

TABLED

Cherokee Council House
Cherokee, North Carolina

MAY 06 2021

Date

Ordinance No. 445 (2021)

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, Tribal Council confirms several appointments made by the Principal Chief; and

WHEREAS, currently there is not a confirmation process to review the appointments, and;

WHEREAS, there is a need to establish a Tribal Council confirmation process.

NOW THEREFORE BE IT ORDAINED in Council assembled at which a quorum is present that the Tribal Council amends Cherokee Code Ch. 117, Tribal Government, as follows in EXHIBIT A.

BE IT FURTHER ORDAINED the Ordinance provisions that 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 the prior C.C. §117-36, C.C. Ch. 120, Resolution No. 36 (1954) and Resolution No. 29 (1987) and any other resolution or ordinance in conflict are rescinded and that this ordinance shall become effective when ratified by the Principal Chief or Vice-Chief. Charter and Governing Document, sect. 12 (Oct. 8, 1986).

Submitted By: Dike Sneed, Painttown Community Representative

Cherokee Code

Chapter 117 – TRIBAL GOVERNMENT

ARTICLE III-A– APPOINTMENT CONFIRMATION RULES

Sec. 117-44.1 – Purpose and applicability.

Confirming or approving appointments.

- a. The hearing rules shall apply to Tribal Council when considering a commission, committee, or board confirmation.
- b. Upon completing a confirmation hearing the Tribal Council shall determine whether to confirm or reject the appointment.
 - 1. When Tribal Council confirms the appointment, the Tribal Council shall submit a resolution at the next Tribal Council session.
 - 2. When Tribal Council rejects the appointment, the Chairman shall notify the Principal Chief in writing with in five calendar days of the hearing.
- c. These rules shall be construed in accordance with Charter and Governing Document sec. 23, C.C. 16-2.01(b), C.C. 16A-3(b), C.C. 18B-200(b), C.C. 55B-3.1(B)(1), C.C. 117-41(a), C.C. 130A-8, C.C.130B-3(b), and other applicable laws of the Eastern and of Cherokee Indians.

Sec. 117-44.2 – Initiating a Tribal Council confirmation hearing.

- a. The Principal Chief shall submit the following to the Tribal Operations Program:
 - 1. Letter requesting a confirmation hearing;
 - 2. Offer letter;
 - 3. Acceptance letter; and
 - 4. Resume.
- b. During the Probationary Term:

- 1 1. Tribal Council shall review each new appointee within the six-month
2 probationary period. C.C. 16-2.01(d), C.C. 16A-3(d), C.C. 130B-3(e), or
3 any other subsequent code provision.
- 4 2. The Tribal Council may initiate, schedule and conduct a performance
5 evaluation hearing to evaluate and consider removing the member from
6 office at any time during the probationary period.

7

8 **Sec. 117-44.3 – Hearing notice and date.**

9 Upon receiving written notice from the Principal Chief, or when calling a hearing on the
10 Tribal Council’s own initiative, the Chairman shall set a hearing on the appointment. Within five
11 working days of setting a hearing, the Tribal Operations Program shall send written notice to the
12 Principal Chief and the appointee delineating the hearing date, time, and location.

13

14 **Sec. 117-44.4 – Extension of time.**

- 15 a. Prior the hearing, the Chairman may extend the hearing date upon:
 - 16 1. The Principal Chief’s written request or the appointee showing good
17 cause;
 - 18 2. Request from a Tribal Council member; or
 - 19 3. Good cause.
- 20 b. A hearing shall not be extended more than ten (10) working days after the
21 originally scheduled hearing.
- 22 c. The Chairman shall promptly provide written notice regarding extension request.
23 If approved, the notice shall include the new hearing date, time, and location.
- 24 d. If Tribal Council approves the extension request, the Tribal Operations Program
25 shall send written notice of the hearing date, time, and location to the Principal
26 Chief, the appointee, and the Cherokee One Feather.
- 27 e. Due to the thirty (30) day action requirement, this section shall not apply to
28 vacancy confirmation hearings. C.C. 16-2.01(i), C.C. 16A-3(i), C.C. 117-41(e)(3),
29 C.C. 130A-8(c)(3), C.C. 130B-3(k) or any other subsequent code provision. The
30

1 Principal Chief shall request a hearing according to the timelines set forth in this
2 Chapter.

3
4 **Sec. 117-44.5 – Public notice and testimony.**

5 a. Public Notice. Tribal Operations Program shall notify the Cherokee One Feather
6 with the hearing date, purpose, time, location and the rules governing public
7 testimony. Tribal Operations Program shall post written hearing notice in a
8 conspicuous place at the Tribal Operations Program office and the Council House.

9 b. Public Notice Requirements. The public notice shall clearly indicate that the
10 hearing is open to the public and the Tribal Council invites public testimony only
11 in accordance with these rules. Notice shall specify that anonymous comments
12 will not be accepted. Members of the general public who want to participate in the
13 hearing shall submit written testimony to the Tribal Council Chairman in care of
14 the Tribal Operation Program not less than five working days prior to the hearing.
15 Tribal Operations Program shall provide complete and legible photocopies of the
16 written testimony to the Tribal Council Chairman, Principal Chief (if a
17 confirmation hearing), and the nominee or appointee.

18 c. Testimony shall not include personal matters pending in litigation.

19 d. At the Council’s discretion, misconduct allegations may be heard. However,
20 criminal misconduct allegations shall be forwarded to the tribal prosecutor for
21 immediate investigation. Criminal misconduct allegations shall stop the Council’s
22 hearing until such time the investigation is completed. Once the investigation is
23 complete, the Council may resume the hearing with new timelines.

24
25 **Sec. 117-44.6 – Hearing.**

26 a. The Tribal Council Chairman shall preside at the hearing. A Council quorum shall
27 be present. If the Tribal Council Chairman is absent, the Vice-Chairman shall
28 preside.

- 1 b. The Tribal Council Chairman shall conduct and regulate the hearing in a fair and
2 orderly manner. Subject to these rules, the Tribal Council Chairman shall extend
3 the right to be heard to all parties.
- 4 c. Upon Tribal Council request, the Legislative Counsel shall provide legal
5 assistance and advice to the committee.
- 6 d. The hearing shall be open to the public and shall be recorded. However, executive
7 sessions shall not be open to the public and shall not be recorded.
- 8 e. The North Carolina Rules of Evidence shall not apply to the Tribal Council
9 hearing. The Chairman may exclude evidence that is irrelevant, immaterial,
10 unduly repetitious, or unfairly prejudicial. If any party objects to the conduct of
11 the hearing, the objecting party shall state the objection orally during the hearing
12 or shall submit a written letter to the Council within five working days of the
13 hearing.
- 14 f. All Tribal Council members, including the Chairman, may ask questions of any
15 testify party. Legislative Counsel may ask questions if the Chairman permits.
- 16 g. The Chairman shall administer oaths to all testifying parties.
- 17 h. The appointee shall have the first opportunity to address the Council for up to
18 thirty (30) minutes. The Chairman may allow additional time to the appointee.
19 The appointee may provide written material to the Council in support of their
20 appointment. If the appointee brings supporting documents, they need to provide
21 the Council with fifteen (15) copies.
- 22 i. This section applies to confirmation hearings only: The Principal Chief shall have
23 up to thirty (30) minutes to address Tribal Council. The Chairman may allow
24 additional time to the Principal Chief. The Principal Chief shall provide the
25 Council with fifteen (15) copies of the appointees offer letter, acceptance letter,
26 resume, and any other documents for the committee.
- 27 j. After the above presentations, the Chairman shall open the hearing to public
28 testimony submitted in accordance with C.C. 117-32.4(b). Public testimony shall
29 be limited to fifteen minutes or less per individual. The testimony shall pertain to
30 the written statement provided in accordance with C.C. 117-32.4(b).

1 k. The appointee and if applicable the Principal Chief shall each have up to thirty
2 (30) minutes to make closing remarks. The appointee shall conclude last. The
3 Chairman may allow additional time.

4 l. At the conclusion, Tribal Council shall recess in executive session to review and
5 evaluate the testimony, the record, and appointee's qualifications.

6
7 **Sec. 117-44.7 – Decision.**

8 a. The Tribal Council shall base its decision and recommendation on the evidence
9 submitted during the hearing and its independent determination on whether the
10 appointee meets the qualifications and requirements specified in the Cherokee
11 Code.

12 b. In open session and by majority vote, Tribal Council shall determine whether the
13 appointee is confirmed or rejected.

14 1. If Tribal Council confirms the appointment, the Tribal Council shall
15 submit a resolution at the next Tribal Council session.

16 2. If Tribal Council rejects the appointment, the Chairman shall notify the
17 Principal Chief in writing with in five calendar days of the hearing.

18
19 **Sec. 117-44.8 – Suspension of rules.**

20 For good cause, the Tribal Council may suspend any provision of these rules by motion,
21 second, and majority vote; provided the suspension is consistent with the principle of fairness.
22 The motioning party shall identify the rule to be suspended and state the good cause for
23 suspension. A motion to suspend the rules is open to debate. Good cause may include allowing a
24 person who cannot read or write testify at the hearing.