

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: DEC 07 2023

ORDINANCE NO.: 52 (2023)

An ordinance amending the EBCI Tribal Election Code.

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

WHEREAS, pursuant to the EBCI Charter and Governing Document, Tribal Council has established a Board of Elections and enacted rules and regulations for the conduct of Tribal elections, which has been codified in ordinance form at Chapter 161 of the Cherokee Code; and

WHEREAS, the EBCI Board of Elections has worked diligently to identify areas of Tribal election law which would benefit from the changes proposed herein; and

WHEREAS, most of the proposed changes herein are relatively minor and are intended to streamline Board processes, so that the Tribe as a whole will continue to benefit from stable and well-run elections.

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 Cherokee Code Chapter 161 shall be amended as follows:

Sec. 161-1. Election dates.

- (a) The Cherokee Tribal General Election for the Office of Principal Chief and Vice Chief shall be held on the first Thursday in September 2019, and each ~~two~~ four years thereafter.
- (b) The Tribal Primary General Election for the ~~office of Principal Chief and Vice Chief offices of Tribal Council~~ shall be held on the first Thursday in ~~June~~ September, 2019, and each ~~four~~ two years thereafter.
- (c) The Tribal Primary Election for the offices of ~~Tribal Council~~ Principal Chief and Vice Chief shall be held on the first Thursday in June, 2019, and each ~~two~~ four years thereafter.
- ~~(d) — A Primary Election run-off shall be held on the third Thursday in June, 2019, and each two years thereafter, if necessary. The Tribal Primary Election for the offices of Tribal Council shall be held on the first Thursday in June 2019, and each two years thereafter.~~

1 ~~(e) A General Election run-off shall be held on the third Thursday in September 2019, and~~
2 ~~each two years thereafter, if necessary.~~

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4 Sec. 161-2. Tribal Offices.

5 (a) The Principal Chief and Vice-Chief shall be elected and hold office for terms of four
6 years.

7 (b) The representatives elected to the Tribal Council shall be elected and hold office for
8 terms of two years. The Tribal Council will consist of 12 members as follows: from Big
9 Cove Township, two members; from Birdtown Township, two members; from ~~Wolfetown~~
10 Wolfown Township, two members; from Yellowhill Township, two members; from
11 Painttown Township, two members; from Graham and Cherokee Counties constituting
12 one Township, two members.

13 (c) The members of Cherokee School Board shall be elected to hold terms of office for four
14 years. The terms of office shall be staggered, with one representative elected from
15 Birdtown, ~~Wolfetown~~, Wolfown and Big Cove in 2001, and each four years thereafter,
16 and one representative elected in Yellowhill, Painttown, and Big Y Community in 1999,
17 and each four years thereafter.

18

19 Sec. 161-3. Qualification for offices.

20 (a) In order to run for or serve as the Principal Chief or Vice-Chief, a candidate must:

- 21 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 22 (2) Be at least 35 years of age by the date of the general election; and
- 23 (3) Have resided on Cherokee trust land continuously for at least two years
24 immediately preceding the date of the general election; and
- 25 (4) Continue to reside on Cherokee trust land during their term of office; and
- 26 (5) Be a registered voter with the Tribal Election Board.

27 (b) In order to run for or serve as a member of the Tribal Council, a candidate must:

- 28 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 29 (2) Be at least 18 years of age by the date of the general election: and
- 30 (3) Have resided in the township which he or she is to represent for at least 90 days
31 immediately preceding the date of the general election; and
- 32 (4) Continue to reside in the township in which the candidate was elected during their
33 term of office; and

- 1 (5) Be a registered voter with the Tribal Election Board.
- 2 (c) In order to run or serve as a member of the Cherokee School Board, a candidate must:
- 3 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 4 (2) Be at least 21 years of age by the date of the general election; and
- 5 (3) Reside in the community the candidate represents for at least one year
- 6 immediately preceding the date of the primary election and continue to reside in
- 7 that community during the term of office; and
- 8 (4) Have received a high school diploma or the equivalent; and
- 9 (5) Be a registered voter with the Tribal Election Board.
- 10 (d) No person shall ever be eligible to ~~file~~ run for or serve in any of the above Tribal Offices,
- 11 if:
- 12 (1) The person has been convicted of a felony; or
- 13 (2) The person has aided, abetted, counseled, or encouraged any person or persons
- 14 guilty of defrauding the Eastern Band of Cherokee Indians or has defrauded the
- 15 Tribe, or who may hereafter aid or abet, counsel or encourage anyone in
- 16 defrauding the Eastern Band of Cherokee Indians; or
- 17 (3) The person has been impeached and removed by the Tribal Council from any
- 18 elected office or appointed office, for having violated his or her oath of office or
- 19 being guilty of any offense making the person ineligible to hold said office; or
- 20 (4) The person fails to meet the residency requirements for elected office.
- 21 (e) No person may file for, run for, or hold more than one Tribal elective office at any one
- 22 time. However, a person may run for Tribal elected office while holding a different Tribal
- 23 office, so long as the person resigns from the current elected office prior to taking the
- 24 oath of office for the newly elected office.
- 25 (f) No person is eligible to hold the office of Principal Chief, Vice-Chief or Tribal Council
- 26 member while simultaneously being a Tribal employee or an employee of a Tribal entity.
- 27 A Tribal employee may run for office, but if elected must resign prior to taking the oath
- 28 of office for Principal Chief, Vice-Chief, or Tribal Council.
- 29 (g) No person is eligible to hold the office for Cherokee School Board Member while
- 30 simultaneously being an employee or student of the Cherokee Central School System. An
- 31 employee of the Cherokee Central School system may run for a seat on the Cherokee
- 32 School Board, but that employee must resign from employment before taking the oath of
- 33 office on the School Board.
- 34 (h) Where this section requires a person to reside or to have resided on Cherokee trust land
- 35 generally or in a particular Cherokee township or community, that requirement shall

1 mean that the person has made that place their primary, permanent place of abode for the
2 required period. It is where the person lives full-time except for temporary absences of
3 relatively short duration. All candidates and elected officials must continue to meet
4 residency requirements of their elected office for the duration of their candidacy and, if
5 elected, for the duration of their term(s). Any elected official who violates the residency
6 requirement shall be ineligible to hold the office. Suspected violations of the residency
7 requirement shall be reported to the Board of Elections in writing by the constituency of
8 that elected office, e.g., Principal Chief or Vice-Chief residency violations must be made
9 by any enrolled member of the Tribe; Tribal Council or School Board member residency
10 violations must be made by an enrolled member of the Tribe registered to vote in the
11 township of the elected office.

12
13 Sec. 161-4. Filing for office—Certification of candidates.

14 (a) All persons filing to be a candidate for Tribal elected office shall do so under his or her
15 own name and his or her original signature. All documents required to be filed with the
16 Board of Elections must bear the original signature of the candidate/~~principal~~ and shall
17 not be signed by any person as an agent acting on behalf of the candidate/~~principal~~
18 through a power of attorney or other delegation of authority. This requirement applies to
19 all applications for candidacy and all other documents required to be filed with the Board
20 of Elections by candidates. Nothing in this subsection applies to the marking of ballots.

21 (b) All persons filing to be a candidate for ~~Tribal elected office to the office of Principal~~
22 ~~Chief, Vice-Chief, Tribal Council, or School Board~~ shall do all of the following:

23 (1) Pay the required filing fees at the Tribal Finance Office no sooner than the first
24 Monday in March and no later than the following Friday in March of the year of
25 the election. Persons paying such fees are advised to inform themselves of the
26 hours of operation of the Tribal Finance Office.

27 a. The filing fee to be a candidate for the office of Principal Chief or Vice
28 Chief is \$1,000.00.

29 b. The filing fee to be a candidate for a seat on Tribal Council is ~~\$500.00~~
30 750.00.

31 c. The filing fee to be a candidate for a seat on the School Board is ~~\$350.00~~
32 500.00.

33 Filing fees are non-refundable and shall be paid by cash, cashier's check,
34 electronic payment, or money order. A receipt from the Tribal Finance Office,
35 showing that the applicable filing fee has been paid, shall be submitted with the
36 candidate application forms described in subparagraph (2), below.

37 (2) Submit to the Board of Elections completed and properly executed candidate
38 application forms (also known as filing forms). The same deadline that applies for

1 payment of the filing fees above applies to submission of the candidate
2 application forms.

3 (c) The Board of Elections shall review all applications and other required information, and
4 ensure that the required filing fees have been paid in order to certify that each applicant is
5 eligible to be a candidate for Tribal elected office. If necessary, any applicant shall be
6 required to appear before the Board at a hearing to answer an inquiry about any matter
7 related to an application for candidacy for Tribal elected office.

8 (d) If the applicant meets all of the qualifications to run for Tribal office, and is not ineligible
9 to hold Tribal office pursuant to Section 161-3(d), the Board of Elections shall certify the
10 applicant as eligible to run for the Tribal office sought by the applicant. The Board of
11 Elections shall notify the applicant of its decision by one of the means listed in Section
12 161-29 of this Chapter on or before March 31 of the election year.

13 (e) If the applicant does not appear to meet all of the qualifications to run for Tribal office, or
14 it appears the applicant may be ineligible to run for Tribal office, the Board of Elections
15 shall order a hearing to be held to determine whether the applicant should be certified as a
16 candidate for Tribal office.

17 (1) ~~Prior to~~ On or before March 31 of the election year, the Board of Elections shall
18 issue a Notice of Hearing informing the applicant of the date and time the hearing
19 will be held. The hearing shall be held no later than ten business days following
20 issuance of the Notice of Hearing. Notice of the scheduled hearing shall be
21 provided as described in Section 161-29 of this Chapter. The Notice of Hearing to
22 the applicant shall clearly and concisely state the issue or issues identified by the
23 Board which might render the applicant unqualified or ineligible to run for Tribal
24 office and must be addressed by the applicant before the Board.

25 (2) The applicant may request that the Board issue subpoenas for persons or
26 documents which the applicant expects to be relevant to the issue or issues
27 identified in the Notice of Hearing. In its discretion, the Board may issue
28 subpoenas for documents or any person it identifies as having information
29 relevant to the issue or issues contained in the Notice of Hearing provided by the
30 Board. At the hearing before the Board, the applicant shall have the right to
31 present written evidence or oral testimony to address the issue or issues identified
32 by the Board. The North Carolina Rules of Evidence do not apply.

33 (3) The burden of proof shall be on the applicant to prove by a preponderance of the
34 evidence of the record as a whole that he or she meets all of the qualifications to
35 be certified as a candidate for Tribal office and is otherwise eligible to hold Tribal
36 office under the law.

37 (4) The Board shall issue a final written decision within five business days following
38 the hearing. The panel may:

- 1 a. find that the applicant meets all of the qualifications for office and is
2 otherwise eligible under the law to hold Tribal office and certify the
3 applicant to be a candidate for Tribal office; or
- 4 b. find that the applicant meets all of the qualifications for office but is
5 otherwise ineligible under the law to ~~be a candidate for~~ hold Tribal office,
6 and deny certification; or
- 7 c. find that the applicant does not meet the qualifications for office and deny
8 certification.

9 (5) A final decision by the Board of Elections to deny certification to an applicant to
10 be a candidate for Tribal office may be appealed by the applicant to the Cherokee
11 Supreme Court. The decision issued by the Board is not required to take any
12 particular form or to formally express findings of facts and conclusions of law as
13 might be written in a court decision; provided, however, the final decision shall
14 contain sufficient information to enable the Court on appeal, if an appeal is filed,
15 to make an informed judgment as to facts considered by the Board of Elections in
16 making its decision so that the Court can determine whether the Board committed
17 an error of law. The only person with standing to appeal to the Court shall be the
18 person whose certification was denied. Notice of appeal to the Cherokee Supreme
19 Court must be given no later than three business days after the final decision is
20 served on the applicant.

21 (f) By April 15 of each election year, the Board of Elections shall publish in the Cherokee
22 One Feather the list of candidates certified to run for each Tribal elected office. In the
23 event a candidate is certified later than April 15 in response to a Court Order, the Board
24 shall then re-publish the list of all certified candidates, including the name(s) of those
25 certified in response to a Court Order, in the next edition of the Cherokee One Feather.

26 (g) At the time the applicant files an application to be a candidate for Tribal office, the
27 candidate shall do the following:

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

- 1 c. that communications by the candidate with the Board and with public shall
2 be truthful; and
- 3 d. ~~that any violations of the requirements for candidacy or the oaths or~~
4 ~~attestations shall be grounds for de-certification by the Board of Elections.~~
5 that the candidate has familiarized himself or herself with the unlawful
6 campaign practices set out in the Tribe's election law; and
- 7 e. that any violations of the requirements for candidacy or of the candidate's
8 oath shall be grounds for decertification by the Board of Elections.
- 9 (h) Any claims or complaints of ~~violation of the requirements of subsection (g)(2)~~ a violation
10 of Tribal election law by a candidate shall be ~~directed~~ made in writing to the Board of
11 Elections for investigation.

12

13 Sec. 161-4.1. Decertification of a candidate.

- 14 (a) If at any time before the primary, general or special election date at issue, a candidate for
15 elected office is no longer qualified or eligible to hold Tribal office, the Board of
16 Elections may decertify that person as a candidate.
- 17 (b) Once the Board has certified a candidate to run for Tribal office:
- 18 (1) Any enrolled member of the EBCI who is registered to vote in Tribal election(s)
19 may file a protest seeking to decertify the candidate from running for Tribal
20 office. All protests must be submitted to the Board of Elections in writing and on
21 forms provided by the Election Board or, if not on forms provided by Board, then
22 in a typed or legible writing. Each protest shall contain sufficient detail to give the
23 Board notice of the facts that the protester asserts support decertification. All
24 protests shall, at a minimum, contain the following information: (1) the name,
25 mailing address, physical address, telephone number and email address (if one is
26 available) of the protester; (2) the dates and approximate times of the act(s) being
27 protested; (3) a description of the subject of the protest; (4) the name, mailing
28 address, telephone number and email address (if one is available) of all witnesses
29 known to the protester; and (5) copies of all supporting records, photos and other
30 documentary evidence in the possession or control of the protester that the
31 protester wants the Board to consider. All protests must include a sworn statement
32 signed by the protester, before a notary, that the allegations presented in the
33 protest are true or that the protester, upon information and belief, believes them to
34 be true.
- 35 (2) The Board of Elections may on its own initiative begin an investigation into the
36 decertification of a candidate at any time before the election date at issue.
- 37 (c) If the nature of the decertification action is that the candidate is not qualified or is
38 ineligible to hold Tribal elected office, ~~S~~such protest should be filed with the Board no

1 later than ten business days after the Board publishes in the Cherokee One Feather the list
2 of candidates certified for the election at issue. The person filing the protest shall pay the
3 protest filing fee ~~expressed by the Board in its schedule of fees. The person filing the~~
4 ~~protest shall pay the protest filing fee~~ of \$100.00.

5 (d) Acting on its own investigation or upon receipt of a timely filed protest to decertify a
6 candidate, the Board of Elections shall give written notice to the candidate at issue within
7 two business days which notice shall inform the candidate that:

8 (1) The Board has, upon its own investigation, determined that the candidate may not
9 meet the qualification or eligibility requirements and is subject to being
10 decertified, and the notice shall state the particular grounds supporting
11 decertification, and shall ask the candidate to file a written response to the notice
12 within five business days which addresses the grounds identified by the Board
13 which may support decertification; or

14 (2) The Board has received a written protest from a properly registered voter and the
15 protest alleges that the candidate is not qualified or not eligible to be a candidate
16 for Tribal office and should be de-certified. A copy of the protest and all
17 supporting documents submitted by the protestor shall be included with the
18 notice. The Board shall ask the candidate to file a written response to the
19 allegations of the protestor within five business days.

20 (3) Notice shall be provided in any of the ways described in C.C. Sec. 161-29
21 ("Service of communications by the Board of Elections").

22 (e) The candidate or the ~~challenger protestor~~ may request a hearing before the Board. Once
23 the Board has reviewed the written response of the candidate, the Board may thereafter
24 order a hearing if there is an issue which has not been resolved by the written response of
25 the candidate.

26 (f) If the Board orders a hearing, the Board shall schedule a hearing to be held within ten
27 business days. The Board shall give the candidate and the ~~challenger protestor~~ notice of
28 the hearing in any of the ways described in C.C. Sec. 161-29 ("Service of
29 communications by the Board of Elections").

30 (g) At the hearing before the Board, the parties shall have the right to present written
31 evidence and/or oral testimony to address the alleged grounds for decertification. At the
32 hearing, the burden of proof is on the moving party to prove by a preponderance of the
33 evidence in the record as a whole that the candidate for Tribal office does not meet the
34 qualification or eligibility requirements under Tribal law and should be decertified as a
35 candidate.

36 (h) The Board shall issue a final written decision within five business days following the
37 hearing, or if no hearing is ordered, within five business days following receipt of the
38 candidate's written response. The written decision shall express whether or not the
39 candidate satisfies the requirements for the office for which candidacy is sought. The

1 final written decision from the Board of Elections shall be sent to the candidate and the
2 protestor challenger, if any, in any of the ways described in C.C. Sec. 161-29 ("Service of
3 communications by the Board of Elections"). The decision of the Board of Elections
4 affirming its decision that the person is eligible and remains certified as a candidate, or
5 reversing its decision and decertifying the candidate, may be appealed to the Cherokee
6 Supreme Court by the non-prevailing party. Notice of appeal to the Cherokee Supreme
7 Court must be given no later than three business days after the final decision is served on
8 the non-prevailing party. The Supreme Court shall review the decision of the Board for
9 error of law.

10 (i) The timing of the actions expressed in this Section may be altered by the Board of
11 Elections if a decertification action is filed close in time to the election at issue; for
12 example, if an action is filed near in time to an election date, the Board of Elections may
13 shorten the length of time for a candidate to file a written response, may order a hearing
14 on an expedited timeframe, and may take other action necessary to resolve the protest
15 expeditiously and appropriately.

16
17 Sec. 161-4.2. Write-in candidates.

- 18 (a) All persons wishing to run as write-in candidates in the primary election must declare
19 their candidacy by filing with the Board of Elections between the first Monday in April
20 and the first Friday in April before a primary election. All candidates must complete a
21 filing form to establish that they meet the qualifications of the office for which they file.
- 22 (b) Write in candidates shall pay a filing fee in the amount as required by the registered
23 candidate as specified in Subsection 161-4(c) of this Chapter.
- 24 (c) The Board of Elections shall review all write-in forms and shall certify each applicant as
25 either eligible or ineligible and notify the applicant of its decision by April 30.
- 26 (d) Write-in votes will not be counted unless the first and last name of the candidate is
27 written on the ballot. The name of the candidate for purposes of write-in voting is the
28 name filed by the candidate with the Board of Elections. The Board of Elections shall
29 make public the names of write-in candidates certified as eligible for each Tribal office
30 no later than seven days before the primary election.
- 31 (e) Unless a person has filed with and been certified as a write-in candidate by the Board of
32 Elections pursuant to Subsection (a) thru (e) of this Section, no write-in votes for that
33 person shall be counted or reported by the Board of Elections.
- 34 (f) If a write-in candidate is successful in a primary election, his or her name shall be placed
35 on the general election ballot in the same manner as all other successful primary election
36 candidates. No write-in voting is permitted in the general election, and no write-in votes
37 cast in the general election shall be counted or reported.
- 38 (g) No stickers preprinted with a candidate's name are permitted for write-in voting.

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2 Sec. 161-5. Primary elections.

3 (a) The two candidates receiving the most votes for the office of Principal Chief and Vice-
4 Chief and the four candidates receiving the most votes for the two Tribal Council seats in
5 each township shall be certified by the Board of Elections, and their names shall be
6 placed on the ballot for the general election.

7 (b) The two candidates receiving the most votes for the office of School Board in each
8 district shall be certified by the Board of Elections, and their names shall be placed on the
9 ballot for the general election.

10 (c) If two or fewer candidates file and are certified eligible under Section 161-4 for Principal
11 Chief, Vice-Chief, or a district School Board position, then no primary election shall be
12 held for that office, and those candidates shall have their names placed on the ballot for
13 the general election.

14 (d) If four or fewer candidates file and are certified eligible under Section 161-4 for Tribal
15 Council in a particular township, then no primary election for Tribal Council shall be held
16 in that township, and those candidates shall have their names placed on the ballot for the
17 general election.

18 (e) A candidate may voluntarily withdraw his or her name from the election by submitting a
19 written letter to the Board of Elections which clearly and unequivocally states the
20 candidate's desire to no longer be considered as a candidate for office. If a candidate
21 withdraws, and ballots for the election have not been printed, the Board of Elections shall
22 remove the candidate's name from consideration, and it shall not appear on the ballot. If a
23 candidate withdraws after ballots have been printed, the candidate's name shall remain on
24 the ballot, however all votes for that candidate shall be considered null and void. This
25 subsection shall apply to primary, general, special, and run-off elections as applicable.

26

27 Sec. 161-6. Recounts.

28 (a) If the vote count in any Tribal election results in a tie, the Board of Elections shall
29 conduct a recount of all ballots cast for that particular office or seat. Such recount shall be
30 conducted by the Board of Elections within two business days after the closing of the
31 polls for that election. The recount shall be performed by the members of the Board of
32 Elections. A "tie" is defined as two or more candidates for the same seat receiving the
33 same number of votes.

34 (b) If any unsuccessful candidate in any Tribal election is defeated by no more than two
35 percent of the total number of votes cast between the unsuccessful candidate and the
36 immediately closest successful candidate, such candidate may request a recount by filing
37 a written request with the Board of Elections within two business days after the closing of

1 the polls for that election. The recount shall be conducted by the Board of Elections
2 within three business days of filing of the request by the unsuccessful candidate.

- 3 (c) The two percent threshold necessary for a recount shall be measured by answering the
4 following question: is the difference between the number of votes received by the
5 unsuccessful candidate who is seeking the recount, and the immediately closest
6 successful candidate, within two percent of all the votes cast for those two candidates? If
7 the difference is within two percent, the Board of Elections shall conduct a recount if a
8 request for a recount is filed pursuant to this section. Any fraction of a percent over two
9 percent shall be considered outside the two percent threshold requiring a recount.
- 10 (d) At the conclusion of any such recount, the Board of Elections shall announce the
11 unofficial results of the recount for all candidates for that office pending official
12 certification of the results of the election to the Tribal Council pursuant to Section 161-
13 16.1 of this chapter.
- 14 (e) Any candidate on a ballot subject to a recount by the Board of Elections may personally
15 observe the recount which will be broadcast and recorded and in a controlled
16 environment ~~to observe the recount~~. Should the candidate choose to not attend, they may
17 designate one representative to observe the recount. Such representation must be
18 designated in writing, with such written appointment delivered to the Board of Elections
19 prior to the commencement of the recount. Such observers shall not participate in or
20 interfere with the recount activities of the Board of Elections and may be ejected by the
21 chairman if they interfere with or disrupt the recount process.
- 22 (f) Regardless of any other expression in this section, nothing in this section shall prohibit
23 the Board of Elections from recounting ballots upon its own initiative as part of an
24 investigation or for quality control purposes.

25

26 Sec. 161-7. Run-off elections.

- 27 (a) The Board of Elections shall have the authority to conduct run-off elections to fill the
28 offices for Principal Chief, Vice-Chief, Tribal Council, and School Board.
- 29 (b) A run-off election shall be held within 15 calendar days of the decision of the Board of
30 Elections to hold such a run-off.
- 31 (c) The Board of Elections shall have authority to conduct run-off elections if any of the
32 following occur:
- 33 (1) The Board determines that a recount of ballots would not produce an accurate
34 vote count; or
- 35 (2) The Board determines upon research and investigation conducted on its own
36 initiative, or in response to a timely filed protest under C.C. Sec. 161-16, that
37 irregularities unfairly and improperly or illegally affected the actual outcome of

1 the election, and but for the irregularity, the winning candidate would not have
2 prevailed at the polls: ~~or~~;

3 (3) The Board determines upon research and investigation conducted on its own
4 initiative, or in response to a timely filed protest under C.C. Sec. 161-16, that
5 irregularities in the conduct of the election rendered the results unreliable by clear
6 and convincing evidence.

7 (d) If, after a recount of ballots by the Board of Elections, two or more candidates running
8 for elected office receives the same number of votes and the individual number of votes
9 cast for each candidate represents the largest vote total by any candidate in the primary
10 election for the last available position on the general election ballot, the Board shall
11 conduct a primary run-off election between such candidates. The candidate receiving the
12 greatest number of votes in that primary run-off election shall be deemed eligible to stand
13 for the general election.

14 (e) If, after a recount of ballots by the Board, in the Tribal Council general election, two
15 candidates receive the same number of votes and the individual number of votes cast for
16 each candidate represents the largest vote total by any individual candidate for that
17 township, there will be no run-off election. The two candidates with the highest vote
18 totals shall be deemed elected to the two Council seats for that township.

19 (f) If, after a recount of ballots by the Board of Elections in the Tribal Council general
20 election, two or more candidates receive the same number of votes that constitute the
21 second highest vote totals by any individual candidate for that township, the Board shall
22 conduct a run-off election between such candidates. The candidate receiving the greatest
23 number of votes in the run-off election shall be deemed elected to the second Council seat
24 for that township.

25 (g) If, after a recount of ballots by the Board of Elections, two or more candidates running
26 for a seat on the School Board, or for the office of Vice Chief, or the office of Principal
27 Chief, receive the same number of votes in the general election and the individual votes
28 totals represent the largest vote total by any individual candidate for that race, the Board
29 shall conduct a run-off election between such candidates. The candidate receiving the
30 greatest number of votes in the run-off election shall be deemed elected to office.

31 (h) Should the Board of Elections determine that a recount of ballots would not determine the
32 accurate vote count or make either of the determinations described in subsection (c)(2) or
33 (c)(3) of this section, the Board shall conduct a run-off election between only the
34 candidates that the Board deems necessary to resolve any issues concerning the accuracy
35 of the vote count or to remedy irregularities in the conduct of the election. All decisions
36 made by the Board of Elections in regards to run-off elections shall be final.

37 (i) The Board of Elections shall not provide absentee ballots for run-off ~~or special~~ elections.

38

1 Sec. 161-8. ~~Reserved. Special election for vacant Tribal Council seat.~~
2 In the event a seat on Tribal Council becomes vacant, Tribal Council may order a special election
3 under such rules and regulations as may be prescribed.
4

5 Sec. 161-9. Referendums/initiatives.

6 (a) Purpose. A referendum is the people's ability to ~~refer newly enacted law by petition; vote~~
7 on ballot questions approved by Tribal Council. ~~from the legislation to the ballot for final~~
8 approval. The following rules shall apply;

9 (b) Definitions.

10 Initiative shall mean the right and procedure by which citizens can propose a law by
11 petition and ensure its submission to the electorate.

12 Referendum shall mean the submission of a proposed public measure or actual statute to
13 a direct actual vote.

14 (c) Process.

15 (1) A referendum/initiative issue shall only be established by resolution of the Tribal
16 Council, duly ratified by the Principal Chief.

17 a. A referendum initiated by Tribal Council does not need a petition.

18 (2) A petition requesting the Tribal Council to authorize an election on a
19 referendum/initiative question shall require:

20 a. Twenty-five percent of registered voters to sign a petition in support of a
21 referendum/initiative on a proposed ordinance or action by the Tribal
22 Council or Principal Chief.

23 b. Thirty-three percent of registered voters to sign a petition the Tribal
24 Council for resolution for a referendum/initiative election on a proposed
25 change to the Charter or Governing Document.

26 (3) Only ~~natural persons~~ tribal members may petition for a referendum on an issue.

27 (4) A petition shall be on a standardized form provided by the Board of Elections and
28 shall include the designation of three signatories comprising the Petitioner's
29 Committee with their names, addresses and enrollment numbers; multiple lines
30 for the signee's printed name, signature, date of signature, address, and enrollment
31 number of supporters of the petition; and a full explanation of the proposed action
32 sought by referendum and shall include the full text of the proposed action. The
33 Petitioner's Committee shall be responsible for the content of the proposed
34 legislation. This proposed legislation shall appear on all signature sheets.

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- (5) The Petitioner's Committee shall submit the proposed referendum language and the text explaining the proposed action to the Board of Elections for review to pre-certify the referendum issue/question as consisting of only one issue or question prior to collecting signatures on the petition. The Board shall have 60 days from the date the Petitioner's Committee submits the referendum language to review the information submitted and to pre-certify the question for the petition. If the Board makes a negative finding, the Petitioner's Committee can revise and resubmit the proposed referendum to the Board.
 - (6) Petition Certification by the Board of Elections.
 - a. Once the Petitioner's Committee has collected all the required signatures, the signed petitions shall be submitted to the Board of Elections for verification that all information required on the petition, including the required number of signatures and all associated information, is contained on the petition. The Board of Elections shall have 90 days to approve or deny certification of the petition. If the Board denies certification, the Petitioner's Committee may attempt to cure the deficiencies and resubmit the signed petitions to the Board.
 - b. Any signature more than one year old on a petition, and any signature of a person who is no longer a registered voter, shall be void and not counted.
 - (7) Submission of Certified Petition to Tribal Council and the Principal Chief.
 - a. After the Board of Elections certifies the petition, the Petitioner's Committee shall submit the certified petition to the Tribal Council. The Tribal Council Chairman shall place the petition on the agenda of the next regularly scheduled Tribal Council session. Nothing in this section requires an immediate decision by Tribal Council assembled, and nothing herein prohibits Tribal Council from tabling the matter for review and other actions within its authority.
 - (8) Required votes.
 - a. Not less than 51 percent of registered voters must vote in a referendum/initiative election on a proposed amendment to the Charter or Governing Document or the election is deemed void.
 - b. Not less than 30 percent of registered voters must vote in a referendum/initiative election ~~to enact or repeal an ordinance or resolution~~ to answer a question on a ballot question or the election is deemed void. No decision approved or denied by the voters on an issue shall be reconsidered by Tribal Council for two years.
 - (9) All registered voters shall be eligible to vote on a referendum issue.

1 (10) Referendums for any purpose of this Section shall be conducted by the following
2 procedures:

3 a. The Board of Elections shall conduct a referendum election for any
4 purpose other than that of modifying the Charter and Governing
5 Document ~~within 90 days of ratification of the~~ in accordance with the date
6 set by Tribal Council in the resolution approving the issue for a
7 referendum vote.

8 b. Within ten business days of ratification of the resolution the Board of
9 Elections shall provide public notice for the upcoming referendum by
10 advertising in the Cherokee One Feather, Graham Star, and Cherokee
11 Scout and by mailing notice to all eligible voters. The notice shall contain
12 an election schedule which shall notify all voters of the date of the
13 election, the question to be voted on and the date in which the voter
14 registration rolls will close.

15 c. The Board of Elections shall close the voter registration books 30 days
16 prior to the referendum election. If the referendum election is set to take
17 place on the same date as a Tribal general election, the voter registration
18 books shall close on the same date as the Tribal general election.

19 d. The Board of Elections shall appoint all election officials 30 days prior to
20 the election. The Board shall conduct an orientation for election officials
21 prior to the election.

22 e. The Board of Elections shall issue ballots for referendum in accordance
23 with the absentee ballot application process pursuant to the procedures set
24 out in this Section.

25 f. Persons desiring to vote by absentee ballot may begin applying for such
26 ballot immediately after receiving notice of the referendum election and
27 all applications to vote by absentee ballot must be submitted or post-
28 marked by the U.S. Postal Service not less than 15 days prior to the
29 election.

30 g. All absentee ballots for referendum election must meet the same criteria
31 for any other election and must be returned to and received by the Board
32 of Elections not less than five days prior to the referendum election.

33 (11) The outcome of the referendum vote, if it has first met the minimum threshold of
34 voters, shall be certified by the Board of Elections ~~and shall be deemed a binding~~
35 ~~action or law duly passed and ratified by the Principal Chief. Any decision made~~
36 ~~by referendum vote cannot be overturned unless there is another referendum.~~ to
37 Tribal Council for further action.

1 (12) Any protest regarding an election irregularity shall be conducted C.C. Section
2 161-16).

3 (13) ~~An issue that has been brought before eligible voters and voted upon by resolution
4 on a referendum/initiative, regardless if the vote is later deemed void for lack of
5 the required percentage of voters, may not be voted upon again by voters in a
6 referendum/initiative election until a period of two years has passed from the date
7 of the immediately preceding vote by eligible voters.~~

8
9 Sec. 161-10. Qualifications.

10 To be eligible to vote in any Cherokee election, a person must:

- 11 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
12 (2) Be at least 18 years of age on the date of the applicable election; and
13 (3) Be registered with the Cherokee Board of Elections as set forth in Section 161-11
14 prior to the applicable election.

15
16 Sec. 161-11. Registration.

17 (a) Voter registration shall be conducted ~~in such offices~~ as may be designated by the Board of
18 Elections. The office ~~designated by the Board~~ shall be open for registration on all regular
19 business days, except as otherwise provided in this section. All voter registration shall
20 only be made in person or through the United States Postal Service (USPS) mail;
21 provided, however, that the Board may publicize the voter registration process through
22 the Board's website or other social media presence. All voter registration cards submitted
23 to the Board must have the tribal member's signature notarized and must include a copy
24 of the voter's government issued photo ID card.

25 (b) Persons who are eligible to vote in EBCI Tribal elections shall register in the township in
26 which they currently reside. Tribal members not living on Cherokee Trust Land shall
27 register in the township in which they last resided, if applicable. Tribal members who
28 have never resided on Cherokee Trust Lands but who are eligible to vote shall register in
29 the township in which his/her enrolled mother last resided. If the voter's mother was not
30 an enrolled member or never held a residence on Cherokee Trust Land, then the Tribal
31 member shall register in the township his/her enrolled father last resided, if applicable.

32 In the case that neither the eligible voter's mother or father held a residence on Cherokee
33 Trust Land, then the eligible voter shall register in the township where their nearest
34 matrilineal ancestor currently resides or last resided. If the voter's mother's side of the
35 family is not of Cherokee descent, then the first matrilineal line on the father's side shall
36 be used to determine township, as information permits.

1 For the purpose of this section the terms "mother" and "father" shall mean biological
2 mother and biological father, unless a legal adoption has occurred, in which case
3 "mother" and "father" shall mean adoptive mother and adoptive father. Eligible voters
4 ~~moving establishing residence~~ from one township to another must ~~reregister change their~~
5 ~~registration to reflect in~~ the new township. Failure to ~~re-register before an election may~~
6 ~~prohibit the voter from participating in an election for Tribal Council or School Board~~
7 ~~update their registration may result in the Board of Elections updating the registration.~~

8 (c) The Board of Elections may conduct special registrations within any township if it is
9 deemed advisable. ~~All such special registration shall be published at least one week in~~
10 ~~advance in the Cherokee One Feather, Cherokee Scout, and Graham Star.~~

11 (d) The Board of Elections shall close the voter registration books at the close of business on
12 the Friday immediately preceding the date set for early voting and the books shall remain
13 closed until the first Monday immediately following the primary election. Tribal
14 members who have not registered to vote prior to the closing of the registration books
15 shall not be eligible to vote in the primary election. Those registered voters who change
16 their residence during the period in which voter registration books are closed are not
17 required to update their registrations until the registration rolls reopen. The residency
18 requirement of C.C. Sec. 161-11.1(a) shall be waived during the period in which voter
19 registration books are closed pursuant to this section to resolve any conflicts with C.C.
20 Sec. 161-11.1(a).

21 (e) The Board of Elections shall open the voter registration books on the Monday following
22 the primary election and the books shall remain open until the close of business on the
23 Friday immediately preceding the date set for early voting during the general election and
24 the books shall remain closed until the first Monday immediately following the general
25 election. During the period when the registration rolls are closed those registered voters
26 who change their residence are not required to update their registration until the
27 registration rolls reopen. This residency requirement of Subsection 161-11.1(a) of this
28 Chapter shall be waived during this period to resolve any conflicts within this Chapter.

29 (f) The Board of Elections shall reopen the voter registration books on the next business day
30 following the certification of the results of the general election to Tribal Council.

31
32 Sec. 161-11.1. Changes in voter registration.

33 (a) Once a person is registered by the Board of Elections, they shall remain registered, ~~until~~
34 ~~such time as they move to a different township, or an investigation made by the Board of~~
35 ~~Elections has found an improper township registration, at which time they must register~~
36 ~~in the new township pursuant to Subsection 161-11(b) of this section.~~

37 (b) Registered voters may terminate their registration by presenting a notarized request to the
38 Board of Elections. This action shall be final upon notification of termination by the
39 Board of Elections.

- 1 (c) Persons living in long-term care facilities and those who are displaced due to emergency
2 situations may petition the Board of Elections for a waiver for the change of township
3 requirement in Subsection (a) of this section. Waivers may be issued upon proof of
4 displacement.
- 5 (d) The Board of Elections shall purge its lists of voters annually for deceased voters in each
6 community.

7

8 Sec. 161-11.2. Challenges to voter registration.

- 9 (a) When the Board of Elections has or receives evidence demonstrating to the Board's
10 satisfaction that a voter is not registered in the correct township, the Board shall notify
11 the voter in writing and give the voter five business days to submit a township change or
12 to request a hearing as provided below to present information as to why the township
13 should not be changed.
- 14 (b) A challenge to a voter's township registration may be made by any enrolled member who
15 is registered to vote in the Tribal election, as provided in Section 161-11.1 through 161-
16 11.3. No protests of a voter's township registration shall be accepted or acted upon by the
17 Board of Elections between April 14 and the first business day following the certification
18 of the general election results. Such challenge the Board shall weigh the evidence
19 provided accordingly and issue the proper investigation required. See C.C. Section 161-
20 16 for proof of residency. The Board shall determine the voter's correct voting township
21 based on the evidence. The Board has the authority to move the voter's registration to the
22 correct township and notify each voter in writing of any changes. No changes shall be
23 made to a voter's township when the registration rolls are closed.
- 24 (c) The Board of Elections is authorized to utilize all resources available to properly
25 document a voter's residence for registration purposes. The burden is placed upon the
26 voter to dispute a decision made by the Board of Elections to the registration books
27 regarding a voter's township. Any affected voter may request a hearing before the Board
28 of Elections within five business days from receipt of a change of township notice. The
29 Board shall afford any voter a hearing within five business days from receipt of hearing
30 request. The affected voter has the right to present any witnesses or documentation to the
31 Board of Elections during the hearing. The Board will issue its decision within five
32 business days from the date of the hearing to either rescind or uphold its decision.

33

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

- 35 (a) The Board of Elections shall maintain a list of all registered voters in the office of the
36 Board of Elections. The Board of Elections shall mail registered voters notice of any new
37 voter registration laws in order to give voters the opportunity to make corrections to their
38 voter registration as may be necessary.

- 1 (b) The Board of Elections shall prepare and provide to each Tribal Council and School
2 Board candidate a printed and electronic listing of each registered voter within the
3 candidate's precinct township. Candidates for Principal Chief and Vice Chief shall be
4 provided with the listing of all townships. This list shall contain the name and current
5 mailing address for each voter and shall be accessible by the candidate to be utilized
6 electronically for its intended purpose. The voter list shall be furnished to each candidate
7 in printed form, and if requested by the candidate, in electronic form set by field
8 identifiers in a manner to permit the candidate to utilize the list electronically for the
9 intended purpose of communication with the registered voters. All mailing addresses will
10 be provided by the EBCI Enrollment Department. The Board of Elections shall cross-
11 reference registered voters between townships prior to each Tribal election. Except as
12 provided in this subsection, the Board shall not be required to give any other lists or other
13 database information to candidates. The candidates are authorized to use such lists only
14 for lawful communications with registered voters related to the election campaign
15 pursuant to Section 161-4(g) of this Chapter. Only the most recent lists as dated and
16 issued by the EBCI Board of Elections to the candidate shall be deemed valid. Previously
17 dated lists shall not be used for campaigning or comparative purposes.
- 18 (c) The Board of Elections, and election officials appointed by the Board of Elections, shall
19 not release any information regarding an individual's personal voting participation to
20 candidates or the general public. Voter registration information is property of and shall
21 only be issued by the EBCI Board of Elections.

22

23 Sec. 161-12. Polling places.

- 24 (a) All designated polling places will be determined by the Board of Elections; and
- 25 (b) All polling places shall be located on trust land or on other land owned by the Eastern
26 Band of Cherokee Indians which may be adjacent to Tribal trust lands.
- 27 (c) No campaign signs of any kind shall be allowed placed within 100 yards of designated
28 polling places for a period of one week prior to the Election Date. All campaign signs
29 within 100 yards of the polling place shall be removed prior to the election date.
- 30 (d) The Board of Elections shall cause all polling places to have operational security cameras
31 onsite and working whenever voting is conducted at the site. Security cameras may
32 record audio, visual, or both. Security cameras shall be used to record activity at the
33 polling place but shall not be placed on ballot equipment or in individual voting booths.
34 Acquisition, control, use and access to the security cameras shall be determined by the
35 Board of Elections, and shall depend on adequate funding for the equipment and
36 personnel being provided by Tribal Council. The security cameras shall be used to
37 provide a visual and/or audio record of activities at the polling place when voting is
38 performed. The records produced by the cameras shall be preserved for not less than one
39 year after the election at issue.

1 (e) All polling places shall be managed to provide an opportunity for registered voters to cast
2 their votes in an orderly manner. Minor children may accompany adults to polling places
3 and to the voting machine; provided, however, that no person, regardless of age or any
4 other factor, shall be allowed to disturb or disrupt others who are attempting to cast their
5 vote. Any person causing a disturbance or disruption may be prohibited from entering, or
6 may be removed from, the polling place but such action shall not be used to deny a
7 registered voter their opportunity to vote.

8

9 Sec. 161-13. Election officials.

10 (a) The board of elections shall appoint election judges, election clerks, door marshalls, and
11 alternates for each such position, to serve in the polling places.

12 (b) Qualifications. In order to serve as an election official, individuals must:

13 (1) Be enrolled members of the Eastern Band of Cherokee Indians; and

14 (2) Be at least 18 years of age by the date of the election; and

15 (3) Be able to read and write the English language; and

16 (4) Be a registered voter with the Tribal Election Board; and

17 (5) Not be a candidate and work any poll, nor immediately related to any candidate
18 within the township of service, nor have been an active member of any
19 candidate's campaign during that election year, and shall not express support for
20 any candidate during the term of appointment as an election official; and

21 (6) Must be willing to serve in any polling place;

22 (7) Attend and complete the mandatory orientation training seminar provided by the
23 Board of Elections prior to each election;

24 (8) Agree to follow all rules and regulations set forward for Tribal elections; and

25 (9) Agree not to remove any election materials or documents created by election
26 officials for any purpose relevant to the election from Board of Election offices or
27 polling places.

28 (c) Election judges.

29 (1) Two Election Judges shall be appointed by the Board of Elections for each polling
30 place no later than 30 days prior to all elections, one of whom shall be designated
31 by the Board of Elections as Chief Election Judge.

32 (2) The Chief Election Judge shall be responsible for the overall conduct of the
33 election at the polling place and ensuring the voting process is conducted in
34 accordance with law.

- 1 (2) If the primary appointee is unable to fill his or her duties, the alternate shall be
2 empowered to perform all the duties enumerated above applicable to the position
3 for which he or she is an alternate.
- 4 (3) The Board of Elections shall provide training to appointed alternates
5 commensurate with the position in which the alternates are requested to serve.

6 (g) Certification.

- 7 (1) All election officials shall be appointed and certified by the Board of Elections as
8 being eligible to serve in their respective capacities, prior to the election.
- 9 (2) All election officials shall before entering on their duties of office take the
10 following oath before a member of the Board of Election: "I [name], having been
11 duly appointed to serve as [title] for the [community] Township in the [year] [type
12 of election] Election, do solemnly swear (or affirm) that I will faithfully perform
13 the duties of that office to the best of my abilities and that I shall serve in a fair
14 and impartial manner without fear or favor to anyone; that I shall comply with
15 Tribal law and shall not engage in or aid, abet or encourage anyone else to engage
16 in any fraud or deceit that would compromise the integrity of my position, the
17 election process or the accuracy of the election results. I make this oath under
18 penalty of perjury." All oaths shall be signed and dated by the respective election
19 officials; such signed oaths shall also include the printed names of the election
20 officials.
- 21 (3) In the event of a vacancy in any of the election official appointments prior to an
22 election, the Board of Elections shall have authority to appoint and certify a
23 replacement.

24 (h) Early voting.

- 25 (1) Early voting shall be conducted pursuant to Sec. 161-15.1.
- 26 (2) Early voting shall be conducted at locations to be determined by Board of
27 Elections.
- 28 (3) The Board of Elections shall choose election officials for early voting no later
29 than 30 days before the date set for early voting.
- 30 (4) Election officials for early voting shall be certified and trained before the date set
31 for voting.

32

33 Sec. 161-14. Voting procedures.

- 34 (a) When a Tribal member appears at the polling place to vote, the enrolled member shall
35 present an Election **Judge official** with a Tribal, state or federal government issued photo
36 I.D. to verify identification, an Election **Judge official** shall then determine if the name

1 appears on the official list of registered voters furnished by the Board of Elections. If
2 there is any question regarding a voter's eligibility, the Chief Election Judge shall call the
3 Board of Elections to verify. If after confirmation with the Board of Elections, the voter is
4 determined not to be eligible or registered, he/she shall not be allowed to vote. If the
5 name appears on the official list of registered voters, the clerk shall then insure that the
6 voter's name does not also appear on the list of early or absentee voters, and shall record
7 the voter's name in a record book maintained for the purpose of documenting such fact. ~~A~~
8 judge An election official shall then give the voter an unmarked ballot.

9 (b) The voter shall mark the ballot in a designated private area within the polling place. The
10 voter shall then place the marked ballot into the ballot box and leave the polling place.

11 (c) If a voter seeks assistance in marking the ballot, the Election Clerk or other election
12 official shall mark the ballot as requested by the voter, and shall have two election
13 officials witness the marking. An official affidavit of assistance form must be signed by
14 the voter prior to the Election Clerk or other election official marking the ballot and noted
15 on that form the signatures of all election staff who in the administration or witnessing of
16 the casting of the ballot. The two election officials shall witness the marking of the ballot
17 and then immediately deposit the ballot in the ballot box.

18 (d) The Board of Elections shall not provide early voting or absentee ballots for run-off or
19 special elections.

20 (e) If any person is unable or unwilling to enter the polling place, the person shall be
21 permitted to vote in a motorized vehicle at the polling place. Such voters shall be
22 permitted to vote by having two of the election officials personally deliver the ballot to
23 such a voter. An official affidavit of assistance form must be signed by the voter prior to
24 the voter marking the ballot, and be noted on that form the signatures of all election staff
25 who assisted in the administration or witnessing of the casting of the ballot. The two
26 election officials shall witness the marking of the ballot by the voter and then
27 immediately return the ballot to the polling place and deposit the ballot in the ballot box.

28 (f) After the polls are opened, under no circumstances shall a ballot box be opened until the
29 polls are closed. If manual ballots are used, key operated locks shall be installed on the
30 ballot boxes with the keys under the sole control of the Board of Elections. The keys shall
31 be delivered to the Chief Election Judge for the Board of Elections only at the closing of
32 the polls. If electronic tabulators are used, the Board of Elections shall use equivalent
33 procedures consistent with the technical requirements of the ballot tabulators to ensure
34 that no unauthorized ballots are inserted in the ballot box or counted in the election.

35 (g) Any voting irregularities observed by the Election Officials must be reported by the Chief
36 Election Judge to the Board of Elections when they occur, but no later than the time when
37 the ballot boxes are returned to the Board of Elections. The Chief Election Judge shall
38 immediately submit a report of the alleged irregularities in writing stating specifically and
39 in detail what the alleged irregularity is. Any alleged irregularities and the manner in

1 which they were handled shall be communicated to each candidate that submits a Protest
2 of Election Irregularity to the Board of Elections within the protest period.

3
4 Sec. 161-15. Absentee voting.

5 (a) The Board of Elections shall prepare and administer a separate ballot for absentee voting.
6 The absentee ballot shall be identical to the regular ballot except that it shall be printed on
7 paper of a different color.

8 (b) Only enrolled members who are registered to vote and meet one of the following
9 requirements may vote by mail or in person by absentee ballot:

10 (1) Tribal members serving on active military duty, including immediate family
11 members who reside in the household, who are unable to return to
12 Cherokee/polling place to cast their votes;

13 (2) Tribal members who are unable to return to Cherokee/polling place to cast their
14 votes;

15 (3) Tribal members enrolled in institutions of higher education and enrolled members
16 of their household that are unable to return to Cherokee/polling place to cast their
17 votes;

18 (4) Tribal members who are employees of the Tribe and are required to be away from
19 Cherokee for training or for reasons required by their employment on the date of
20 election who are unable to return to Cherokee/polling place to cast their votes;

21 (5) Tribal members who: because of illness are in a hospital, nursing home, or other
22 treatment facility, and/or, who because of their physical condition and course of
23 treatment are unable to go to the polling place to cast their votes; or

24 (6) Tribal members who physically reside on Cherokee trust lands but who will be
25 absent from Cherokee on Election Day for business or personal reasons, and are
26 unable to return to Cherokee/polling place to cast their votes.

27 (c) Person desiring to vote by absentee ballot must apply for such a ballot within the
28 following time periods: Beginning on April 1 and ending on May 15 for the primary
29 election and beginning on July 1 and ending on August 15 for the general election, for
30 requests made by phone, electronic mail, or US mail. Requests may be made in person in
31 the Board of Elections Office by 4:00 p.m. the Friday before said election. ~~The Board of
32 Elections may require appropriate documentation to establish compliance of Subsection
33 161-15(b) of this Section be submitted with the application. A voter may request both a
34 primary election absentee ballot and a general election absentee ballot if the application
35 for absentee ballot is submitted by May 15.~~

36 (d) Absentee ballots shall be given or mailed to the prospective voter by the Board of
37 Elections beginning on May 1 for the Primary Election and on August 1 for the General

1 Election, together with instructions and an official self-addressed return envelope.
2 Absentee ballots must be witnessed, returned to and received by the Board of Elections
3 on or before 4:00 p.m. on the Friday before day of the Primary Election, and on or before
4 4:00 p.m. on the Friday before day of the General Election. All absentee ballots shall be
5 counted by the Board of Elections on Election Day.

6 (e) The Board of Elections shall prepare a list of all absentee ballots returned to the Board of
7 Elections and shall make such a list available to the Chief Election Judge in each polling
8 place on the day of election. Election officials shall not permit any person to cast a ballot
9 whose name appears on the absentee voters list.

10 (f) ~~The Board of Elections shall print on the face of each application for absentee ballot the~~
11 ~~following legend with the blank space in the legend to be completed:~~

12 ~~"This application is issued for the absentee ballots to be voted in the _____ (General~~
13 ~~Election, Primary Election, etc.) to be held on the _____ day of _____, 20____."~~
14 ~~Reserved.~~

15 (g) An application for absentee ballot shall be issued only by mail, electronic mail, or in
16 person to the voter. The application must be returned in paper form to the Board of
17 Elections. The voter shall provide a copy of his/her enrollment card and or a copy of
18 his/her government issued photo ID card with the application for absentee ballot. The
19 application shall require the voter to certify as follows:

20 "I, (Print Full Name), do certify, under penalty of perjury, that I am a voter in the
21 _____ Township voting member of the Eastern Band of Cherokee Indians, duly
22 registered to vote in accordance with the Cherokee Code. I understand it is a violation of
23 Tribal law to sign this certificate knowing that what I am certifying is not true.

24 _____

25 Signature of Voter

26 Date: _____

27 Witness: _____

28 Address: _____

29 Witness: _____

30 Address: _____

31 (h) No later than May 1 for a primary election and August 1 for a general election, the Board
32 of Elections shall print a sufficient number or envelopes in which persons casting
33 absentee ballots may transmit their marked ballots to the Board of Elections. Each return
34 envelope shall be printed in accordance with the following instructions:

35 (1) On one side shall be printed an identified number of the voter and the following
36 statement which shall be certified by one member of the Board of Elections:

1 "Certification of Election Board Member: The undersigned Election Board
2 Member certifies that _____ is a registered and qualified voter of _____
3 Township and has made proper request to vote under the laws of the Eastern Band
4 of Cherokee Indians.

5 _____
6 Chairman/Member

7 Date: _____

- 8 (2) On the other side shall be printed the return address of the Board of Elections and
9 the following certification:

10 "Certification of Absentee Voter: I, (Print Full Name), do certify, under penalty of
11 perjury, that I am ~~registered voter in _____ Township of voting member of~~ the
12 Eastern Band of Cherokee Indians, duly registered to vote in accordance with
13 Tribal law. I further certify that I requested an absentee ballot and that I marked
14 the ballot enclosed herein, or that it was marked for me in my presence and
15 according to my instructions. I understand it is a violation of Tribal law to sign
16 this certificate knowing that what I am certifying is not true.

17 Signature of Voter: _____

18 Date: _____

19 Witness: _____

20 Address: _____

21 Witness: _____

22 Address: _____

- 23 (i) On or before May 1 for a primary election and August 1 for a general election, the Board
24 of Elections shall prepare and print a sufficient number of instruction sheets on how
25 voters are to prepare absentee ballots and return them to the Board of Elections. The
26 instruction sheet shall state the date on which ballots must be received by the Board of
27 Elections to be counted.

- 28 (j) The Board of Elections shall use the following procedures to maintain the Absentee Logs:

- 29 (1) Record the absentee applications and ballots issued.
- 30 a. Name of the voter requesting an absentee ballot.
 - 31 b. Number assigned to voters ballot when issued.
 - 32 c. The township in which applicant is registered.
 - 33 d. Address to which the ballot is mailed.

- 1 e. The date the request for ballot was received.
- 2 (2) When the Board of Elections receives and approves an application for absentee
- 3 ballots, it shall promptly issue and transmit the ballot to the voter only, not to a
- 4 relative, in accordance with the following instructions:
 - 5 a. On a detachable tab, the Board of Elections shall have printed the words
 - 6 "Absentee Ballot No. _____" and insert in the blank space the number
 - 7 assigned to the absentee voter. The Board shall not write, type, or print any
 - 8 other matter upon the ballot.
 - 9 b. The Board shall detach the numbered tab, fold and place the ballot in a
 - 10 return envelope and write or type in the appropriate blanks thereon the
 - 11 absentee voters name, his/her ballot number and the designation of the
 - 12 township in which the voter is registered. The Board of Elections shall
 - 13 leave the return envelope holding the ballots unsealed.
 - 14 c. The Board of Elections shall then place the unsealed return envelope
 - 15 holding the ballot, together with printed instructions for voting and
 - 16 returning the ballot, in an envelope addressed to the voter at the address
 - 17 stated in his/her request, seal the envelope, and mail it at the expense of
 - 18 the Board of Elections. Alternatively, a voter may personally pick up the
 - 19 ballot at the Board of Elections office.
- 20 (3) If the voter does not meet the criteria for absentee voting, the Board of Elections
- 21 will notify the voter in writing of the reason for denial. The decision of the Board
- 22 of Elections to deny an absentee ballot application shall be final.

23
24 Sec. 161-15.1. Early voting.

- 25 (a) Any registered voter may vote early under the provisions of this subsection.
- 26 (b) Early voting opens at 9:00 a.m. on the first Monday of May and ends the fourth Monday
- 27 of May before the primary election and the first Monday of August and ends the fourth
- 28 Monday of August before the general election and closes at 4:00 p.m. on regular business
- 29 days except for the last Saturday prior to the closing of early voting; the last Saturday
- 30 hours shall be 9:00 a.m. until 4:00 p.m. The location for early voting shall be determined
- 31 by the Board of Elections and shall be located on Tribal trust lands. The Board of
- 32 Elections shall not extend the dates and times for early voting for any reason.
- 33 (c) All registered voters who desire to vote early shall follow the voting procedures set forth
- 34 in Section 161-14.
 - 35 (1) The early voting ballots shall be marked and distinctly colored from the absentee
 - 36 and regular voting ballots. On a detachable stub, the Board of Elections shall have
 - 37 printed the words "Early ballot No. _____" and insert in the space the number

1 assigned to the early voter. The Board shall not write, type, or print any other
2 matter upon the stub. The Board shall detach the numbered ballot tab.

3 (2) After voting in a private area, the voter shall place the ballot ~~in a sealed envelope~~
4 ~~provided and witnessed by a Board Member or Election Officials and placed~~ in a
5 locked ballot box. The early voting ballot box shall not be opened and counted
6 until election day.

7 (d) The Board of Elections shall prepare a list of all early ballots cast and shall make such a
8 list available to the Chief Election Judge in each polling place on the day of the election.
9 Election Officials shall not permit any person to cast a ballot whose name appears on the
10 early voter's list.

11 (e) Election irregularities and protests shall be conducted in accordance with the procedures
12 as set forth in Section 161-16 of this chapter.

13
14 Sec. 161-16. Election irregularities and protests.

15 (a) All protests must be submitted to the Board of Elections in writing and on forms provided
16 by the Election Board or, if not on forms provided by Board, then in a typed or legible
17 writing. Each protest shall contain sufficient detail to give the Board adequate notice of
18 the alleged irregularity being protested. All protests shall, at a minimum, contain the
19 following information: (1) the name, mailing address, physical address, telephone
20 number and email address (if one is available) of the protester; (2) the dates and
21 approximate times of the act(s) being protested; (3) a description of the subject of the
22 protest; (4) the name, mailing address, telephone number and email address (if one is
23 available) of all witnesses known to the protester; and (5) copies of all supporting
24 records, photos and other documentary evidence in the possession or control of the
25 protester that the protester wants the Board to consider. All protests must include a sworn
26 statement signed by the protester, before a notary, that the allegations presented in the
27 protest are true or that the protester, upon information and belief, believes them to be
28 true. All hearings for election irregularities and protests shall be set according to this
29 Section.

30 (b) The person filing the protest shall pay the protest filing fee ~~of \$100. expressed by the~~
31 ~~Board in its schedule of fees.~~ The person filing the protest must be an enrolled member of
32 the Eastern Band of Cherokee Indians who is registered to vote in Tribal elections.

33 (c) Except as otherwise provided in this section, a protest of irregularities in the conduct of
34 an election must be submitted to the Board of Elections no later than five business days
35 after the close of the polls. If the Board orders a hearing to hear the protest, then a hearing
36 date shall be set by the Board within two business days after the receipt of the written
37 protest.

38 (1) The Board has authority to not order a hearing if:

- 1 a. The Board determines that it can render an informed decision based on the
2 written protest and supporting materials provided by the parties, including
3 information obtained by the Board through its own independent research
4 and investigation, or
- 5 b. The Board determines that the written protest fails to meet the minimum
6 requirements set forth in C.C. Sec. 161-16(a), or
- 7 c. The alleged irregularities complained of, even if taken as true in the light
8 most favorable to the protestor, cannot be shown to have unfairly and
9 improperly or illegally affected the actual outcome of the election and but
10 for the alleged irregularities the winning candidate would not have
11 prevailed at the polls.

12 (2) If the Board orders a hearing on a protest of irregularities, the parties to the protest
13 shall be allowed adequate time to prepare their case, not to exceed five business
14 days. It is imperative to proceed in a timely manner, therefore the normal rules of
15 civil procedure are not applicable. Parties may request that the Board issue
16 subpoenas for persons or documents which the party expects to be relevant to the
17 protest. In its discretion, the Board may issue subpoenas for documents or any
18 witness it identifies as having information relevant to the issue or issues described
19 in the protest. At a hearing before the Board, and subject to C.C. Section 161-32,
20 the applicant shall have the right to present written evidence or oral testimony to
21 address the alleged irregularities. The North Carolina Rules of Evidence may be
22 used and give probative effect to evidence which possesses probative value
23 commonly accepted by reasonably prudent people in the conduct of their affairs.
24 They shall give effect to the rules of privilege recognized by law. They may
25 exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

26 (3) All persons that the protest may directly affect shall be notified of the scheduled
27 hearing by the Election Board. Notice shall be provided by any means authorized
28 in C.C. Section 161-29 ("Service of Communications by the Board of Elections").

29 (d) Any person filing a protest for election irregularities under this section must establish
30 before the Board of Elections that the alleged irregularities unfairly and improperly or
31 illegally affected the actual outcome of the election, and but for the irregularity, the
32 winning candidate would not have prevailed at the polls.

33 (e) All persons who are parties to an election protest shall have the right to have an attorney
34 and/or lay advocate represent them before the Board of Elections. Any attorney who
35 represents a person before the Board of Elections shall comply with Tribal law governing
36 the practice of law in Cherokee.

37 (f) If the Board orders a hearing, after all parties have had an opportunity to be heard and
38 present evidence the Board of Elections shall issue a final written decision. The decision
39 shall be issued within four business days after the conclusion of the hearing. If no hearing

1 is ordered, the Board shall issue the final written decision no later than four business days
2 after it determines it will not hold a hearing. The written decision shall be sent to all
3 affected person(s) by means authorized in C.C. Section 161-29 ("Service of
4 Communications by the Board of Elections").

5 (g) The Board has the power to:

- 6 (1) Find that the protest did not meet the requirements set forth in this Chapter and
7 dismiss the protest; or
- 8 (2) Find that the protest did meet the requirements set forth in this Chapter and issue
9 the appropriate relief.
- 10 (3) If the Board of Elections finds that the protester has met the burden expressed in
11 subsection (d) of this section, then the Board of Elections is authorized to issue
12 relief in the form of ordering a new election or a run-off election between two or
13 more candidates affected by the election irregularity. If it is shown by the
14 evidence presented that a crime may have been committed during the course of
15 the election, the Board of Elections may present evidence to the Tribal
16 Prosecutor's Office for possible criminal charges.
- 17 (4) The Board of Elections shall use the same procedure set out in Section 161-7 of
18 this Chapter, if a new or run-off election is warranted.
- 19 (5) The powers given to the Board of Elections in this subsection are in addition to,
20 and are a supplement to, the powers given to the Board in C.C. Section 161-19.

21 (h) The Board of Elections shall issue a final, written decision. The decision is not required
22 to take any particular form or to formally express findings of facts and conclusions of law
23 as might be written in a court decision; provided, however, the final decision shall
24 contain sufficient information to enable the Cherokee Supreme Court on appeal, if an
25 appeal is filed, to make an informed judgment as to facts considered by the Board of
26 Elections in making its decision so that the Court can determine whether the Board
27 committed an error of law. Notice of appeal to the Cherokee Supreme Court must be
28 given no later than three business days after the final decision is served on the non-
29 prevailing party.

30 (i) No person shall be entitled to receive monetary damages or recover their legal or personal
31 expenses from the Board of Elections or the Tribe.

32
33 Sec. 161-16.1. Certification of election results.

34 (a) At the meeting of Tribal Council on the first Monday of October following a general
35 election, or after the first meeting of the Tribal Council following a special or primary
36 election, the Board of Elections shall certify the election to the Tribal Council.

1 (b) If a formal election protest is filed with and not yet resolved by the Board of Elections
2 pursuant to Section 161-16, the Board of Elections shall only certify the results of the
3 seats or offices not in dispute with the Council by Annual Council.
4

5 Sec. 161-17. - Board established.

6 (a) The Board of Elections shall be composed of six members, one from each township. Each
7 member of the Board shall be appointed by the Tribal Council effective September 30 in
8 non-election years, with the term of each member to run for four years from that date.
9 The terms shall be staggered with one representative appointed from Painttown,
10 ~~Wolfstown~~ ~~Wolfetown~~/Big Y, Snowbird/Cherokee County in 2012 and each four years
11 thereafter; and one representative appointed from Big Cove, Birdtown and Yellowhill in
12 2014 and each four years thereafter.

13 (b) In order to serve as a member of the Board of Elections, a candidate must:

14 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and

15 (2) Be at least 18 years of age on the date of appointment; and

16 (3) Reside on Cherokee Trust Lands for a least one year prior to the date of
17 appointment and continue to reside on the Cherokee Trust Land for the duration
18 of their term; and

19 (4) Have received a high school diploma or equivalent prior to the date of
20 appointment.

21 (c) No Election Board member shall be a candidate for any Tribal office or actively support
22 any candidate for Tribal office during the term for which the member is appointed to the
23 Board. For purposes of this section, "actively support" means contributing money to,
24 campaigning for, or openly declaring support for any candidate.

25 (d) Every person who is a member of the Board of Elections shall take the same oath
26 required of election officials in C.C. Section 161-13.
27

28 Sec. 161-18. - Vacancies on election board.

29 A vacancy on the Board shall be filled by appointment of a replacement by the Tribal Council at
30 the next regular Council session after the vacancy occurs. Such appointee shall serve the
31 remaining term of the Board member being replaced.
32

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

- 1 (a) The Board shall have the power to do all things necessary and proper, consistent with this
2 Chapter, to effectuate the intent of this Chapter. Those powers include, but are not limited
3 to, the following: to make final decisions on candidate eligibility, proper voter and
4 candidate registrations and eligibility, absentee voter eligibility, and protest decisions; to
5 provide for the proper conduct of elections; to hire and/or contract with firms and
6 individuals to assist the Board in the conduct of its business; to resist, report and take
7 action against illegal or unethical conduct affecting Tribal elections; to set and impose
8 reasonable filing fees, protest fees and other fees; to provide for the imposition of civil
9 fines and other consequences for unlawful conduct; to make administrative rules pursuant
10 to Cherokee Code Chapter 150 (Administrative Procedure Act); and to develop rules,
11 policies, and procedures pursuant to Cherokee Code Section 117-35 (Authority to Make
12 Rules, Policies and Procedures). The Board, in carrying out its decision, shall have the
13 authority to subpoena documents and witnesses and shall have quasi-judicial powers to
14 make the final rulings on all election protests properly before it. If any person or entity
15 fails or refuses to obey a subpoena properly issued and served, the Board may apply to
16 the Cherokee Court for an order requiring compliance with the subpoena. The Cherokee
17 Court shall have jurisdiction to issue such order upon a showing by the Board that a
18 subpoena was properly issued and served, but was not complied with as the terms of the
19 subpoena required. Compliance with the court order may be enforced through the
20 contempt powers of the Court.
- 21 (b) The Board shall appoint all election officials necessary for the proper supervision of
22 Tribal elections as set forth in Article II of this Chapter.
- 23 (c) The Board shall provide to the election officials at each polling place a list of registered
24 voters for their respective polling place.
- 25 (d) The Board shall be responsible for the preparation of the official ballots to be used in
26 each of the polling places for all Tribal elections and shall furnish such ballots to the
27 elections officials in each polling place.
- 28 (e) The Board shall be responsible for certifying each applicant as eligible or ineligible,
29 notifying each applicant of its decision, and holding hearings as set forth in this Chapter.
30 The Board shall make public the names of the candidates certified as eligible on the
31 ballot for each Tribal office no later than April 15 of an election year for the primary
32 election and August 1 of an election year for the general election.
- 33 (f) The Board, together with the election officials for each polling place shall conduct all
34 ballot counts after the closing of the polls. The Board shall thereafter make public
35 unofficial reports of election returns. The Board shall certify elections as specified in
36 Section 161-16.1.
- 37 (g) The Board shall investigate irregularities and nonperformance of duty and violation of
38 Tribal election rules and regulations by election officials or other persons. The Board may
39 hold hearings in the course of such investigations in accordance with Section 161-16, but
40 is not required to hold a hearing on any particular matter if the Board determines that it

- 1 can render an informed decision based on the written protest and supporting materials
2 provided by the parties or the Board, including information obtained by the Board
3 through its own independent research and investigation.
- 4 (h) The Board shall have access to all ballot boxes and their contents, all voting machines
5 and their contents, all registration records, and all necessary enrollment records in the
6 Tribal Enrollment Office to carry out its duties under this Chapter. The Board of
7 Elections is authorized to utilize all resources available to properly document a voter's
8 residence for registration purposes.
- 9 (i) The Board shall conduct an instructional meeting for township officials at a location to be
10 determined by the Board[.] ~~and such meeting shall be held no later than the week~~
11 ~~preceding each election.~~ All election officials shall receive training and instruction in the
12 proper execution of their duties before the beginning of early voting, if possible. All
13 election officials shall receive a copy of a written training handbook detailing the election
14 day process.
- 15 (j) The Board shall keep a ~~tape~~ recording and written record of all Board meetings at which
16 evidence is received or a vote taken regarding a protest filed with the Board.
- 17 (k) The Board shall prepare and submit to the Tribal Council a budget request, which shall
18 include all anticipated Tribal election expenses for the coming fiscal year. The request
19 should include payment of all persons working with elections and all known registration
20 costs.
- 21 (l) The Board shall have the authority to fully implement and carry out all other duties set
22 forth in this Chapter.
- 23 (m) Whenever the Board of Elections votes on a matter, the decision receiving the majority of
24 votes shall prevail. If a vote taken on a matter results in a tie among the members of the
25 Board, the matter fails.
- 26 (n) The Board shall provide reasonable accommodations for individual with a disability
27 when exercising of their right to vote. Reasonable accommodations shall be given in all
28 processes required to exercise the right to vote, including, but not limited to, becoming a
29 registered voter, accessing public polling places, and engaging in early voting or
30 alternative voting.
- 31 (o) The Board shall have authority to conduct run-off elections, being a second election
32 conducted after a primary or general election usually involving a subset of the candidates
33 who participated the original election and is held for the following purposes:
- 34 (1) to resolve a tie between candidates who received the same number of votes in the
35 original election; or
- 36 (2) to re-do the election in whole or in part because the Board of Elections has
37 determined, upon its own independent research and investigation prompted by a
38 properly filed protest, that irregularities in the conduct of the election affected the

1 actual outcome of the election or rendered the results contrary to the Tribal
2 Charter or this Chapter 161, or the Board of Elections has determined that the
3 results are unreliable by clear and convincing evidence.
4

5 Sec. 161-20. - Definitions.

6 The terms defined in this Section shall, for all purposes of this Chapter, have the meanings
7 specified below:

8 *Business day* shall mean any day of the week in which Tribal offices are open for regular
9 business in whole or in part. This does not include Saturday, Sunday, or any other Tribal or
10 federal holiday or Tribal administrative leave day in which Tribal offices are closed for the whole
11 day.

12 *Calendar day* shall mean any day of the week.

13 *Candidate* shall mean the person running for elective office and includes his or her agent.
14 Candidate also includes any person or entity who files a ballot measure including, but not be
15 limited to, initiative questions, referendum questions and amendments to the Tribal Charter and
16 Governing Document or to the adopted constitution of the Tribe if a constitution is adopted.

17 ~~*Election period* shall mean the period beginning October 1 and ending on September 30 of each~~
18 ~~year of a regularly scheduled primary and general election for Tribal Council, Principal Chief or~~
19 ~~Vice Chief. In a special election, the election period shall mean the period beginning five months~~
20 ~~immediately before the date set for the special election called to fill a vacancy in a Tribal office~~
21 ~~and extending five months beyond the date of the special election.~~

22 *Election Year* shall mean October 1 through September 30 of the year of a regularly scheduled
23 general election for Tribal Council or Principal Chief or Vice Chief are held.

24 *Government Issued Identification (ID.)* shall mean a valid state issued driver's license, state
25 issued photo I.D., military personnel I.D. card, a United States government issued passport,
26 EBCI and EBCI entities' employee identification with photo, or EBCI Enrollment card with
27 photo.

28 *Immediately related to or Immediate family* shall mean a husband, wife, father, mother, brother,
29 sister, daughter, son, aunt, uncle, grandfather, grandmother, niece, nephew, or grandchild.

30 *Polling Place* shall mean the actual physical location where votes are cast during an elections.
31 The Board of Elections shall authorize and designate one polling place in or adjacent to each
32 voting township, except for the Wolfetown Wolftown Township, which shall have two polling
33 places — one for in Wolfetown Wolftown and one in for Big-Y, and Snowbird/Cherokee County,
34 which shall have one polling place for Snowbird and one for Cherokee County.

35 *Run-off election* shall mean a second election conducted after a primary or general election (1) to
36 resolve a tie between candidates who received the same number of votes in the original election;
37 or (2) to re-do the election in whole or in part for the reasons expressed in C.C. § 161-19.

1 *Township* shall mean the six established communities on the Qualla Boundary recognized by the
2 Tribal Council and in the Charter and Governing Document as having Tribal Council
3 representatives: Big Cove (including Tow String), BirdTown (including 3200 Acre Tract),
4 PaintTown, YellowHill, ~~WolfeTown~~ Wolfstown (including Big Y), and SnowBird, and Cherokee
5 County trust lands, combined into one township.

6 *Trust Land* shall mean land held in trust by the United States government for the benefit of the
7 Eastern Band of Cherokee Indians or its members.

8 *Tribe* is used inclusively and shall mean the government of the Eastern Band of Cherokee
9 Indians and all of its boards, commissions, entities and enterprises.

10 *Vacancy* shall mean that an elected official has resigned or died, or has been impeached or
11 removed, or has been removed after having been found to be disabled to the extent that he or she
12 is unable to discharge the powers and duties of the office during his or her term of office.

13

14 Sec. 161-21. - Prosecution.

15 Any violation of this Chapter that may constitute commission of crime shall be referred by the
16 Board of Elections to the Tribal prosecutor for review and potential prosecution in the Cherokee
17 Court or in federal court depending on the nature and extent of the crime.

18 Any person who, in any official proceeding of the Board of Elections or in any official document
19 submitted to the Board or submitted to another entity or person as required in this Chapter,
20 makes a false statement under oath or affirmation, or who swears or affirms the truth of a
21 statement previously made when the statement is material and the person believes the statement
22 not to be true, shall be subject to prosecution under applicable Tribal law.

23

24 Sec. 161-22. - Effective date; amendment; severability; weekends.

25 (a) This Chapter and amendments to it shall be effective upon ratification by the Principal
26 Chief.

27 (b) The provisions of this Chapter that established election requirements or procedures shall
28 not be amended during an election year as defined in Section 161-20, except as provided
29 in Section 161-25.

30 (c) If any provisions of this Chapter are found to be invalid because it is inconsistent with
31 another law, then the inconsistent portion shall be reviewed and amended until all
32 conflicts are resolved. All other provisions of this Chapter shall remain in full force and
33 effect.

34 (d) If the deadline for any action required under this Chapter falls on a weekend or holiday,
35 then the deadline is extended until the next business day.

36

1 Sec. 161-23. - Appellate review.

2 The standard of review for an appeal of a final decision by the Board of Elections shall be for
3 error of law.

4

5 Sec. 161-24. - Unlawful campaign practices.

6 (a) In addition to other prohibitions in this Chapter, the following acts are unlawful:

7 (1) Campaigning within 100 yards of a polling place. No person shall campaign,
8 attempt to persuade voters, place campaign literature or signs, or otherwise
9 attempt to influence the outcome of a Tribal election within 100 yards of a polling
10 place. This restriction shall be applied in concert with the 100 yard restrictions
11 provided in C.C. Section 161-12 and Section 161-13(d).

12 (2) Buying or selling votes. No person, corporation, partnership, or any other legal
13 entity shall attempt to influence a person or obtain his or her vote, or obtain his or
14 her signature on a petition, by making a direct and specific offer to that individual,
15 or to another person on behalf of that individual, of money, goods or services.
16 This subsection is not intended to limit the making of "campaign promises", i.e.,
17 generalized suggestions that people will benefit from policies associated with
18 particular candidates or particular issues on the ballot.

19 (3) Tampering with ballots. No person shall tamper with, alter, destroy, deface or
20 mutilate ballots that have been cast in an election, or perform any such acts in
21 connection with an official record of ballots cast in an election, except as
22 authorized by law.

23 (4) Giving false information in registering or voting. No person shall knowingly or
24 willfully give false information as to his name, address or period of residence in
25 the township for the purpose of establishing his eligibility to register or to vote, or
26 conspire with another individual for the purpose of encouraging his false
27 registration to vote or illegal voting, or pay or offer to pay or accept payment for
28 registering to vote or for voting.

29 (5) Falsification or concealment of material facts. It shall be unlawful for any person
30 to knowingly and willfully falsify or conceal a material fact, or make any false,
31 fictitious, or fraudulent statement or representation, or make or use any false
32 writing or document knowing the same to contain any false, fictitious, or
33 fraudulent statement or entry.

34 (6) No intimidation. No person, organization, association, corporation or other entity
35 shall use or threaten to use physical force, job discrimination, employment
36 reprisal, employment reward, or financial reprisal or financial reward, to solicit or
37 accept money or any other thing of value for the purpose of influencing the result
38 of an election or to assist a candidate or office holder.

- 1 (7) Voting more than once in an election. No person shall vote more than once in an
2 election, except as provided by law.
- 3 (8) Marking the ballot of another person. No person shall mark the ballot of another
4 voter without that voter's express approval. No person shall execute the signature
5 of another voter on any document submitted to the Board of Elections without
6 that voter's express approval.
- 7 (9) Photographing voters prohibited. No person shall photograph, videotape, or
8 otherwise record the image of any voter within the ~~voting enclosure~~ polling place.
9 This subsection does not apply to cameras used as a regular part of the security of
10 the facility that is a polling place.
- 11 (10) Photographing voted ballot prohibited. No person shall photograph, videotape, or
12 otherwise record the image of a voted official ballot for any purpose not otherwise
13 permitted under law.
- 14 (b) A willful violation of Cherokee Code Sec. 161-24(a) ("Unlawful campaign practices")
15 shall be a crime punishable by a fine not to exceed \$5,000.00, by imprisonment not to
16 exceed a term of one year, or both.

17

18 Sec. 161-25. - Amendment to this chapter.

19 No provisions of this Chapter 161, otherwise known as the Election Ordinance, may be amended
20 from October 1 to September 30 of any Election year in which regularly scheduled general
21 elections for Tribal Council or Principal Chief or Vice Chief are held. This restriction does not
22 apply to amendments that are necessary to comply with decisions of the Cherokee Tribal Court,
23 or to amendments that are procedural or administrative that do not alter the substantive
24 requirements for the actions or persons expressed in this Chapter.

25

26 Sec. 161-26. - Board of elections office.

- 27 (a) The Board of Elections shall have an office or offices that are secured so that access to
28 the offices is limited to authorized persons only.
- 29 (b) The Board of Elections offices shall have working security cameras that shall record all
30 persons coming and going from the offices ~~during an election period~~, and to record the
31 handling and securing of all ballots, and to provide for the security of all ballots.
- 32 (c) Keys and codes to Board of Election offices shall only be provided to authorized
33 personnel. All access to Election Board offices shall be logged remotely, providing the
34 ability to review who has been in and out of the offices.

35

36 Sec. 161-27. - Securing and logging ballots.

- 1 (a) All ballots shall be secured in a locked safe or cabinet with access limited to authorized
2 personnel only. The Board of Elections shall maintain a log indicating who accesses the
3 ballots and the day, date and time (example: "Monday, 08/28/2017, 2:00 p.m.") access
4 was made.
- 5 (b) If bins or containers are used to store marked or unmarked ballots, the bins or containers
6 shall be sturdy enough to preclude reasonable attempts at unauthorized access and shall
7 have a secure locking system to safeguard sensitive data and to prevent tampering, theft
8 or destruction of documents.
- 9 (c) If security seals are used to securely lock bins or containers, the security seals shall be
10 secured in a locked cabinet with limited access controlled by the Board of Elections. A
11 log shall be maintained to monitor who has accessed the security seals, as well as reason
12 access to the seals was necessary. The log shall contain day, date and time entries. Two
13 signatures shall be noted on the log each time a bin or container is opened, with one
14 signature being that of a Board of Elections members.
- 15 (d) Security seals shall be uniform and pre-numbered sequentially.
- 16 (e) The Board of Elections shall log spoiled ballots.

17

18 Sec. 161-28. - Poll books.

19 All poll books shall be reconciled and verified daily by two members of the Board of Elections.

20

21 Sec. 161-29. - Service of communications by the Board of Elections.

22 Wherever in this Chapter the Board of Elections is required to serve an official notice, ~~fine~~ or
23 decision on a person, the Board may serve the official communication in any of the ways
24 expressed in this section. Regardless of the manner of service, the Board shall keep records
25 establishing that the communication was made, ~~actually received by the intended recipient, and~~
26 ~~when it was received, including information about when the recipient received the~~
27 communication. The following methods of service are acceptable:

- 28 (a) By requiring the recipient to personally appear at the Board of Elections office to pick-up
29 and sign for the document; or
- 30 (b) By mailing the document to the recipient by United States Postal Service certified mail
31 with return receipt requested, or by delivery by FedEx or United Parcel Service; or
- 32 (c) By personal delivery by an officer of the Cherokee Indian Police Department with proof
33 or return of service to be provided by the officer to the Board. The Cherokee Indian
34 Police Department is hereby authorized and required, if requested by the Board, to
35 deliver such communications and provide proof or return of service to the Board. ~~;~~ or

1 (d) By electronic means such as by email or text message to a mobile telephone number
2 maintained by the candidate; provided, however, that the Board shall preserve all such
3 emails or other electronic communications and shall keep records of all such
4 communications with sufficient detail so the Board can show when the communication
5 was made, who received it and when it was received.

6

7 Sec. 161-30. - Calculation of days.

8 Unless a different meaning is clearly expressed, wherever in this Chapter a time period of ten
9 days or less is expressed for the performance of an act (such as for filing a required document,
10 scheduling a hearing or providing notice of an event), those days shall mean business days; and
11 any time period greater than ten days shall mean calendar days.

12

13 Sec. 161-31. - Legal representation at hearings.

14 Parties to hearings before the Board of Elections shall have the right to have an attorney and/or
15 lay advocate represent them at the hearing. Any attorney who represents a person at a hearing
16 before the Board shall comply with Tribal law.

17

18 Sec. 161-32. - Control of hearings.

19 The Board of Elections shall have authority to control the conduct of hearings before the Board.
20 The Board may impose reasonable restrictions on the presence of parties, witnesses and other
21 persons, the sequestration of the same, the presentation of evidence and the duration of hearings.
22 Such control shall be exercised to provide a safe and orderly hearing and to minimize disruption
23 and delay.

24

25 **BE IT FINALLY ORDAINED** that all ordinances which are inconsistent with this ordinance
26 are rescinded, and that this ordinance shall become effective upon ratification by the
27 Principal Chief.

28

29 *Submitted by the EBCI Board of Elections:*

30

Cindy Chandler, Wolfstown/Big Y (Chairman)

31

Lloyd Arneach, Yellowhill (Co-Chairman)

32

Denise Ballard, Birdtown

33

Roger Smoker, Snowbird/Cherokee County

34

Joan Bradley, Painttown

35

Deb West, Big Cove