to exercise the right to vote, including, but not limited to, becoming a registered
16 voter, accessing public polling places, and engaging in early voting or alternative voting.

17
18 (h) *Incarcerated Individuals with a Disability.* No incarcerated individual with a disability
19 shall be denied reasonable accommodations during such individual's time in Eastern
20 Band of Cherokee Indian custody.

21
22 (i) *Government Services.* No otherwise qualified person with a disability shall, by reason of
23 such disability, be denied or excluded from the benefit of any service, program or activity
24 offered by any governmental or public entity on the Qualla Boundary, unless no
25 reasonable accommodations can be made which will afford access to and participate in
26 such service, program or activity.

27
28 (j) *Public Accommodations.* All private businesses and commercial operations must make
29 such reasonable accommodations as are necessary to ensure the individuals with
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1 disabilities have access to goods and services offered equal to the access afforded to
2 individuals without disabilities.

3
4 (k) Remedies. Any person injured in violation of this section and their rights were violated as
5 a result of an action or inaction, may seek remedies for such violation in the form of legal
6 and equitable relief in the Cherokee Courts.

7
8 ~~(a) All privileged patient medical records or records defined in 26 U.S.C. § 6103 in the~~
9 ~~possession of the Division shall be confidential and shall not be public records~~
10 ~~under chapter 132 of the Cherokee Code and shall be maintained and disposed of~~
11 ~~pursuant to the regulations or other agreements governing such documents.~~

12 ~~(b) Subject to C.C. 7B-2901(d), the Division shall restrict the use of or disclosure of~~
13 ~~information concerning individuals assisted by the Division to purposes directly~~
14 ~~connected with:~~

15 ~~(1) The administration of programs or services provided by the Tribe or its~~
16 ~~entities and programs or services of the Tribe or its entities provided under~~
17 ~~parts A, B, D or E of Title IV of the Social Security Act ("SSA"), or under~~
18 ~~titles I, V, X, XIV, XVI, XIX, or XX of the SSA;~~

19 ~~(2) Any investigation, prosecution, or criminal or civil proceeding, conducted~~
20 ~~in connection with the administration of any such service or program;~~

21 ~~(3) The administration of any other federal or federally assisted program~~
22 ~~which provides assistance, in cash or in kind, or services, directly to~~
23 ~~individuals on the basis of need;~~

24 ~~(4) Any audit or similar activity conducted in connection with the~~
25 ~~administration of any such service or program by any governmental~~
26 ~~agency which is authorized by law to conduct such audit or activity; and~~

27 ~~(5) Reporting and providing information to appropriate authorities and~~
28 ~~agencies with respect to known or suspected child maltreatment; and the~~
29 ~~safeguards so provided shall prohibit disclosure to any committee or~~
30 ~~Tribal Council (other than an agency referred to in subsections (1) (4)~~

1 above with respect to an activity referred to in such clause), of any
2 information which identifies by name or address any such applicant or
3 recipient of Tribal, Tribal entity or other governmental agency services,
4 programs or assistance, including but not limited to any applicant or
5 recipient of assistance under SSA Title IV E; except that nothing
6 contained herein shall preclude the Tribe from providing standards which
7 restrict disclosures to purposes more limited than those specified herein, or
8 which, in the case of adoptions, prevent disclosure entirely.

9 ~~(e) Except as provided in (a) and (b) above, it shall be unlawful for any person to obtain,
10 disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or
11 other information concerning persons applying for or receiving public assistance or
12 human services or are directly derived from the records, files or communications of the
13 Division or acquired in the course of performing official duties except for the purposes
14 directly connected with the administration of the programs of public assistance and
15 human services in accordance with federal and Tribal law, rules and regulations.~~

16 ~~(d) The Division may adopt rules governing access to case files for human services and
17 public assistance programs.~~

18
19 **Sec. 130A-7. – Confidentiality of records.**

20
21 (a) All privileged patient medical records or records defined in 26 U.S.C. § 6103 in the
22 possession of the Division shall be confidential and shall not be public records
23 under chapter 132 of the Cherokee Code and shall be maintained and disposed of
24 pursuant to the regulations or other agreements governing such documents.

25 (b) Subject to C.C. 7B-2901(d), the Division shall restrict the use of or disclosure of
26 information concerning individuals assisted by the Division to purposes directly
27 connected with:

28 (1) The administration of programs or services provided by the Tribe or its entities
29 and programs or services of the Tribe or its entities provided under parts A, B, D

1 or E of Title IV of the Social Security Act ("SSA"), or under titles I, V, X, XIV,
2 XVI, XIX, or XX of the SSA;

3 (2) Any investigation, prosecution, or criminal or civil proceeding, conducted in
4 connection with the administration of any such service or program;

5 (3) The administration of any other federal or federally assisted program which
6 provides assistance, in cash or in kind, or services, directly to individuals on the
7 basis of need;

8 (4) Any audit or similar activity conducted in connection with the administration of
9 any such service or program by any governmental agency which is authorized by
10 law to conduct such audit or activity; and

11 (5) Reporting and providing information to appropriate authorities and agencies with
12 respect to known or suspected child maltreatment; and the safeguards so provided
13 shall prohibit disclosure to any committee or Tribal Council (other than an agency
14 referred to in subsections (1)--(4) above with respect to an activity referred to in
15 such clause), of any information which identifies by name or address any such
16 applicant or recipient of Tribal, Tribal entity or other governmental agency
17 services, programs or assistance, including but not limited to any applicant or
18 recipient of assistance under SSA Title IV-E; except that nothing contained herein
19 shall preclude the Tribe from providing standards which restrict disclosures to
20 purposes more limited than those specified herein, or which, in the case of
21 adoptions, prevent disclosure entirely.

22 (c) Except as provided in (a) and (b) above, it shall be unlawful for any person to obtain,
23 disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or
24 other information concerning persons applying for or receiving public assistance or
25 human services or are directly derived from the records, files or communications of the
26 Division or acquired in the course of performing official duties except for the purposes
27 directly connected with the administration of the programs of public assistance and
28 human services in accordance with federal and Tribal law, rules and regulations.

29 (d) The Division may adopt rules governing access to case files for human services and
30 public assistance programs.

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3 **Chapter 95 – WAGES/EMPLOYMENT RIGHTS**

4 **ARTICLE I. – MINIMUM WAGE**

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6 **Sec. 95-1.- Minimum wage scale.**

7 (a) *Purpose:* The purpose of this section is to protect and stabilize wages of persons
8 employed by private persons or businesses on the Cherokee Indian Reservation.

9 (b) *Scope:* Every private employer who engages in business within the exterior boundaries of
10 the Eastern Band of Cherokee Indians Reservation shall comply with all federal
11 employment and wage laws, regulations and standards. Every private employer shall
12 comply with C.C. §130A-6. The term "private employer" shall not include the Eastern
13 Band of Cherokee Indians or any separately chartered Tribal organizations, entities or
14 instrumentalities.

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16 **Chapter 96 – TRIBAL EMPLOYEES**

17 **ARTICLE I. – IN GENERAL**

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20 **Sec. 96-10.1. – Disabled Individual Civil Rights.**

21 Any Tribal program, department, division, L.L.C, entity, board, or commission shall not
22 deny an individual with a disability selection solely for or retention in employment because of
23 his or her disability so long as reasonable accommodations can be made that will allow the
24 individual to perform his or her employment duties.

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26 **Chapter 115 – EDUCATION**

27 **ARTICLE I. – GENERAL PROVISIONS**

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29 ***

30 **Sec. 115-7.1. – Disabled Individual Civil Rights.**

1 Any school located on the Qualla Boundary shall not deny any student with a disability
2 free appropriate public education designed to meet his or her unique needs in the least restrictive
3 environment.

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5 **Chapter 161 – ELECTIONS**
6 **ARTICLE III. – BOARD OF ELECTIONS**

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8 **Sec. 161-19. – Powers and duties of the election board.**

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10 (n) The Board shall provide reasonable accommodations for individual with a disability
11 when exercising of their right to vote. Reasonable accommodations shall be given in all
12 processes required to exercise the right to vote, including, but not limited to, becoming a
13 registered voter, accessing public polling places, and engaging in early voting or
14 alternative voting.

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NAVAJO NATION'S AFFIRMATIVE ACTION PLAN FOR THE HANDICAPPED

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III. STATEMENT OF POLICY

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V. EMPLOYMENT PROCEDURES

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- D. Follow-up

VI. AMENDMENTS

I. Authority

A. Legal authority is contained in:

1. Rehabilitation Act of 1973:

Section 501 - Employment of Handicapped Individuals
Section 502 - Architectural and Transportation Barriers Compliance Board
Section 503 - Employment Under Federal Contracts
Section 504 - Non-Discrimination Under Federal Grants

2. Education for all Handicapped Children - Public Law 94-142

3. Navajo Tribal Council Resolution CMY-40-77 - Equal Access to Employment and Removal of Architectural Barriers

4. Architectural Barriers Act of 1968

5. Department of Labor, Code of Federal Regulations, Title 20, Chap. VI.

II. Definition of Handicapped

A. A Handicapped individual is an individual:

1. who has a physical or mental impairment which substantially limits one or more of his major life activities, or
2. who has a record of such an impairment, or
3. who is regarded as having such an impairment.

B. A "qualified" handicapped individual is a handicapped individual who is capable of performing a particular job with reasonable accommodation to his or her handicap, at the minimum acceptable level of productivity applicable to a non-handicapped incumbent.

III. Statement of Policy

A. Philosophy:

"ALL PERSONS SHOULD HAVE AN OPPORTUNITY TO REALIZE THEIR GREATEST POTENTIAL TO THE EXTENT OF THEIR MENTAL AND/OR PHYSICAL CAPABILITIES"

B. Applicability:

1. The Navajo Nation's Affirmative Action Plan stated herein shall apply to all employers operating within the Navajo Nation, including the Navajo Tribal government, the Bureau of Indian Affairs, the U.S. Public Health Service, public school districts, Tribal enterprises, private profit and non-profit corporations, or any other entities conducting business on or near the reservation.
2. In addition to the policies stated herein, all affected employers are subject to the Rules and Regulations set forth in the Federal Register Vol. 42, No. 86, Wednesday, May 4, 1977 - Title 45 - Public Welfare, Subtitle A, Part 84, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance".

C. Non-Discrimination in Hiring:

Within the framework of Indian Preference, the Navajo Nation maintains and enforces a policy which prohibits discrimination against any employee or applicant for employment on the basis of physical or mental handicap in regard to any position in an agency for which the applicant or employee is qualified. The Navajo Nation, in recognition of and as a remedy to the effects of past discrimination, will take "Affirmative" action to employ, advance in employment and otherwise treat qualified handicapped Indian individuals without discrimination based upon their physical and/or mental handicap in all personnel practices relating to: Recruitment, employment, promotions, transfers, demotions, reclassifications, reduction in force, terminations, salary rates and other forms of compensation and selection for training or career development.

D. Accommodation:

1. The Navajo Nation will make reasonable attempts to accommodate the physical and/or mental limitations to individuals. This concept of accommodation assures that the handicapped applicant and/or employee can get into buildings, job sites and restrooms. The concept of accommodation is the major obstacle for employing the handicapped. Accommodation also refers to removal of attitudinal barriers on the part of the non-handicapped staff.
2. The Navajo Nation will take necessary action to make all public buildings, private businesses, community services and community activities accessible to the handicapped.

IV. Administration of Policy

A. Navajo Nation Council on the Handicapped:

Shall be established to oversee and direct the action items contained in this Affirmative Action Plan, including complaints in reference to removing architectural barriers, per the NNCCI Plan of Operation.

B. Specific Program Responsibilities:

1. Personnel Services Departments - All Agencies/Programs
 - a. Conduct an analysis of employees to determine the number, the types and the needs of the qualified handicapped individuals employed within the Navajo Nation.
 - b. Review its personnel procedures to assure careful, thorough and systematic consideration of the job qualifications of handicapped applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.
 - c. Review all policies and practices relating to employee benefits (including leave policies, retirement plans, insurance programs, educational compensation, grievance procedures), to ensure they are available to all employees on an equal basis without discrimination due to physical or mental handicap.

2. Equal Opportunity Offices

- a. Provide a discrimination complaint/conciliation procedure for all employees and applicants for employment which will be directed at resolving discrimination complaints at the lowest organizational level within the agency through the executive of precise and calculated action in a relatively short time frame. If the decision reached is adverse to the employee, the agency shall inform the complainant's right to file a complaint with Office of Labor Relations, and if necessary, right to file a complaint with the United States Department of Labor.
- b. Ensure that an exit interview program is developed and implemented in order to check on whether or not discrimination was the factor in an employee's dismissal.
- c. Establish a monitoring system in order to ensure that all policies, procedures, requirements and actions taken in recruiting, employing, promoting and transferring employees are in strict adherence to merit system principles, are nondiscrimination regarding handicapped status and in compliance to the guidelines set forth by the Navajo Nation and by the Federal Equal Employment Opportunity Coordinating Council.
- d. Assure that all program directors are informed of the Navajo Nation Affirmative Action Plan for the Handicapped.

3. Navajo Vocational Rehabilitation Program - The Navajo Tribe

- a. Provides technical assistance to agency management on all key employment and personnel policies and issues as regards equal employment opportunity within a framework of Indian preference.
- b. Ensures that a career development or upward mobility programs be developed and implemented in order to provide opportunity for career advancement for employees presently in deadend and non-professional positions.
- c. To coordinate with the Maintenance Department and Design and Engineering to determine what architectural barriers exist. Whenever feasible ramps will be installed, doorways, wash rooms and drinking fountains will be modified to accommodate persons in wheelchairs. Parking areas will be provided adjacent to the work site. Additional accommodations will be made on an individual basis as needs arise.

4. Design and Engineering Department - The Navajo Tribe

Reviews all new construction to insure accessibility to the handicapped. Design and Engineering Department incorporates design features into all plans and specifications and reviews and signs off on final plans and specifications prior to bid advertisement.

5. Navajo Housing Authority and other Housing Committees.

- a. In coordination with Agency/Program housing departments, Navajo Housing Authority and other housing committees will insure handicapped persons are given due consideration for housing needs.
- b. Conduct an analysis to determine number of houses currently accessible to handicapped persons and number of houses currently occupied by handicapped individuals.

6. Office of Navajo Labor Relations

- a. Work cooperatively with the Navajo Nation Council on the Handicapped to insure that the Navajo Nation Affirmative Action Plan for the Handicapped is implemented.
- b. Assure that all employers affected by said Plan carry out the policy stated herein in a satisfactory manner.
- c. Receive complaints and take appropriate action to insure that handicapped applicants and employees are afforded their rights as set forth in this Plan.
- d. Assure that the "affirmative action" statement contained herein is included in all contracts and subcontracts between the Tribe and other entities on the Navajo reservation.
- e. Take appropriate action to insure compliance with these policies, including the withholding of funds or cancellation of contracts, leases, or other agreements in the event of non-compliance.

V. Employment Procedures

A. Employment Outreach:

1. Serious efforts will be made to search for qualified handicapped applicants through:
 - a. Direct contact with Federal, Tribal and Local Agencies
 - b. Positive statements in media advertising to solicit qualified handicapped applicants, i.e., "eligible handicapped individuals are invited to apply."
2. Any questions concerning the physical or mental impairment of an applicant will be deleted from all job application forms.

B. Placement:

1. Proper placement of the handicapped will be done jointly through the efforts of a Vocational Rehabilitation Specialist, Navajo Vocational Rehabilitation Program and a designated representative of Program Personnel Service Department. Minor accommodations in the work environment will be made when required.

2. The assignments of a handicapped person to a job should be based on what the person has to offer, using the "whole person concept," not on what the individual has lost or lacks, thus the individual's impairment should not interfere with job performances.
3. Whenever necessary, health examinations and medical release may be obtained prior to job placement.

C. Interviewing:

1. Ensure that all hiring agents ask only questions that can be proven to be job-related and are not discriminatory due to race, color, sex, national origin, age, religious creed, political affiliation and handicapped status or other nonrelated inquiries.
2. In each case where a handicapped employee or applicant is rejected for employment, promotion, or training, a statement of the reasons will be appended to the application form or personal file. This statement must include a comparison of the qualifications of the handicapped applicant or employee and the person selected, as well as a description of the accommodation considered.
3. The application or personnel form for each known handicapped applicant must be annotated to identify each vacancy for which the applicant was considered, and the form must be quickly retrievable for review by the Navajo Tribe, Office of Navajo Labor Relations, and the agency's personnel officials for use in investigations and internal compliance activities.

D. Follow-up:

1. Once the handicapped individual is placed on a job or on-the-job training the individual shall be subject to the usual probationary requirements job procedures.
2. The Vocational Rehabilitation Specialist will make sufficient job visits during the first thirty (30) days to assure the individual every reasonable supportive and counselling service to maximize his or her success.

VI. Amendments

Deletion, addition, changes can be made by two-thirds (2/3) vote of the Navajo Nation Council on the Handicapped.