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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: _____

ORDINANCE NO. _____ (2025)

An ordinance amending C.C. Sections 95-12 and 95-13 to delete the reference to "Local Indians" and to clarify that the Tribe's employment preference law gives first preference to EBCI enrolled members.

WHEREAS, the employment preference law of the Eastern Band of Cherokee Indians is expressed in C.C. Section 95-12 and C.C. Section 95-13; and

WHEREAS, taken together, those sections state that the first employment preference shall be given to any "Local Indian", an archaic phrase that has outlived its usefulness and which is defined as enrolled members of the EBCI and "any member of another federally-recognized tribe who resides within the exterior boundaries of the Reservation"; and

WHEREAS, the highest employment preference should be given only to enrolled members of the EBCI and their spouses and children; and

WHEREAS, C.C. Sec. 95-12 and Sec. 95-13 should be amended to strike the definition of "Local Indian" and clearly state that EBCI enrolled members and their spouses and children shall have the first preference in employment.

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 Section 95-12 and C.C. Section 95-13 are amended to read as follows:

Sec. 95-12. Definitions.

- (a) *Employee* means any person employed for remuneration.
- (b) *Employer* means any person, partnership, corporation or other entity that employs individuals for wages.
- (c) *Covered employer* means the Tribe, all Tribal programs and entities, and all other employers who receive grant or contract funding from the Tribe. All other employers are encouraged to use the TERO skills bank. Pursuant to Resolution 150 (1994), all employers holding a Trader's License and conducting business on Cherokee trust lands who desire to advertise for employment opportunities with newspapers and the media outside of Cherokee, shall also advertise such employment opportunities in the Cherokee One Feather, and such advertising shall be deemed a condition of conducting business on Cherokee trust lands.

- 1 (d) *Entity* means any person, partnership, corporation, joint venture, government, governmental
2 enterprise, or any other natural or artificial person or organization. The term "entity" is
3 intended to be as broad as possible to ensure this law's coverage over all employment
4 activities within the Tribe's jurisdiction, and the term shall be so interpreted by the
5 Commission and the Court.
- 6 (e) *Commission* or *TERC* means the Tribal Employment Rights Commission established by this
7 law.
- 8 (f) *Commercial enterprise* means any activity by the Tribe or the federal or state governments
9 other than a traditional government function as defined by the Internal Revenue Service.
- 10 (g) *Indian* means any member of a federally-recognized Indian Tribe.
- 11 (h) ~~*Local Indian Enrolled Member*~~ means any member of the Eastern Band of Cherokee
12 Indians, ~~or any member of another federally-recognized tribe who resides within the~~
13 ~~exterior boundaries of the Reservation.~~
- 14 (i) *Cherokee Indian Reservation* or *Reservation* means the Qualla Boundary and all other lands
15 held in trust for or owned by the Eastern Band of the Cherokee Indians.
- 16 (j) *Tribe* means the Eastern Band of Cherokee Indians.
- 17 (k) *Cherokee Court* or *Court* means the Court of Indian Offenses for the Eastern Band of
18 Cherokee Indians, or any successor tribal court established by the Tribe.
- 19 ~~(l) *Tier 1* means the first or highest level of preference and is reserved for Enrolled Members as~~
20 ~~defined herein.~~
- 21 ~~(m) *Tier 2* means the second level of preference and is reserved for parents, spouses and~~
22 ~~children of Enrolled Members as defined herein.~~

23 **Sec. 95-13. Indian preference in employment.**

- 24 (a) All covered employers for all employment occurring within the Reservation shall give
25 preference, ~~as further described in subsection (b)~~ to qualified ~~Indians with the persons first~~
26 ~~preference to local Indians~~ in all initial hiring and training. ~~Local Indians shall also receive~~
27 ~~and shall give them~~ preferential protection from layoffs ~~and promotions~~. The Tribal
28 government may express additional preference levels in its Personnel Policy so long as the
29 preferences expressed in this section retain the first and second positions.
- 30 (b) (1) ~~*Tier 1*~~ Preference in Initial Hiring. Covered employers shall give first preference in initial
31 hiring to ~~local Indians Enrolled Members~~ who meet the minimum qualifications for a
32 particular job, regardless of any higher qualifications that non-Indians may have.
- 33 (2) ~~*Tier 2 Preference in Initial Hiring.*~~ Covered employers shall give second preference in
34 initial hiring to ~~Spouses of local Indians who parents, spouses and children of Enrolled~~
35 ~~members, when the parent, spouse or child in question meets meet~~ the minimum
36 qualifications for a particular job ~~shall be entitled to a second preference.~~
- 37 ~~(2)(3)~~ Preference in Promotions. Covered employers shall give ~~first first~~ preference in
38 promotions ~~to local Indians to Tier 1 employees~~; provided, however, that covered
39 employers may adopt promotion policies which reward employees who perform at
40 higher levels of performance and such employers will not be bound to promote

1 qualified Indians Tier 1 employees who meet only the minimum requirements of the
2 job if these employees do not also meet the higher performance requirements set out in
3 the promotion criteria of the covered employers' personnel policy. However, once the
4 higher promotion criteria is met, preference will be given to the Indian Tier 1 employee
5 meeting that promotion criteria. For the Tribal government and its entities, promotion
6 performance criteria shall be in writing and filed with the respective Human Resources
7 Department on or before September 30, 2023, and promotions after that date shall be
8 examined to ensure satisfaction of the written criteria. The Human Resources
9 Department of the Tribal government shall develop a promotion criteria template that
10 may be modified and used by Tribal government programs and entities. Covered
11 employers shall offer appropriate training and opportunities to employees so the
12 employees may learn the skills necessary to support promotion.

13 (3) Nothing in this chapter shall be construed to prevent a covered employer from
14 selecting the most qualified Indian Tier 1 applicant, or from selecting a non-Indian
15 non-Tier 1 or non-Tier 2 applicant if no qualified Indian Tier 1 or Tier 2 person
16 applies for the job.

17 (4) The Tribal government and its entities shall advertise initial hire opportunities and
18 promotion opportunities in-house for seven calendar days before advertising
19 externally, but may also run in-house and external advertisements concurrently.

20 (c) No covered employer shall discriminate against any employee on the basis of gender, age,
21 disability, or religion.

22 (d) For purposes of hiring, a covered employer who:

23 (1) Utilizes the hiring hall or skills bank established by the Commission,

24 (2) Notifies at least three Indians of the opportunity to apply for the job (unless fewer are
25 listed for the available job), and

26 (3) Complies with subsections (b) and (c) of this section, shall be considered in
27 compliance with this preference law.

28 (e) All covered employers shall comply with the rules, regulations, guidelines, and orders of the
29 Tribal Employment Rights Commission which set forth the specific obligations of
30 employers in regard to Indian preference.

31 (f) The requirements of this law shall not apply to any direct employment by federal, state or
32 other governments or their subdivisions. It shall apply to all contractors or grantees of such
33 governments and to all commercial enterprises operated by such governments.

34 (g) This law shall apply to the Tribe, except that C.C. Sections 95-23, 95-24, and 95-25 shall
35 not apply. Any complaint against the Tribe for violation of this law shall be filed with the
36 Director prior to a hearing and appeal under any applicable personnel policies and
37 procedures of the Tribe and shall not be heard by the Commission. Nothing in this law shall
38 be construed as a waiver of the Tribe's sovereign immunity.

39 (h) For purposes of initial hiring by the Tribe or a program funded by the Tribe, of persons
40 subject to the Tribe's Personnel Policies and Procedures, if a local Indian Tier 1 applicant
41 meeting the minimum qualifications applies for a job, no other person shall be hired without

1 a written justification satisfactory to the Office of Human Resources. Tribal entities that are
2 not subject to the Tribe's Personnel Policies and Procedures shall adopt a similar process.

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4 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
5 rescinded, and that this ordinance shall become effective when ratified by the
6 Principal Chief.

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9 *Submitted by Michael McConnell, Attorney General.*