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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

FEB 03 2022

Date: _____

ORDINANCE NO.: 137 (2021)

An ordinance amending Tribal election law in Cherokee Code Chapter 161.

WHEREAS, the Eastern Band of Cherokee Indians (EBCI) is a federally-recognized Indian tribe with sovereign powers of self-government; and

WHEREAS, EBCI Charter and Governing Document § 6 empowers Tribal Council to enact rules and regulations for the conduct of Tribal elections and the Tribe has codified its election laws in Cherokee Code Chapter 161; and

WHEREAS, from time to time it is necessary to conduct a review of Cherokee Code Chapter 161; and

WHEREAS, the EBCI Board of Elections has undertaken a comprehensive review of Cherokee Code Chapter 161 and makes the following suggestions and proposed amendments to the Election Code, for Tribal Council's consideration, which are listed below; and

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 the following amendments are made to Cherokee Code Chapter 161:

Sec. 161-4. Filing for office—Certification of candidates.

(g) At the time the applicant files an application to be a candidate for Tribal office, ~~or no later than three business days following receipt of notice of certification as a candidate for Tribal office,~~ the candidate shall do the following:

- (1) sign an agreement under oath to use the voter registration list provided to the candidate pursuant to Section 161-11.3 of this Chapter only for truthful communications with eligible voters in connection with the election and to clearly identify himself/herself in all such election-related communications;
- (2) affirm in writing and under oath that the candidate has reviewed and is aware of, understands and agrees to follow the Tribe's election law, including, but not limited to, the following:
 - a. the residency requirements for the office sought;
 - b. the eligibility criteria to be a candidate for the office sought;

- 1 c. that communications by the candidate with the Board and with
2 public shall be truthful; and
3 d. that any violations of the requirements for candidacy or the oaths
4 or attestations shall be grounds for de-certification by the Board of
5 Elections.
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9 Sec. 161-6. Recounts.
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- 11 (b) If any unsuccessful candidate in any Tribal election is defeated by no more than
12 two percent of the total number of votes cast between the unsuccessful candidate
13 and the immediately closest successful candidate ~~for that particular office or seat~~,
14 such candidate may request a recount by filing a written request with the Board of
15 Elections within two business days after the closing of the polls for that election.
16 The recount shall be conducted by the Board of Elections within three business
17 days of filing of the request by the unsuccessful candidate.
18 (c) The two percent threshold necessary for a recount shall be measured by answering
19 the following question: is the difference between the number of votes received by
20 the unsuccessful candidate who is seeking the recount, and the immediately
21 closest successful candidate, within two percent of all the votes cast for those two
22 candidates? If the difference is within two percent, the Board of Elections shall
23 conduct a recount if a request for a recount is filed pursuant to this section. Any
24 fraction of a percent over two percent shall be considered outside the two percent
25 threshold requiring a recount.
26 (d) At the conclusion of any such recount, the Board of Elections shall announce the
27 unofficial results of the recount for all candidates for that office pending official
28 certification of the results of the election to the Tribal Council pursuant to Section
29 161-16.1 of this Chapter.
30 (e) Any candidate on a ballot subject to a recount by the Board of Elections may
31 personally observe the recount which will be televised broadcast and recorded and
32 in a controlled environment to observe the recount. Should the candidate choose
33 to not attend, they may designate one representative to observe the recount. Such
34 representation must be designated in writing, with such written appointment
35 delivered to the Board of Elections prior to the commencement of the recount.
36 Such observers shall not participate in or interfere with the recount activities of
37 the Board of Elections and may be ejected by the chairman if they interfere with
38 or disrupt the recount process.
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43 Sec. 161-11. Registration.
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- 45 (a) Voter registration shall be conducted in such offices as may be designated by the
46 Board of Elections. The office designated by the Board shall be open for
47 registration on all regular business days, except as otherwise provided in this

1 section. All voter registration shall only be made in person or through the United
2 States Postal Service (USPS) mail. All voter registration cards submitted to the
3 Board must have the tribal member's signature notarized and must include a copy
4 of the voter's government issued photo ID card.

- 5 (b) Persons who are eligible to vote in EBCI Tribal elections shall register in the
6 township in which they currently reside. Tribal members not living on Cherokee
7 Trust Land shall register in the township in which they last resided, if applicable.
8 Tribal members who have never resided on Cherokee Trust Lands but who are
9 eligible to vote shall register in the township in which his/her enrolled mother last
10 resided. If the voter's mother was not an enrolled member or never held a
11 residence on Cherokee Trust Land, then the Tribal member shall register in the
12 township his/her enrolled father last resided, if applicable. In the case that neither
13 the eligible voter's mother or father held a residence on Cherokee Trust Land,
14 then the eligible voter shall register in the township where their nearest matrilineal
15 ancestor currently resides or last resided. If the voter's mother's side of the family
16 is not of Cherokee descent, then the first matrilineal line on the father's side shall
17 be used to determine township, as information permits. For the purpose of this
18 section the terms "mother" and "father" shall mean biological mother and
19 biological father, unless a legal adoption has occurred, in which case "mother"
20 and "father" shall mean adoptive mother and adoptive father. Eligible voters
21 moving from one township to another must reregister in the new township.
22 Failure to re-register before an election may prohibit the voter from participating
23 in an election for Tribal Council or School Board.

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27 Sec. 161-11.3. Notice of voter registration.

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29 (b) The Board of Elections shall prepare and provide to each candidate a printed and
30 electronic listing of each registered voter within the candidate's precinct. This list
31 shall contain the name and current mailing address for each voter and shall be
32 accessible by the candidate to be utilized electronically for its intended purpose.
33 The voter list shall be furnished to each candidate in printed form, and if
34 requested by the candidate, in electronic form set by field identifiers in a manner
35 to permit the candidate to utilize the list electronically for the intended purpose of
36 communication with the registered voters. All mailing addresses will be provided
37 by the EBCI Enrollment Department. The Board of Elections shall cross-
38 reference registered voters between townships prior to each Tribal election.
39 Except as provided in this subsection, the Board shall not be required to give any
40 other lists or other database information to candidates. The candidates are
41 authorized to use such lists only for lawful communications with registered voters
42 related to the election campaign pursuant to Section 161-4(~~f~~) (g) of this Chapter.
43 Only the most recent lists as dated and issued by the EBCI Board of Elections to
44 the candidate shall be deemed valid. Previously dated lists shall not be used for
45 campaigning or comparative purposes.
- 46 (c) The Board of Elections, and Election officials appointed by the Board of
47 Elections, shall not release any information regarding an individual's personal

1 voting participation to candidates or the general public. Voter registration cards
2 are information is property of and shall only be issued by the EBCI Board of
3 Elections.
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7 Sec. 161-13. Election officials.
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- 9 (b) Qualifications. In order to serve as an election official, individuals must:
- 10 (1) Be enrolled members of the Eastern Band of Cherokee Indians; and
 - 11 (2) Be at least 18 years of age by the date of the election; and
 - 12 (3) Be able to read and write the English language; and
 - 13 (4) Be a registered voter with the Tribal Election Board; and
 - 14 (5) Not be a candidate and work any poll, nor immediately related to any
15 candidate within the township of service, nor have been an active member
16 of any candidate's campaign during that election year, and shall not
17 express support for any candidate during the term of appointment as an
18 election official; and
 - 19 (6) Must be willing to serve in any polling place; and
 - 20 (7) Attend and complete the mandatory orientation training seminar provided
21 by the Board of Elections prior to each election.
 - 22 (8) Agree to follow all rules and regulations set forward for Tribal elections;
 - 23 (9) Agree not to remove any Election materials or documents created by
24 Election officials for any purpose relevant to the election from Board of
25 Election offices or polling places.

- 26 (c) Election judges.
- 27 (1) Two Election Judges shall be appointed by the Board of Elections for each
28 polling place no later than 30 days prior to all elections, one of whom shall
29 be designated by the Board of Elections as Chief Election Judge.
 - 30 (2) The Chief Election Judge shall be responsible for the overall conduct of
31 the election at the polling place and ensuring the voting process is
32 conducted in accordance with law.
 - 33 (3) The duties of the Chief Election Judge shall include: (a) obtaining the
34 ballot box, tally sheets, and the registration books from the Board of
35 Elections on the day of the election and for returning them to the Board at
36 the close of each election day; (b) confirming the registration of individual
37 voters; and (c) ensuring that election officials assist individual voters who
38 seek assistance marking their ballot.
 - 39 (4) Election Judges shall work with the Election Clerks to reconcile the ballot
40 totals with the ballot tabulator receipts in their respective polling place.
 - 41 (5) Election Judges shall certify the election count totals for each candidate by
42 signing the tally sheets and by signing a separate statement under oath
43 confirming the results of the election in their polling place on election day.

44 (e)(d) Election Clerks.

- 45 (1) One Election Clerk shall be appointed by the Board of Elections for each
46 polling place no later than 30 days prior to all elections; provided,
47 however, that two Election Clerks shall be appointed by the Board for

1 each of the Birdtown and Wolfetown (not Big-Y) polling places due to the
2 larger number of registered voters in those townships.

- 3 (2) The Election Clerk duties shall include: (a) assisting the Election Judges in
4 confirming the registration of individual voters; ~~(b) recording the name of~~
5 ~~each voter casting a ballot;~~ ~~(e) (b)~~ assisting individual voters who seek
6 assistance in marking ballots; and ~~(d) (c)~~ assisting Election Judges in
7 counting the votes after the polls are closed.
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11 Sec. 161-14. Voting procedures.

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13 (a) When a Tribal member appears at the polling place to vote, the enrolled member
14 shall present an Election Judge with a Tribal, state or federal government issued
15 photo I.D. to verify identification, an Election Judge shall then determine if the
16 name appears on the official list of registered voters furnished by the Board of
17 Elections. If there is any question regarding a voter's eligibility, the Chief Election
18 Judge shall call the Board of Elections to verify. If after confirmation with the
19 Board of Elections, the voter is determined not to be eligible or registered, he/she
20 shall not be allowed to vote. If the name appears on the official list of registered
21 voters, the clerk shall then insure that the voter's name does not also appear on the
22 list of early or absentee voters, and shall record the voter's name in a record book
23 maintained for the purpose of documenting such fact. A judge shall then give the
24 voter an unmarked ballot.
25 (b) The voter shall mark the ballot in a designated private area within the polling
26 place. The voter shall then place the marked ballot into the ballot box and leave
27 the polling place.
28 (c) If a voter seeks assistance in marking the ballot, the Election Clerk or other
29 Election official shall mark the ballot as requested by the voter, and shall have
30 two election officials witness the marking. An official Affidavit of Assistance
31 form must be signed by the voter prior to the Election Clerk or other Election
32 Official marking the ballot and noted on that form the signatures of all election
33 staff who in the administration or witnessing of the casting of the ballot. The two
34 election officials shall witness the marking of the ballot and then immediately
35 deposit the ballot in the ballot box.
36 (d) The Board of Elections shall not provide early voting or absentee ballots for run-
37 off or special elections.
38 (e) If any ~~elderly, handicapped, or infirm~~ person is unable or unwilling to enter the
39 polling place, the person shall be permitted to vote in a motorized vehicle at the
40 polling place. Such ~~elderly, handicapped, or infirm~~ voters shall be permitted to
41 vote by having two of the election officials personally deliver the ballot to such a
42 voter. An official Affidavit of Assistance form must be signed by the voter prior
43 to the voter marking the ballot, and be noted on that form the signatures of all
44 election staff who assisted in the administration or witnessing of the casting of the
45 ballot. The two election officials shall witness the marking of the ballot by the

1 voter and then immediately return the ballot to the polling place and deposit the
2 ballot in the ballot box.

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6 Sec. 161-15.1. Early voting.

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8 (a) Any registered voter may vote early under the provisions of this subsection.
9 (b) Early voting opens at 9:00 a.m. on the ~~second~~ first Monday of May and ends the
10 fourth Monday of May before the primary election and the ~~second~~ first Monday
11 of August and ends the fourth Monday of August before the general election and
12 closes at 4:00 p.m. on regular business days except for the last Saturday prior to
13 the closing of early voting; the last Saturday hours shall be 9:00 a.m. until 4:00
14 p.m. The location for early voting shall be determined by the Board of Elections
15 and shall be located on Tribal trust lands. The Board of Elections shall not extend
16 the dates and times for early voting for any reason.

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20 Sec. 161-19. Powers and duties of the election board.

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22 (e) The Board shall be responsible for certifying each applicant as eligible or
23 ineligible, notifying each applicant of its decision, and holding ~~appeal~~ hearings as
24 set forth in this Chapter. The Board shall make public the names of the candidates
25 certified as eligible on the ballot for each Tribal office no later than April 15 of an
26 election year for the primary election and August 1 of an election year for the
27 general election.

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31 Sec. 161-21. Prosecution.

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33 Any violation of this Chapter that may constitute commission of crime shall be referred
34 by the Board of Elections to the Tribal prosecutor for review and potential prosecution in
35 the Cherokee Court or in federal court depending on the nature and extent of the crime.
36 Any person who, in any official proceeding of the Board of Elections or in any official
37 document submitted to the Board or submitted to another entity or person as required in
38 this Chapter, makes a false statement under oath or affirmation, or who swears or affirms
39 the truth of a statement previously made when the statement is material and the person
40 believes the statement not to be true, shall be subject to prosecution under applicable
41 tribal law. C.C. Chapter 14, Article XII (Perjury and Obstructing Justice).

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43 **BE IT FINALLY ORDAINED** that all ordinances in conflict with this ordinance are hereby
44 rescinded and that this ordinance shall be effective upon ratification by the
45 Principal Chief.

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47 *Submitted by the Board of Elections, Lula Jackson, Chairperson.*