

# TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: AUG 01 2024

ORDINANCE NO. 264 (2024)

*An ordinance amending C.C. Sec. 18B-200 to provide for application of the Personnel Policy to the staff of the TABCC and amending C.C. Sec. 18B-205 to require the TABCC to use the Tribe's financial management software and to adopt and follow the Tribe's Fiscal Management Manual.*

WHEREAS, the Tribal Alcoholic Beverage Control Commission ("TABCC") was established in 2009 when Tribal Council passed Cherokee Code (C.C.) Chapter 18B for the regulation of alcoholic beverages; and

WHEREAS, the creation, membership, independence and other aspects of the TABCC are expressed in C.C. Sec. 18B-200; and

WHEREAS, subsection (f) of Sec. 18B-200 states that the TABCC "shall be and shall act independently and autonomously from the Principal Chief, Tribal Council, the Tribal Gaming Commission and the Tribal Casino Gaming Enterprise. No prior or subsequent review by the Principal Chief, Tribal Council, the Tribal Gaming Commission or the Tribal Casino Gaming Enterprise shall be required or permitted, except as otherwise explicitly provided in this chapter."; and

WHEREAS, subsection (a)(8) of C.C. Sec. 18B-203 gives the TABCC authority to "Adopt fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, the daily deposit of funds and any other rules necessary to assure the proper accountability of public funds."; and

WHEREAS, a recent financial audit found that the TABCC had not adopted or had not applied necessary fiscal control rules, creating the potential that TABCC funds could be misused or not properly tracked and accounted for; and

WHEREAS, C.C. Chapter 18B should be amended to require the TABCC to adopt and comply with the Tribe's Fiscal Management Manual and to use the Tribe's financial software system.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that C.C. Sec. 18B-200 and Sec. 18B-205 shall be amended to read as follows:

1 **Sec. 18B-200. - Tribal Alcoholic Beverage Control Commission.**

2 (a) *Creation of Commission; compensation.* The Tribal Alcoholic Beverage Control  
3 Commission is created to consist of a chairman and four associate members. The  
4 Commissioners shall receive compensation and benefits at a level determined by Tribal  
5 Council resolution. This compensation shall be included in the Commission's annual budget.  
6 Commissioners shall be reimbursed for actual expenses incurred on Commission business,  
7 including necessary travel expenses.

8 (b) *Appointment of members.* Members of the Commission shall be appointed by the Principal  
9 Chief subject to approval by Tribal Council. Nominees to the Commission shall be enrolled  
10 members and selected on the basis of their commitment to the interests and goals of the  
11 Commission without forgetting the interests of the Cherokee community, their preparedness  
12 to assume responsibility for the decisions of the Commission and to ensure that said decisions  
13 are implemented, and their willingness to devote the time and energy necessary to familiarize  
14 themselves with the strategic, financial and operational issues facing the Commission.

15 (c) *Terms of members.* The Interim Commission shall serve for a term of two years. Following  
16 the expiration of the Interim Commission's term, the Principal Chief shall appoint five  
17 Commissioners for a term of four years, four years, three years, two years and one year  
18 respectively and at least one appointee will be from the Interim Commission. The  
19 Commissioner shall elect their own officers at the start of each fiscal year. Thereafter, all  
20 Commission members shall be appointed to terms of four years and the established staggered  
21 terms shall continue for each Commission position for future new, renewal or replacement  
22 appointments. All Commission members may be removed for cause by a majority vote of the  
23 Tribal Council. Nothing in this chapter shall be construed to preclude a member of the  
24 Commission from serving successive terms.

25 (d) *Vacancy.* The Principal Chief shall fill any vacancy on the Commission by appointing a  
26 successor within 30 days after the date on which the vacancy becomes effective subject to  
27 approval by Tribal Council. If the Chairman's seat becomes vacant, the Vice Chairman shall  
28 immediately assume the Chairman's seat and complete the remaining term of the vacating  
29 Chairman. A new member of the Commission will be appointed by the Principal Chief, subject  
30 to approval by Tribal Council, to complete the remaining term of the former Vice Chairman.  
31 The Commission will then elect a new Vice Chairman.

32 (e) *Employees.* The ~~ehairman~~ Executive Director is authorized to employ, discharge, and  
33 otherwise supervise subordinate personnel of the Commission.

34 i. Application of the Tribe's personnel policy. It is the intent of the Commission that  
35 all hired staff, including the Director, shall have the benefits and protections of the  
36 personnel policy applicable to all Tribal employees, including procedures for  
37 corrective actions. In order to maintain a clear separation of duties and administration  
38 of the preference law, however, all staff serving the Commission shall be separate  
39 from the administrative authority of the Principal Chief, the Executive Committee,  
40 and Tribal Council. It shall be the responsibility of the Executive Director, with the  
41 approval of the Commission, to modify such Tribal personnel policies and procedures,  
42 as needed, in order for such policies and procedures to be effective for the personnel  
43 needs of the Commission. The Commission shall have exclusive supervisory

1 responsibility of the Director and the Director shall have supervisory and personnel  
2 responsibilities over all other Commission staff.

3 (f) *Independence.* In all matters within its purview and responsibilities, the Commission shall  
4 be and shall act independently and autonomously from the Principal Chief, Tribal Council,  
5 the Tribal Gaming Commission and the Tribal Casino Gaming Enterprise. No prior or  
6 subsequent review by the Principal Chief, Tribal Council, the Tribal Gaming Commission or  
7 the Tribal Casino Gaming Enterprise shall be required or permitted, except as otherwise  
8 explicitly provided in this chapter.

9 (g) *Sovereign Immunity of the Commission.* The Commission, as an instrumentality of the Tribe,  
10 retains all of the Tribe's rights, privileges and immunities, including sovereign from suit.

11 (h) *Oath of Office.* Prior to beginning their official duties, each member of the Commission shall  
12 take the following oath before some officer authorized to administer oaths: "I do solemnly  
13 swear (or affirm) that I will faithfully execute the duties of Commissioner as a member of the  
14 Tribal Alcoholic Beverage Control Commission and will to the best of my ability, preserve,  
15 protect and defend the charter and governing document and laws confirmed and ratified by  
16 the enrolled members of the Eastern Band of Cherokee Indians. I do solemnly swear (or  
17 affirm) that I have not obtained my appointment to this Commission by bribery or any undue  
18 or unlawful means or fraud, and that in all measures which may come before me, I will so  
19 conduct myself as in my judgment shall appear most conducive to the interest and prosperity  
20 of the Eastern Band of Cherokees."

21 (i) All Commissioners will be subject to initial and subsequent random drug testing per the  
22 Tribal personnel policy. Refusal to submit to any drug testing or a positive test result shall  
23 result in an immediate dismissal from the Commission. Drug testing shall be paid from the  
24 annual budget of the Commission.

25 (j) All Commissioners are subject to the same criminal background checks as TCGE and TGC  
26 employees. Each Commissioner is required to update their information.

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28 **Sec. 18B-205. Budget, Accounts, reports and audits required.**

29 (a) *Accounts and reports.* The Commission shall be required to submit to Tribal Council and to  
30 the Principal Chief such reports as may be required by Tribal Council.

31 (b) *Annual independent audit.* The Commission shall engage independent auditors for annual  
32 audits of its internal operations. Such independent audits must apply generally accepted  
33 accounting principles.

34 (c) Budget. The Commission shall establish a budget for the support and operations of the  
35 office, pay salaries and other expenses, within the limit of funds available to it, which is to  
36 be included in budget requests submitted annually to Tribal Council for approval. The  
37 Commission shall manage its budget in coordination with the Tribe's financial management  
38 system, including use of the Tribe's financial management software, and shall adopt and  
39 follow the Tribe's Fiscal Management Manual.

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2 (f)Application of the Tribe's personnel policy. It is the intent of the Commission that all hired  
3 staff, including the Director, shall have the benefits and protections of the  
4 personnel policy applicable to all Tribal employees, including procedures for  
5 corrective actions. In order to maintain a clear separation of duties and  
6 administration of the preference law, however, all staff serving the TERO shall be  
7 separate from the administrative authority of the Principal Chief, the Executive  
8 Committee, and Tribal Council. It shall be the responsibility of the Director, with  
9 the approval of the Commission Chairman, to modify such Tribal personnel  
10 policies and procedures, as needed, in order for such policies and procedures to be  
11 effective for the personnel needs of the TERO. The Commission Chairman shall  
12 have exclusive supervisory responsibility of the Director and the Director shall  
13 have supervisory and personnel responsibilities over all other TERO staff.  
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15 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are  
16 rescinded, and that this ordinance shall become effective when ratified by the  
17 Principal Chief.  
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20 *Submitted by Michael McConnell, Attorney General, on behalf of Michell Hicks, Principal Chief*  
21 *and Michael Stamper, Tribal Council (Painttown).*