

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: NOV 01 2018

ORDINANCE NO. 408 (2018)

WHEREAS, on September 6, 2018, Tribal Council passed Ordinance No. 173 (2018) which was amended to extend the time for amending the Tribal election laws codified at Cherokee Code Chapter 161; and

WHEREAS, Tribal Council and the community have requested changes to the election ordinance to improve the election process so that it produces trustworthy election results and address the problems encountered in the 2017 Tribal general election; and

WHEREAS, the amendments to the election ordinance are presented in this ordinance.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapter 161, the election ordinance, shall be amended to read as follows:

Sec. 161-1. - Election dates.

- (a) The Cherokee General Election shall be held on the first Thursday in September ~~1999~~ 2019, and each two years thereafter.
- (b) The Primary Election for the office of Principal Chief and Vice-Chief shall be held on the first Thursday in June, ~~2015~~ 2019, and each four years thereafter.
- (c) The Primary Election for the offices of Tribal Council shall be held on the first Thursday in June, ~~2013~~ 2019, and each two years thereafter.
- (d) A Primary Election run-off shall be held on the third Thursday in June, ~~2013~~ 2019, and each two years thereafter, if necessary.
- (e) A General Election run-off shall be held on the third Thursday in September ~~1999~~ 2019 and each two years thereafter, if necessary,

Sec. 161-2. - Tribal Offices. [No changes are made to this section.]

Sec. 161-3. - Qualification for offices.

- (a) In order to run for or serve as the Principal Chief or Vice-Chief, a candidate must:
 - (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
 - (2) Be at least 35 years of age by the date of the primary election; and

- (3) Have resided on Cherokee trust land continuously for at least two years immediately preceding the date of the primary election; and
- (4) Continue to reside on Cherokee trust land during their term of office; and
- (5) Be a registered voter with the Tribal Election Board.
- (b) In order to run for or serve as a member of the Tribal Council, a candidate must:
- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 18 years of age by the date of the primary election; and
- (3) Have resided in the township which he or she is to represent for at least 90 days immediately preceding the date of the primary election; and
- (4) Continue to reside in the township in which the candidate was elected during their term of office; and
- (5) Be a registered voter with the Tribal Election Board.
- (c) In order to run or serve as a member of the Cherokee School Board, a candidate must:
- (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- (2) Be at least 21 years of age by the date of the primary election; and
- (3) Reside in the community the candidate represents for at least one year immediately preceding the date of the primary election and continue to reside in that community during the term of office; and
- (4) Have received a high school diploma or the equivalent; and
- (5) Be a registered voter with the Tribal Election Board.
- (d) No person shall ever be eligible to file for or serve in any of the above Tribal Offices, if:
- (1) The person has been convicted of, pled guilty to, or entered a no-contest plea to a felony; or
- (2) The person has aided, abetted, counseled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians or has defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians; or
- (3) The person has been impeached and removed by the Tribal Council from any elected or appointed office, or found guilty in any jurisdiction to have violated a law that would constitute a violation of Section 17 of the Charter and Governing Document of the Eastern Band of Cherokee Indians; or
- (4) The person has resigned from Tribal elected or appointed office while under criminal investigation or under pending charges for fraud, or a violation of Section 17 of the Tribal Charter or Tribal Law; or
- (5) The person is more than ninety (90) days in default of an obligation to pay a debt to the Tribe, which obligation is imposed by law, contract or court order and the default has not been cured; or
- (6) The person fails to meet the residency requirements for elected office.
- (e) No person may file for, run for, or hold more than one Tribal elective office at any one time. However, a person may run for Tribal elected office while holding a different Tribal

1 office, so long as ~~the term of the office currently held will expire prior to or at the same~~
2 ~~time as the person would assume office if elected to the new office~~ the person resigns from
3 the current elected office prior to taking the oath of office for the newly elected office.
4

5 (f) No person is eligible to hold the office ~~for~~ of Principal Chief, Vice-Chief or Tribal Council
6 member while simultaneously being a Tribal employee or an employee of a Tribal entity. A
7 Tribal employee may run for office, but if elected must resign prior to taking the oath of
8 office for Principal Chief, Vice-Chief, or Tribal Council.
9

10 (g) ~~Members of the Tribal Council or School Board who change their residence from the~~
11 ~~township that they were elected to represent shall be removed from office by the Board of~~
12 ~~Elections if a petition is filed with the Board by an enrolled member registered in that~~
13 ~~township and upon such a finding made by the Board of Elections. Tribal Council or~~
14 ~~School Board members whose residence is challenged by such a petition shall have the~~
15 ~~right to a hearing by the Board of Elections at which they may present evidence and~~
16 ~~testimony in their own behalf. The Election Board's decision is the final decision to be~~
17 ~~made by a Tribal body but may be appealed to the Tribal Court for further review.~~
18

19 (h) ~~No person is eligible to hold the office for Cherokee School Board member while~~
20 ~~simultaneously being an employee or student of the Cherokee Central School System. No~~
21 ~~person is eligible to hold the office for Cherokee School Board Member while~~
22 simultaneously being an employee or student of the Cherokee Central School System. An
23 employee of the Cherokee Central School system may run for a seat on the Cherokee
24 School Board, but that employee must resign from employment before taking the oath of
25 office on the School Board.
26

27 (i) Where this section requires a person to reside or to have resided on Cherokee trust land
28 generally or in a particular Cherokee township or community, that requirement shall mean
29 that the person has made that place their primary, permanent place of abode for the
30 required period. It is where they live full-time except for temporary absences of relatively
31 short duration. All candidates and elected officials must continue to meet residency
32 requirements of their elected office for the duration of their candidacy and, if elected, for
33 the duration of their term(s). Any elected official who violates the residency requirement
34 shall be ineligible to hold the office and shall be removed therefrom by process of
35 applicable law. Suspected violations of the residency requirement shall be reported to the
36 Board of Elections in writing by the constituency of that elected office, e.g., Principal Chief
37 or Vice-Chief residency violations must be made by any enrolled member of the Tribe;
38 Tribal Council or School Board member residency violations must be made by an enrolled
39 member of the Tribe registered to vote in the township of the elected office.
40
41

42 **Sec. 161-4. - Filing for office – Certification of candidates.**

43

44 (a) All persons filing to be a candidate for Tribal elected office shall do so under his or her own
45 name and his or her original signature. All documents required to be filed with the Board of
46 Elections must bear the original signature of the candidate/principal and shall not be signed

1 by any person as an agent acting on behalf of the candidate/principal through a power of
2 attorney or other delegation of authority. This requirement applies to all applications for
3 candidacy and all other documents required to be filed with the Board of Elections by
4 candidates. Nothing in this subsection applies to the marking of ballots.

5
6 (ab) All persons filing to be a candidate for election to the office of Principal Chief, Vice-Chief,
7 Tribal Council, or School Board ~~must~~ shall do all of the following:

8 (1) Ppay the required filing fees with at the Tribal Finance Office between no sooner than
9 March 1 and no later than March 15 of the year of the election. Persons paying such fees
10 are advised to inform themselves of the hours of operation of the Tribal Finance Office.

11 a. The filing fee to be a candidate for the office of Principal Chief or Vice Chief is
12 \$700.00.

13 b. The filing fee to be a candidate for a seat on Tribal Council is \$500.00.

14 c. The filing fee to be a candidate for a seat on the School Board is \$350.00.

15
16 Filing fees are non-refundable and shall be paid by cash, cashiers check or money order.
17 A receipt from the Tribal Finance Office, showing that the applicable filing fee has been
18 paid, shall be submitted with the candidate application forms described in subparagraph
19 (2), below.

20
21 (2) Submit to the Board of Elections completed and properly executed candidate application
22 forms (also known as filing forms). The same deadline that applies for payment of the
23 filing fees above applies to submission of the candidate application forms. Must pay the
24 filing fee with the Tribal Finance Office between March 1 and March 15 of the year of the
25 election. All candidates must complete filing forms to establish that they meet the
26 qualifications of the office for which they file.

27 (bc) The Board of Elections shall review all applications and other required information, including
28 but not limited to background checks, and ensure that the required filing fees have been paid
29 in order to -and shall certify whether or not each applicant as either eligible or ineligible is
30 eligible to be a candidate for Tribal elected office. The Board of Elections shall and notify the
31 each applicant of its decision by registered mail on or before by March 31 of the election year,
32 or may be picked up in person from the Board of Elections Office on or before the March 31
33 deadline provided the person signs, at the Board office, proof of receipt of the notice of
34 decision. Candidates shall be contacted by Board of Elections Office to pick up and sign for
35 the notice of certification. Any adverse decisions shall be accompanied with include a clear
36 and concise statement as to the reason(s) for denial of an applicant's eligibility and shall
37 include a list of the applicant's rights to request a hearing before the Board of Elections the
38 following information:-

39 (1) That the applicant may appeal the denial of certification and may request a hearing
40 before the Board of Elections for the appeal. The request for a hearing before the
41 Board shall be in writing, signed by the applicant, and shall be filed with the
42 Chairman of the Board within five (5) business days of receipt of notice of the
43 denial. The person appealing the decision of the Board shall pay the appeal filing
44 fee expressed by the Board in its schedule of fees.

- 1 (2) If an appeal is timely and properly filed, the Board shall schedule a hearing and that
2 hearing shall be held within five (5) business days of the date the Board received
3 the notice of appeal. The Board shall give the person whose eligibility was denied
4 notice of the date and time for the hearing. Notice of the scheduled hearing shall
5 be provided as described in C.C. Sec. 161-29 ("Service of communications by the
6 Board of Elections") within two (2) business days of the date the Board received
7 the request for hearing.
- 8 (3) At the appeal hearing before the Board, the appellant shall have the right to present
9 written evidence and/or oral testimony to address the deficiency in their application
10 that was identified by the Board's decision which deficiency rendered the appellant
11 ineligible.
- 12 (4) The Board shall issue a written decision within five (5) business days following the
13 hearing. The written decision shall express whether or not the prospective candidate
14 satisfies the requirements for the office for which candidacy is sought. The final
15 written decision from the Board of Elections shall be provided to the applicant in
16 any of the ways described in C.C. Sec. 161-29 ("Service of communications by the
17 Board of Elections"). A decision by the Board of Elections to affirm its prior
18 decision that the person is ineligible may be appealed by that person to the
19 Cherokee Supreme Court for error of law. The only person with standing to appeal
20 to the Court shall be the person whose eligibility was denied.
- 21 (d) Within three (3) business days of receipt of notice of certification as a candidate for
22 Tribal office, the candidate shall do the following:
- 23 (1) sign an agreement under oath to use the voter registration list provided to the
24 candidate pursuant to Section 161-11.3 of this Chapter only for truthful
25 communications with eligible voters in connection with the election and to clearly
26 identify himself/herself in all such election-related communications;
- 27 (2) affirm in writing and under oath that they are aware of, understand and agree to
28 follow the requirements of this Chapter including, but not limited to, the following:
- 29 (i) the residency requirements for the office sought;
- 30 (ii) the eligibility criteria to be a candidate for the office sought;
- 31 (iii) that communications by the candidate with the Board and with public shall be
32 truthful; and
- 33 (iv) applicable financial and ethics reporting requirements expressed in this Chapter
34 and C.C. § 117-45.3(9) (Code of Ethics).
- 35 (v) that any violations of the requirements for candidacy or the oaths or attestations
36 shall be grounds for de-certification by the Board of Elections.
- 37 Any claims or complaints of violation of the requirements of this subpart (2) shall
38 be directed to the Board of Elections for investigation.
- 39
40

1 ~~(c) Each candidate must pay a filing fee to the Tribal Finance Office. Candidates for the office of~~
2 ~~Principal Chief and Vice Chief shall pay a filing fee of \$700.00. Candidates for the Tribal~~
3 ~~Council shall pay a filing fee of \$500.00. Candidates for the School Board shall pay a filing~~
4 ~~fee of \$350.00. All fees are non-refundable and shall be paid by cash, cashiers check, or money~~
5 ~~order.~~

6 ~~(d) No candidate shall have his or her name placed on any official ballot unless the candidate has~~
7 ~~been both certified as eligible by the Board of Elections and has not been de-certified, and has~~
8 ~~timely paid the proper filing fee to the Tribal Finance Office pursuant to Subsections (a), (b),~~
9 ~~and (c) of this Section, has properly executed required oaths and attestations, and has complied~~
10 ~~with the requirements expressed under C.C. § 117-45 (Code of Ethics).~~

11 ~~(e) Candidates who are denied certification shall have the right to request a hearing before the~~
12 ~~Board of Elections. Such hearings may be obtained only by filing a written request with the~~
13 ~~Chairman of the Board of Elections within five business days of the adverse ruling by the~~
14 ~~Board of Elections. Such hearing requests shall be hand delivered to the office of the Board~~
15 ~~of Elections during normal business hours. Such hearing request shall be considered served~~
16 ~~on the date of the hand delivered. The burden for appearance at the scheduled date and time~~
17 ~~shall be on the denied candidate. At such hearing, any person denied certification shall have~~
18 ~~the right to present written evidence or oral testimony to establish their qualification as a~~
19 ~~candidate for that particular office. The Board shall issue a written decision to the candidate~~
20 ~~stating whether the candidate satisfies the requirements for such office within two business~~
21 ~~days after the conclusion of the hearing. If the candidate is deemed not to meet the~~
22 ~~qualification for the office, the reasons for denial shall be stated by the Board in its written~~
23 ~~decision. The written decision from the Board of Elections shall be sent to the candidate by~~
24 ~~certified mail with return receipt requested. Proof of service of process is a return receipt from~~
25 ~~the United States Postal Service or a return of service from the Cherokee Police Department.~~

26 ~~(f) All candidates shall sign an agreement under oath to use the voter list provided to the candidate~~
27 ~~pursuant to Section 161-11.3 of this Chapter only for truthful communications with eligible~~
28 ~~voters in connection with the election. The candidate must clearly identify himself/herself in~~
29 ~~all such communications. Any claims or complaints shall be directed to the Board of Elections~~
30 ~~for investigation. The voter list shall be furnished to each candidate in printed form, and if~~
31 ~~requested by the candidate, in electronic form set by field identifiers in a manner to permit the~~
32 ~~candidate to utilize the list electronically for the intended purpose of communication with the~~
33 ~~registered voters. The Election Board shall take all steps necessary to assure that the electronic~~
34 ~~list is made accessible for the candidate to properly utilize.~~

35 ~~(g) If at any time prior to the election, should a candidate no longer meet the eligibility~~
36 ~~requirements of Section 161-3 of this Chapter, the Board of Elections may decertify that~~
37 ~~person as a candidate. A decertified candidate may request a hearing under Section 161-4(c).~~

38 Sec. 161-4.1 – Decertification of a candidate.

39
40 (a) If at any time before the primary, general or special election at issue, a candidate for
41 elected office no longer meets the applicable eligibility requirements, the Board of
42 Elections may decertify that person as a candidate. A decertified candidate may request a
43 hearing as provided in this section.
44

1 (b) Only the following shall have standing to file a protest seeking decertification of a
2 candidate whom the Board has already determined is eligible to run for office in that
3 election cycle:

4 (1) The Board of Elections upon its own initiative and investigation; or

5 (2) Any enrolled member of the EBCI who is registered to vote in the Tribal
6 election. All protests must be submitted to the Board of Elections in writing
7 and on forms provided by the Election Board or, if not on forms provided by
8 Board, then in a typed or legible writing. Each protest shall contain sufficient
9 detail to give the Board notice of the facts that the protester asserts support
10 decertification. All protests shall, at a minimum, contain the following
11 information: (1) the name, mailing address, physical address, telephone
12 number and email address (if one is available) of the protester; (2) the dates
13 and approximate times of the act(s) being protested; (3) a description of the
14 subject of the protest; (4) the name, mailing address, telephone number and
15 email address (if one is available) of all witnesses known to the protester; and
16 (5) copies of all supporting records, photos and other documentary evidence
17 in the possession or control of the protester that the protester wants the Board
18 to consider. All protests must include a sworn statement signed by the
19 protester, before a notary, that the allegations presented in the protest are true
20 or that the protester, upon information and belief, believes them to be true.

21 (c) Such protest shall be filed with the Board no later than five (5) business days after the
22 Board publishes in the Cherokee One Feather the preliminary unofficial list of candidates
23 for the election at issue. The person filing the protest shall pay the protest filing fee
24 expressed by the Board in its schedule of fees.

25 (d) Acting on its own investigation or upon receipt of a timely filed protest to decertify a
26 candidate, the Board of Elections shall give written notice to the candidate at issue within
27 two (2) business days which notice shall inform the candidate that:

28 1. The Board has, upon its own investigation, determined that the candidate
29 does not meet the eligibility requirements and should be decertified, and the
30 notice shall state the particular grounds supporting decertification; or

31 2. The Board has received a written protest from a properly registered voter
32 and the protest alleges that the candidate is not eligible and should be de-
33 certified. A copy of the protest and all supporting documents submitted by
34 the protestor shall be included with the notice.

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

37 (e) The candidate or the challenger may request a hearing before the Board. The request shall
38 be in writing and shall be filed with the Chairman of the Board within five (5) business
39 days of receipt of the notice of the complaint from the Board.

40 (f) Within five (5) business days of the date the Board received the request for hearing, the
41 Board shall schedule a hearing to be held within ten (10) business days. The Board shall

1 give the candidate and the challenger notice of the hearing in any of the ways described in
2 C.C. Sec. 161-29 ("Service of communications by the Board of Elections").

3 (g) At the hearing before the Board, the parties shall have the right to present written evidence
4 and/or oral testimony to address the alleged grounds for decertification.

5 (h) The Board shall issue a written decision within five (5) business days following the hearing.
6 The written decision shall express whether or not the candidate satisfies the requirements
7 for the office for which candidacy is sought. The final written decision from the Board of
8 Elections shall be sent to the candidate and the challenger, if any, in any of the ways
9 described in C.C. Sec. 161-29 ("Service of communications by the Board of Elections").
10 The decision of the Board of Elections affirming its decision that the person is eligible and
11 remains certified as a candidate, or reversing its decision and decertifying the candidate,
12 may be appealed to the Cherokee Supreme Court by the non-prevailing party. The
13 Supreme Court shall review the decision of the Board for error of law.

14 (i) A protest of a person's certification as a candidate by the Board of Elections shall be filed
15 within thirty (30) days of the last date on which the Board of Elections may issue such a
16 certification. The protest is void if it is not filed within that thirty (30) day period.

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19 **Sec. 161-4.12. - Write-in candidates.** [Except for re-numbering this section to be Sec. 161-4.2,
20 no substantive changes are made to this section.]

21
22 **Sec. 161-5. – Primary elections.** [No changes are made to this section.]

23
24 **Sec. 161-6. - Recounts.**

25
26 (a) If the vote count in any Tribal election results in a tie, the Board of Elections shall conduct
27 a recount of all ballots cast for that particular office or seat. Such recount shall be
28 conducted by the Board of Elections within two (2) business days after the closing of the
29 polls for that election. The recount shall be performed by the members of the Board of
30 Elections. A "tie" is defined as two or more candidates for the same seat receiving the
31 same number of votes.

32 (b) If any unsuccessful candidate in any Tribal election is defeated by no more than two
33 percent (2%) of the total number of votes cast for that particular office or seat, such
34 candidate may request a recount by filing a written request with the Board of Elections
35 within two (2) business days after the closing of the polls for that election. The recount
36 shall be conducted by the Board of Elections within three (3) business days of filing of the
37 request by the unsuccessful candidate.

38 (c) The two percent (2%) threshold necessary for a recount shall be measured by answering
39 the following question: is the difference between the number of votes received by the
40 unsuccessful candidate who is seeking the recount, and the immediately closest successful
41 candidate, within two percent (2%) of all the votes cast for those two candidates? If the
42 difference is within two percent (2%), the Board of Elections shall conduct a recount if a
43 request for a recount is filed pursuant to this section. Any fraction of a percent over two

percent (2%) shall be considered outside the two percent (2%) threshold requiring a recount.

(e d) At the conclusion of any such recount, the Board of Elections shall announce the tally and unofficial results of the recount which shall become the official tally for that office pending official certification of the results of the election to the Tribal Council pursuant to Section 161-16.1 of this Chapter.

(d e) Any candidate on a ballot subject to a recount by the Board of Elections may personally observe the recount which will be televised and in a controlled environment to observe the recount. Should the candidate choose to not attend, they may designate one representative to observe the recount. Such representation must be designated in writing, with such written appointment delivered to the Board of Elections prior to the commencement of the recount. Such observers shall not participate in or interfere with the recount activities of the Board of Elections and may be ejected by the chairman if they interfere with or disrupt the recount process.

(f) Regardless of any other expression in this section, nothing in this section shall prohibit the Board of Elections from recounting ballots upon its own initiative as part of an investigation, for quality control purposes, or for any other reason.

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

(a) The Board of Elections shall have the authority to conduct run-off elections to fill the offices for Principal Chief, Vice-Chief, Tribal Council, and School Board.

(b) A run-off election shall be held within fifteen (15) calendar days of the decision of the Board of Elections to hold such a run-off.

(c) The Board of Elections shall have authority to conduct run-off elections if any of the following occur:

(1) The Board determines that a recount of ballots would not produce an accurate vote count; or

(2) The Board determines upon research and investigation conducted on its own initiative, or in response to a timely filed protest under C.C. Sec. 161-16, that irregularities in the conduct of the election affected the actual outcome of the election or rendered the results contrary to the Tribal Charter or this Chapter; or

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

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

(b-e) If, after a recount of ballots by the Board, in the Tribal Council general election, two candidates receive the same number of votes and the individual number of votes cast for each candidate represents the largest vote total by any individual candidate for that

township, there will be no run-off election. ~~The two candidates with the highest vote totals shall be deemed elected to the two (2) Council seats on the Council for that township.~~

(e f) If, after a recount of ballots by the Board of Elections in the Tribal Council general election, two or more candidates ~~running for the last available seat on the Tribal Council~~ receive the same number of votes that constitute the second highest vote totals in the general election and the votes represent the second largest vote total by any individual candidate for that township, the Board shall conduct a run-off election between such candidates. The candidate receiving the greatest number of votes in the run-off election shall be deemed elected to the second Council seat on the Tribal Council for that township.

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

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

~~(f) A run-off election shall be held within 15 days of the decision of the Board of Elections to hold such a run-off.~~

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

Sec. 161-8. – Special elections Filling vacancies in elected office.

(a) ~~In case of a vacancy for the office of Principal Chief, the Vice Chief shall become the Principal Chief and shall serve the balance of the elected term of office until his or her successor is elected.~~ Vacancy in the Office of Principal Chief. If the office of Principal Chief becomes vacant, the Vice Chief shall become the Principal Chief upon being sworn-in by the Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-in Principal Chief shall serve the balance of the Principal Chief's elected term of office. No special election shall be held.

(b) ~~If the position of Vice Chief is vacated, the Council may elect a successor from Tribal Council Representatives, who shall serve until his or her successor is elected the balance of the elected term of office.~~ Vacancy in the Office of Vice Chief. If the office of Vice Chief becomes vacant, the Tribal Council shall elect a successor from the then-current Tribal Council representatives no later than the next regularly scheduled Tribal Council session after the vacancy occurs. The Tribal Council representative elected to fill the vacancy shall become the Vice Chief upon being sworn into the office of Vice Chief by the Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-in Vice Chief shall serve the balance of the Vice Chief's elected term of office. No special election shall be

1 held unless none of the then-sitting Tribal Council representatives are qualified to hold the
2 office of Vice Chief.
3

4 (c) ~~If the office of the Principal Chief and Vice Chief become vacant simultaneously, the~~
5 ~~Chairman of the Council shall become Principal Chief and shall serve the balance of the~~
6 ~~elected term of office and the Council shall elect a Vice Chief who shall serve the balance~~
7 ~~of the elected term. If the Chairman of the Tribal Council does not meet the qualifications~~
8 ~~for the office of Principal Chief, the vacancy shall be filled as follows: The office of Vice~~
9 ~~Chief shall be filled through election by Tribal Council, and the Vice Chief shall serve in~~
10 ~~place of the Principal Chief until a special election can be held. The Board of Elections~~
11 ~~shall give public notice of a period of 15 days during which qualified persons may file for~~
12 ~~office of Principal Chief. A special election shall be held 30 days after the last filing date.~~
13 ~~The individual receiving a majority of votes cast in such special election shall be deemed~~
14 ~~elected to the office of Principal Chief. If no candidate receives a majority in such special~~
15 ~~election, the Board shall conduct a run-off election between the two candidates receiving~~
16 ~~the most votes in the special election, with the run-off election to be held two weeks after~~
17 ~~the special election. The candidate receiving the most votes in the run-off election shall be~~
18 ~~deemed elected to the seat of Principal Chief. Once the Principal Chief is elected and~~
19 ~~seated, the acting Principal Chief shall step down and resume his or her elected position as~~
20 ~~Vice Chief.~~ *Simultaneous Vacancy in the Office of Principal Chief and Office of Vice Chief*
21 *– Chairman of Tribal Council Qualified.* If the office of the Principal Chief and the office
22 of the Vice Chief become vacant simultaneously, the Chairman of the Tribal Council, if
23 qualified, shall become Principal Chief upon being sworn into the vacant position by the
24 Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-in
25 Principal Chief shall serve the balance of the Principal Chief's elected term of office.
26 Additionally, the Tribal Council shall elect a Vice Chief from among the then-serving
27 Tribal Council representatives qualified to serve as Vice-Chief, and such Tribal Council
28 election shall be held at the first regularly scheduled Tribal Council session immediately
29 following the occurrence of the vacancy. The newly elected Vice Chief shall be sworn-in
30 by the Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-
31 in Vice Chief shall serve the balance of the Vice Chief's elected term of office. No special
32 election shall be held unless none of the then-sitting Tribal Council representatives are
33 qualified to hold the office of Principal Chief and Vice Chief as provided herein. If a
34 special election is held, the candidate winning the special election shall serve the remaining
35 time left in the term of office. There will be no other election during the general election at
36 the mid-point of the four (4) year term, if applicable.
37

38 (d) *Simultaneous Vacancy in the Office of Principal Chief and Office of Vice Chief – Chairman*
39 *of Tribal Council Not Qualified.* If the office of the Principal Chief and Vice Chief become
40 vacant simultaneously and the Chairman of Tribal Council is not qualified to fill the vacancy
41 in the office of Principal Chief, the vacancy shall be filled as provided in this subsection. The
42 Tribal Council representative elected by Council to fill the vacant office of Vice Chief shall
43 temporarily serve as "Acting" Principal Chief until the Board of Elections conducts a special
44 election of all registered and eligible voters within sixty (60) days of the vacancy to fill the
45 position of Principal Chief. The Board of Elections shall provide public notice in the Cherokee

1 One Feather print edition for two print cycles (two weeks) and in the electronic edition for
2 fifteen (15) consecutive calendar days, during which time qualified persons may file to be
3 candidates for election to the office of Principal Chief. The Board of Elections shall expedite
4 the certification of candidates to meet the expedited time frames. All application filing
5 requirements, including payment of fees and other requirements, shall be complied with in
6 accordance with the notice provided by the Board of Elections for the special election for the
7 office of Principal Chief. The Board of Elections shall conduct a special election within thirty
8 (30) days after the close of the candidate filing date. The candidate receiving a majority of
9 votes cast in the special election (i.e., fifty percent (50%) of votes cast plus one (1) vote) shall
10 be deemed elected to the office of Principal Chief. If no candidate receives a majority of the
11 votes cast in the special election, the Board shall conduct a run-off election between the two
12 candidates who received the greatest number of votes in the special election. The Board of
13 Elections shall conduct the run-off election not later than two (2) weeks after the date of the
14 special election. The candidate receiving the greatest number of votes in the run-off election
15 shall be deemed elected to the office of Principal Chief. Once the Principal Chief is elected
16 and sworn-in by the Chief Justice of the Cherokee Supreme Court or his/her designee, the
17 “Acting” Principal Chief shall step down and resume the duties of the office of Vice Chief to
18 which he or she was previously elected by Tribal Council.

19 (e) *Simultaneous Vacancy in the Office of Principal Chief and Office of Vice Chief – No Qualified*
20 *Tribal Council Members.* If the offices of the Principal Chief and Vice Chief become vacant
21 simultaneously and none of the then-sitting Tribal Council representatives are qualified to fill
22 the vacant positions, the Board of Elections shall provide notice and conduct a special election
23 of all registered and eligible voters to fill both vacancies in the manner provided in subsection
24 (d). In such a situation, the Chairman of the Tribal Council shall serve as “Acting Chief” until
25 the Principal Chief or Vice Chief is elected and sworn in to office as provided in subsection
26 (d).

27 (f) *Authority of “Acting” Principal Chief.* Any person serving as “Acting” Principal Chief as
28 provided in subsection (d) or (e) of this section until a special election is held, shall have
29 limited authority while he or she is the Acting Principal Chief. His or her authority shall be
30 limited to performing administrative and ministerial functions necessary to keep the Tribal
31 government running with a minimum of disruption and change.

32 (d g) ~~In the event of a vacancy on the Tribal Council with more than six months remaining in~~
33 ~~the elected term, the Board of Elections shall schedule a special election within 45 days of~~
34 ~~such vacancy. The Board of Elections shall give public notice of a period of 15 days during~~
35 ~~which qualified persons may file for the vacant Tribal Council seat. The candidate receiving~~
36 ~~the most votes in the special election shall be deemed elected to the vacant Tribal Council~~
37 ~~seat. If there are less than 90 days remaining in the term of the vacated member, the seat shall~~
38 ~~remain vacant until the next regular election.~~ *Vacancy on Tribal Council.* In the event of a
39 vacancy on Tribal Council that has more than six months remaining in the elected term
40 applicable to that Council seat, the Board of Elections shall conduct a special election of
41 registered voters in that township within forty-five (45) days of the date the Tribal Council
42 seat became vacant. The Board of Elections shall provide public notice in the Cherokee One
43 Feather print edition for two print cycles (two (2) weeks) and in the electronic edition for
44 fifteen (15) consecutive days, during which qualified persons may file for certification as a
45 candidate for the vacant Tribal Council seat, to pay required fees and perform other

1 requirements of this Chapter for becoming a candidate for the office sought. The Board shall
2 expedite the certification of candidates. The candidate receiving the greatest number of votes
3 cast in the special election shall be deemed elected to the vacant Tribal Council seat. If there
4 are six (6) months or less remaining in the term of the vacated Tribal Council seat, no special
5 election shall be held and the Tribal Council seat shall remain vacant until the next regular
6 election.

7 ~~(e h)~~ In the event of a vacancy on the School Board with more than six months remaining in the
8 elected term, the Board of Elections shall schedule a special election within 45 days of such
9 vacancy. The Board of Elections shall give public notice of a period of 15 days during
10 which qualified persons may file for the vacant School Board seat. The candidate receiving
11 the most votes in the special election shall be deemed elected to the vacant School Board
12 seat. If there are less than six months remaining in the term of the vacated member, the seat
13 shall remain vacant until the next regular election. Vacancy on School Board. In the event
14 of a vacancy in one of the seats for School Board, if that seat has more than six (6) months
15 remaining in the elected term of office, the Board of Elections shall conduct a special
16 election within forty-five (45) days of such vacancy. The Board of Elections shall provide
17 public notice in the Cherokee One Feather print edition for two print cycles (two (2) weeks)
18 and in the electronic edition for fifteen (15) consecutive days, during which time qualified
19 persons may file for certification as a candidate for the vacant School Board seat, to pay
20 required fees, and perform other tasks required in this Chapter for becoming a candidate for
21 the office sought. The candidate receiving the highest number of votes in the special
22 election for the vacant School Board seat shall be deemed elected to the vacant seat. If
23 there are six (6) months or less remaining in the term of the vacated seat, the seat shall
24 remain vacant until the next regular election.
25

26 ~~(f i)~~ Candidates Shall Be Qualified. ~~When filling vacated elected offices, e~~ Candidates for all
27 vacated elected offices must meet all applicable qualifications for that office pursuant to
28 Section 161-3 of this Chapter.

29 ~~(g j)~~ No Absentee or Early Voting. ~~The Board of e~~ Elections shall not provide issue absentee ballots
30 or conduct early voting in for run-off or special elections.

31 ~~(k)~~ Eligible Persons May Run. Nothing in this section shall be construed to prohibit a person,
32 who is otherwise eligible and qualified, from running to fill an office even if the office is to
33 be filled by special election.
34
35

36 **Sec. 161-9. - Referendums/initiatives.**

37 (a) *Purpose.* A referendum is the people's ability to refer newly enacted law by petition, from
38 the legislation to the ballot for final approval. The following rules shall apply,

39 (b) *Definitions.*

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

1 *Referendum* shall mean the submission of a proposed public measure or actual statute to
2 a direct actual vote.

3 (c) *Process.*

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

6 a. ~~A referendum initiated by Tribal Council does not need a petition. The petition~~
7 ~~requirement described below shall not apply to any resolution or issue properly~~
8 ~~before Council on Tribal Council's own initiative, and which Tribal Council decides,~~
9 ~~also on its own initiative, to present to the Cherokee people for referendum vote.~~

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

12 a. Twenty-five percent (25 percent %) of the registered voters to sign a petition the
13 Tribal Council for a resolution for in support of a referendum/initiative election on a
14 proposed ordinance or action by the Tribal Council or Principal Chief.

15 b. Thirty-three percent (33 percent %) of registered voters to sign a petition the Tribal
16 Council for resolution for a referendum/initiative election on a proposed change to
17 the Charter or Governing Document.

18 ~~The petition requirement shall not apply to any resolution or issue properly before~~
19 ~~Council, which Council, on its own initiative, presents to the Cherokee people for~~
20 ~~referendum vote.~~

21 (3) Only natural persons may petition for a referendum on an issue.

22 (4) A petition shall be on a standardized form provided by the Board of Elections and shall
23 include the designation of three (3) signatories comprising the Petitioner's Committee with
24 their names, addresses and enrollment numbers; multiple lines for the signee's printed
25 name, signature, date of signature, address, and enrollment number of supporters of the
26 petition; and a full explanation of the proposed action sought by referendum and shall
27 include the full text of the proposed action. The Petitioner's Committee shall be
28 responsible for the content of the proposed legislation. This proposed legislation shall
29 appear on all signature sheets.

30 (5) The Petitioner's Committee shall submit the proposed referendum language and the text
31 explaining the proposed action to the Board of Elections for review to pre-certify the
32 referendum issue/question as consisting of only one issue or question prior to collecting
33 signatures on the petition. The Board shall have sixty (60) days from the date the
34 Petitioner's Committee submits the referendum language to review the information
35 submitted and to pre-certify the question for the petition. If the Board makes a negative
36 finding, the Petitioner's Committee can revise and resubmit the proposed referendum to
37 the Board.

38 (6) Petition Certification by the Board of Elections.

39 a. Once the Petitioner's Committee has collected all the required signatures, the
40 signed petitions shall be submitted to the Board of Elections for verification that

1 all information required on the petition, including the required number of
2 signatures and all associated information, is contained on the petition. The Board
3 of Elections shall have ninety (90) days to approve or deny certification of the
4 petition. If the Board denies certification, the Petitioner's Committee may attempt
5 to cure the deficiencies and resubmit the signed petitions to the Board.

6 b. Any signature more than one (1) year old on a petition, and any signature of a
7 person who is no longer a registered voter or who has died since signing the petition,
8 shall be void and not counted.

9 (7) Submission of Certified Petition to Tribal Council and the Principal Chief.

10 a. After the Board of Elections certifies the petition, the Petitioner's Committee shall
11 submit the certified petition to the Tribal Council. The Tribal Council Chairman
12 shall place the petition on the agenda of the next regularly scheduled Tribal
13 Council session. Nothing in this section requires an immediate decision by Tribal
14 Council assembled, and nothing herein prohibits Tribal Council from tabling the
15 matter for review and other actions within its authority.

16 (8) Required votes.

17 a. Not less than fifty-one percent (51 percent %) of registered voters must vote in a
18 referendum/initiative election on a before the proposed amendment to the Charter
19 or Governing Document shall be enacted or repealed or the election is deemed void.

20 ~~(4) —~~ b. If a majority of the Not less than thirty percent (30%) of registered voters voting
21 must vote in a referendum/initiative election are in favor of the enactment to enact or
22 repeal of an ordinance or resolution or the election is deemed void, provided that at
23 least thirty percent (30 percent %) of registered voters have voted in such an election,
24 the ordinance or resolution shall be enacted or repealed. No action No decision
25 approved or denied by the voters on an issue undertaken by this procedure shall be
26 overturned by Tribal Council for two (2) years.

27 ~~a. —~~ A petition shall be on a standardized form provided by the Board of Elections and
28 shall include the designation of three signatories as the Petitioner's Committee;
29 signature lines for the names, addresses and enrollment numbers of supporters of the
30 petition; and a full explanation of the proposed action sought by referendum
31 including the full text of the proposed action. The Petitioner's Committee shall be
32 responsible for the content of the proposed legislation. This proposed legislation shall
33 appear on all signature sheets.

34 ~~b. —~~ The petition shall be submitted to the Board of Elections in order that the information
35 listed on the petition is verified. Only registered voters shall be counted in this
36 process.

37 ~~(5) Each resolution for referendum shall be in the full text form of the proposed action. Before~~
38 ~~the issue is presented to the Cherokee people for a vote, the text of the question shall be~~
39 ~~reviewed by the Office of the Attorney General and finally approved by the Tribal~~
40 ~~Council and the Principal Chief to ensure that the question for vote adequately and clearly~~
41 ~~informs the voter of the question to be answered, is limited to one question at a time, and~~
42 ~~encompasses only one issue per question.~~

1 (6 8) All registered voters shall be eligible to vote on a referendum issue.

2 (7 9) Referendums for any purpose of this Section shall be conducted by the following
3 procedures:

4 a. The Board of Elections shall ~~schedule~~ conduct a referendum election for any purpose
5 other than that of modifying the Charter and Governing Document ~~to be held~~ within
6 ninety (90) days of ratification of the resolution approving the issue for a referendum
7 vote.

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

14 c. The Board of Elections shall close the voter registration books thirty (30) days prior
15 to the referendum election.

16 d. The Board of Elections shall appoint all election officials 30 days prior to the
17 election. The Board shall conduct an orientation for ~~precinct~~ election officials prior
18 to the election.

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

21 f. Persons desiring to vote by absentee ballot may begin applying for such ballot
22 immediately after receiving notice of the referendum election and all applications to
23 vote by absentee ballot must be submitted or post-marked by the U.S. Postal Service
24 not less than by at least fifteen (15) days prior to the election.

25 g. All absentee ballots for referendum election must meet the same criteria for any
26 other election and must be returned to and received by the Board of Elections ~~ten~~ not
27 less than five (5) days prior to the referendum election.

28 (8 10) The outcome of the referendum vote, if it has first met the minimum threshold of
29 voters, shall be certified by the Board of Elections and shall be deemed a binding action
30 or law duly passed and ratified by the Principal Chief.

31 (9 11) Any protest regarding an election irregularity shall be conducted ~~according to the~~
32 ~~procedures set out in the current law. (Tribal Election Law Section C.C. § 161-16).~~

33 (10 12) An issue that has been brought before ~~the~~ eligible voters and voted upon by
34 resolution on a referendum/initiative, regardless if the vote is later deemed void for lack
35 of the required percentage of voters, may not be voted upon again by voters in a
36 referendum/initiative election until a period of two (2) years has passed from the date of
37 the immediately preceding vote by eligible voters.

38 ARTICLE II. - VOTERS

39
40
41 Sec. 161-10. - Qualifications. [No changes are made to this section.]

1
2 **Sec. 161-11. - Registration.**
3

4 (a) Voter registration shall be conducted in such offices as may be designated by the Board of
5 Elections. The office designated by the Board shall be open for registration on all regular
6 business days, except as otherwise provided in this section. All voter registration shall
7 only be made in person or ~~sent by~~ through the United States Postal Service (USPS)
8 mMail. All voter registration cards ~~received by mail~~ submitted to the Board must ~~be~~ have
9 the tribal member's signature notarized and must include a copy of the voter's government
10 issued photo ID card.
11

12 (b) Persons who are eligible to vote in EBCI Tribal elections ~~Voters~~ shall register in the
13 township in which they currently reside. Tribal members not living on Cherokee Trust
14 Land shall register in the township in which they last resided, if applicable. ~~Voters Tribal~~
15 members who have never resided on Cherokee Trust Lands but who are eligible to vote
16 shall register in the township in which his/her enrolled mother last resided. If the voter's
17 mother was not an enrolled member or never held a residence on Cherokee Trust Land,
18 then the ~~voter Tribal member~~ shall register ~~where~~ in the township his/her enrolled father
19 last resided, if applicable.
20

21 In the case that neither the eligible voter's mother or father held a residence on Cherokee
22 Trust Land, then the eligible voter shall register in the township where their nearest
23 matrilineal ancestor last resided. If the voter's mother's side of the family is not of
24 Cherokee descent, then the first matrilineal line on the father's side shall be used to
25 determine township, as information permits.
26

27 For the purpose of this section the terms "mother" and "father" shall mean biological
28 mother and biological father, unless a legal adoption has occurred, in which case "mother"
29 and "father" shall mean adoptive mother and adoptive father. Eligible ~~Voters~~ moving
30 from one township to another must reregister in the new township. Failure to re-register
31 before an election may prohibit the voter from participating in an election for Tribal
32 Council or School Board.
33

34 (c) The Board of Elections may conduct special registrations within any ~~precinct~~ township if it
35 is deemed advisable. All such special registration shall be published at least one week in
36 advance in the Cherokee One Feather, Cherokee Scout, and Graham Star.
37

38 (d) The Board of Elections shall close the voter registration books at the close of business on
39 the Friday ~~prior to~~ immediately preceding the date set for early voting and the books shall
40 remain closed until the first Monday immediately following the primary election. Tribal
41 members who ~~are~~ have not registered to vote ~~on or~~ prior to the closing of the registration
42 books shall not be eligible to vote in the primary election. Those registered voters who
43 change their residence during this the period in which voter registration books are closed
44 are not required to update their registrations until the registration rolls reopen. The
45 residency requirement of ~~Subsection C.C. Sec.161-11.1(a) of this Chapter~~ shall be waived

1 during ~~this~~ the period in which voter registration books are closed pursuant to this section
2 period to resolve any conflicts within this Chapter C.C. Sec.161-11.1(a).
3

4 (e) The Board of Elections shall open the voter registration books on the Monday following
5 the primary election and the books shall remain open until the close of business on the
6 Friday ~~prior to~~ immediately preceding the date set for early voting during the general
7 election and the books shall remain closed until the first Monday immediately following
8 the general election. During the period when the registration rolls are closed those
9 registered voters who change their residence are not required to update their registration
10 until the registration rolls reopen ~~on the first business day following the certification of the~~
11 ~~general election~~. This residency requirement of Subsection 161-11.1(a) of this Chapter
12 shall be waived during this period to resolve any conflicts within this Chapter.
13

14 (f) The Board of Elections shall reopen the voter registration books on the next business day
15 following the certification of the results of the general election to Tribal Council.
16

17 **Sec. 161-11.1. - Changes in voter registration.** [No changes are made to this section.]
18

19 **Sec. 161-11.2. - Challenges to voter registration.**
20

21 (a) When the Board of Elections has or receives evidence demonstrating to the Board's
22 satisfaction that a voter is not registered in the correct township, the Board shall notify the
23 voter in writing and give the voter five (5) business days to submit ~~community~~ a township
24 change or to request a hearing as provided below to present information as to why the
25 township should not be changed.
26

27 (b) A challenge to a voter's township registration may be made by any enrolled member who
28 is registered to vote in the Tribal election, as provided in Section 161-11.1 through 161-
29 11.3. No protests of a voter's township registration shall be accepted or acted upon by the
30 Board of Elections between April 14 and the first business day following the certification
31 of the general election results. Such challenge ~~may~~ and the Board shall weigh the
32 evidence provided accordingly and issue the proper investigation required. See C.C.
33 Section 161-16 for proof of residency. The Board shall determine the voter's correct
34 voting township based on the evidence. The Board has the authority to move the voter's
35 registration to the correct township and notify each voter in writing of any changes. No
36 changes shall be made to a voter's township when the registration rolls are closed.
37

38 (c) The Board of Elections is authorized to utilize all resources available to properly
39 document a voter's residence for registration purposes. The burden is placed upon the
40 voter to dispute ~~any changes~~ a decision made by the Board of Elections ~~within to~~ the
41 registration books regarding a voter's township. Any affected voter may request a hearing
42 before the Board of Elections within five (5) business days from receipt of a change of
43 township notice. The Board shall afford any voter a hearing within five (5) business days
44 from receipt of hearing request. The affected voter has the right to present any witnesses
45 or documentation to the Board of Elections during the hearing. The Board will issue its

1 decision within five (5) business days from the date of the hearing to either rescind or
2 uphold its decision.

3
4 **Sec. 161-11.3. - Notice of voter registration.** [No changes are made to this section.]
5

6 **Sec. 161-12. - Polling places.**

- 7 (a) All designated polling sites places will be determined by the Board of Elections; and
8 (b) All polling places shall be located on trust land.
9 (c) No campaign signs of any kind shall be allowed within 100 yards of designated polling
10 places for a period of one week prior to the Election Date.
11 (d) The Board of Elections shall cause all polling places to have operational security cameras
12 onsite and working whenever voting is conducted at the site. Security cameras may record
13 audio, visual, or both. Security cameras shall be used to record activity at the polling
14 place but shall not placed on ballot equipment or in individual voting booths. Acquisition,
15 control, use and access to the security cameras shall be determined by the Board of
16 Elections, and shall depend on adequate funding for the equipment and personnel being
17 provided by Tribal Council. The security cameras shall be used to provide a visual and/or
18 audio record of activities at the polling place when voting is performed. The records
19 produced by the cameras shall be preserved for not less than one (1) year after the election
20 at issue.
21 (e) All polling places shall be managed to provide an opportunity for registered voters to cast
22 their votes in an orderly manner. Minor children may accompany adults to polling places
23 and to the voting machine; provided, however, that no person, regardless of age or any
24 other factor, shall be allowed to disturb or disrupt others who are attempting to cast their
25 vote. Any person causing a disturbance or disruption may be prohibited from entering, or
26 may be removed from, the polling place but such action shall not be used to deny a
27 registered voter their opportunity to vote.

28
29 **Sec. 161-13. - Election officials.**

- 30 (a) The board of elections shall appoint election judges, election clerks, door marshalls, and
31 alternates for each such position, to serve in the polling places.
32
33 (a-b) Qualifications. In order to serve as an election official, individuals must:
34 (1) Be enrolled members of the Eastern Band of Cherokee Indians; and
35 (2) Be at least 18 years of age by the date of the election; and
36 (3) Be able to read and write the English language; and
37 (4) Be a registered voter with the Tribal Election Board; and
38 (5) Not be a candidate and work any poll, nor immediately related to any candidate
39 within the ~~community they serve~~ township of service, nor have been an active
40 member of any candidate's campaign during that election year. Election officials may
41 and shall not express not support for any candidate working their polling place
42 position during the term of appointment as an election official; and:
43 (6) Must be willing to serve in any polling place; and
44 (6 7) Attend and complete the mandatory orientation training seminar provided by the
45 Board of Elections prior to each election.
46 (b c) Election judges.

- 1 (1) Two ~~(2)~~ eElection jJudges shall be appointed by the Board of Elections for each
2 precinct -polling place no later than thirty (30) days prior to all elections, one (1) of
3 whom shall be designated by the Board of Elections as Chief Election Judge.
4 (2) The Chief Election Judge shall be responsible for the overall conduct of the election
5 at the precinct-level polling place and ensuring the voting process is conducted in
6 accordance with law.
7 (3) The duties of the Chief Election Judge shall include: (a) ~~be responsible for~~ obtaining
8 the ballot box, tally sheets, and the registration books from the Board of Elections on
9 the day of ~~orientation~~ the election and for returning them to the Board at the close of
10 ~~the each election day~~; (b) confirming the registration of individual voters; and (c)
11 ensuring that election officials assist individual voters who seek assistance marking
12 their ballot.

13
14 The Chief Judge shall ~~supervise the election process by determining the eligibility of~~
15 ~~individual voters, by observing the marking of ballots for those individuals seeking~~
16 ~~assistance in marking of their ballot, and by ensuring that the voting process is~~
17 ~~conducted in accordance with the law~~.

- 18
19 (3 4) After the polls are closed, the ~~eElection jJudges~~ shall ~~be responsible for reconciling~~
20 work with the Election Clerks to reconcile the ballot totals with the ballot tabulator
21 receipts in their respective precinct polling place.
22
23 (5) ~~They~~ Election Judges shall certify the election count totals for each candidate by
24 signing the tally sheets. ~~They shall then return the ballot box, all unused ballots, tally~~
25 ~~sheets, and registration book to the Board of Elections. Each judge shall then sign a~~
26 ~~sworn and by signing a separate statement under oath~~ confirming the results of the
27 election in their precinct polling place on election day.
28

29 (c) Election Clerks.

- 30 (1) One (1) Election Clerk shall be appointed by the Board of Elections for each precinct
31 polling place no later than thirty (30) days prior to all elections; provided, however,
32 that two (2) Election Clerks shall be appointed by the Board for each of the
33 Birdtown and Wolfetown (not Big-Y) polling places due to the larger number of
34 registered voters in those townships.
35 (2) The Election Clerk duties shall include: (a) assisting the Election jJudges in
36 confirming the registration of individual voters; (b) recording the name of each voter
37 casting a ballot; (c) ~~The Clerk shall~~ assisting individual voters who seek assistance
38 in marking ballots; and (d) ~~The Clerk shall~~ assisting Election jJudges in counting the
39 votes after the polls are closed.
40

41 One additional Clerk shall be appointed to the Birdtown and Wolfetown precinct by
42 the Board of Elections, due to the higher numbers of registered voters.
43

44 (d) Door Marshals.

- 45 (1) One Door Marshal shall be appointed by the Board of Elections for each precinct
46 polling place no later than thirty (30) days prior to all elections.

- 1 (2) The Door Marshal shall control the entrance of voters into the polling place to
2 ensure that there is an orderly flow of voters in and out of the polling place and
3 control the entrance of voters so that the election process shall not be
4 compromised.
5 (3) The Door Marshal shall ensure that no candidate, their immediate family, or their
6 campaign workers are within 100 yards of the polling place except to cast their
7 own ballots.
8 (4) The Door Marshal shall ensure that there is no loitering, electioneering,
9 intimidation of voters, or use of alcoholic beverages in and around the polling
10 place.
11

12 (e) Alternates Appointment of Alternatives to Serve at Polling Place.

- 13 (1) At least One alternate shall be appointed by the Board of Elections for each
14 precinct polling place no later than 30 days prior to all elections, for each position
15 for which the Board of Elections believes an alternate is necessary or helpful.
16 (2) If the primary appointee is unable to fill his or her duties, the alternate shall be
17 empowered to perform all the duties enumerated above applicable to the position
18 for which he or she is an alternate.
19 (3) The Board of Elections shall provide training to appointed alternates
20 commensurate with the position in which the alternates are requested to serve.
21

22 (f) Certification.

- 23 (1) All election officials shall be appointed and certified by the Board of Elections as
24 being eligible to serve in their respective capacities, prior to the election.
25 (2) All election officials shall before entering on their duties of office take the
26 following oath before a member of the Board of Election: "I [name], having been
27 duly appointed to serve as [title] for the [community] Township in the [year] [type
28 of election] Election, do solemnly swear (or affirm) that I will faithfully perform
29 the duties of that office to the best of my abilities and that I shall serve in a fair
30 and impartial manner without fear or favor to anyone; that I shall comply with
31 Tribal law and shall not engage in or aid, abet or encourage anyone else to engage
32 in any fraud or deceit that would compromise the integrity of my position, the
33 election process or the accuracy of the election results. I make this oath under
34 penalty of perjury." All oaths shall be signed and dated by the respective election
35 officials; such signed oaths shall also include the printed names of the election
36 officials.
37 (3) In the event of a vacancy in any of the Election Official appointments prior to an
38 election, the Board of Elections shall have authority to appoint and certify a
39 replacement.

40 (g) Early voting.

- 41 (1) Early voting shall be conducted pursuant to Sec. 161-15.1.
42 (2) Early voting shall be conducted at locations to be determined by Board of
43 Elections.
44 (3) The Board of Elections shall choose election officials for early voting no later than
45 thirty (30) days before the date set for early voting.

1 (4) Election officials for early voting shall be certified and trained before the date set
2 for voting.
3

4 **Sec. 161-14. - Voting procedures.**
5

- 6 (a) When a Tribal member appears at the polling place to vote, the enrolled member shall
7 present an Election Judge with a Tribal, state or federal government issued photo I.D. to
8 verify identification, an Election Judge shall then determine if the name appears on the
9 official list of registered voters furnished by the Board of Elections. If there is any
10 question regarding a voter's eligibility, the ~~chief judge~~ Chief Election Judge shall call the
11 Board of Elections to verify. If after confirmation with the Board of Elections, the voter
12 is determined not to be eligible or registered, he/she shall not be allowed to vote. If the
13 name appears on the official list of registered voters list, the clerk shall then insure that
14 the voter's name does not also appear on the list of absentee voters, and shall record the
15 voter's name in a record book maintained for that the purpose of documenting such fact.
16 A judge shall then give the voter an unmarked ballot.
- 17 (b) The voter shall mark the ballot in a designated private area within the polling place. The
18 voter shall then place the marked ballot into the ballot box and leave the polling place.
- 19 (c) If a voter seeks assistance in marking the ballot, the Election Clerk or other ~~assisting~~
20 ~~party~~ Election official shall mark the ballot as requested by the voter, and shall have
21 two election officials witness the marking. An official Affidavit of Assistance form
22 must be signed by the voter prior to the Election Clerk or other ~~assisting party~~ Election
23 Official marking the ballot and noted on that form the signatures of all election staff
24 who in the administration or witnessing of the casting of the ballot. The two election
25 officials shall witness the marking of the ballot and then immediately deposit the ballot
26 in the ballot box.
- 27 (d) The Board of Elections shall not provide absentee ballots for run-off or special elections.
- 28 (e) If any elderly, handicapped, or infirm person is unable to enter the polling place, the
29 person shall be permitted to vote in a motorized vehicle at the polling place. Such
30 elderly, handicapped, or infirm voters shall be permitted to vote by having ~~any~~ two (2)
31 of the ~~four~~ election officials personally deliver the ballot to such a voter. An official
32 Affidavit of Assistance form must be signed by the voter prior to the voter marking the
33 ballot, and be noted on that form the signatures of all election staff who assisted in the
34 administration or witnessing of the casting of the ballot. The two election officials shall
35 witness the marking of the ballot by the voter and then immediately return the ballot to
36 the polling place and deposit the ballot in the ballot box.
- 37 (f) After the polls are opened, under no circumstances shall a ballot box be opened until the
38 polls are closed. If manual ballots are used, key operated locks shall be installed on the
39 ballot boxes with the keys under the sole control of the Board of Elections. The keys
40 shall be delivered to the ~~e~~Chief Election ~~j~~Judge for the Board of Elections only at the
41 closing of the polls. If electronic tabulators are used, the Board of Elections shall use
42 equivalent procedures consistent with the technical requirements of the ballot tabulators
43 to ensure that no unauthorized ballots are inserted in the ballot box or counted in the
44 election.
- 45 (g) Any voting irregularities observed by the Election Officials must be reported by the
46 Chief Election Judge to the Board of Elections when they occur, but no later than the

1 time when the ballot boxes are returned to the Board of Elections. The Chief Election
2 Judge ~~must~~ shall immediately submit a report of the alleged irregularities in writing
3 stating specifically and in detail what the alleged irregularity is ~~immediately~~. Any
4 alleged irregularities and the manner in which they were handled shall be
5 communicated to each candidate that submits a Protest of Election Irregularity to the
6 Board of Elections within the protest period.
7

8 **Sec. 161-15. - Absentee voting.**

- 9 (a) The Board of Elections shall prepare and administer a separate ballot for absentee voting.
10 The absentee ballot shall be identical to the regular ballot except that it shall be printed on
11 paper of a different color.
- 12 (b) Only enrolled members who are registered to vote and meet one of the following
13 requirements may vote by mail or in person by absentee ballot:
- 14 (1) Tribal members serving on active military duty who are unable to return to Cherokee to
15 cast their votes;
- 16 (2) Tribal members employed with the federal government assigned to duty other than the
17 Cherokee Indian Reservation who are unable to return to Cherokee to cast their votes;
- 18 (3) Tribal members enrolled in institutions of higher education that are unable to return to
19 Cherokee to cast their votes;
- 20 (4) Tribal members who are employees of the Tribe and are required to be away from
21 Cherokee for training or for reasons required by their employment on the date of election
22 who are unable to return to Cherokee to cast their votes;
- 23 (5) Tribal members who; because of illness are in a hospital, nursing home, or other
24 treatment facility and who because of their physical condition and course of treatment are
25 unable to return to Cherokee to cast their votes; or who because of incarceration in any
26 jail or prison are unable to go to the appropriate polling place to cast their vote; or
- 27 (6) Tribal members who physically reside on Cherokee trust lands but who will be absent
28 from Cherokee on Election Day for business or personal reasons, and are unable to return
29 to Cherokee to cast their votes.
- 30 (c) Person desiring to vote by absentee ballot must apply for such a ballot within the following
31 time periods: Beginning on April 1 and ending on May 15 for the primary election and
32 beginning on July 1 and ending on August 15 for the general election, for requests made by
33 phone, electronic mail, or US mail. Requests may be made in person in the Board of Elections
34 Office by 4:30 4:00 p.m. the Friday before said election. The Board of Elections may require
35 appropriate documentation to establish compliance of Subsection 161-15(b) of this Section be
36 submitted with the application.
- 37 (d) Absentee ballots shall be given or mailed to the prospective voter by the Board of Elections
38 beginning on May 1 for the Primary Election and on August 1 for the General Election,
39 together with instructions and an official self-addressed return envelope. Absentee ballots
40 must be witnessed, returned to and received by the Board of Elections on or before 4:30 4:00
41 p.m. on the Friday before the Primary Election, and on or before 4:30 4:00 p.m. on the Friday

1 before the General Election. All absentee ballots shall be counted by the Board of Elections
2 on Election Day.

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

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

9 "This application is issued for the absentee ballots to be voted in the _____
10 (General Election, Primary Election, etc.) to be held on the _____ day of
11 _____, 20 ____."

12 (g) An application for absentee ballot shall be issued only by mail or in person to the voter. The
13 voter shall provide a copy of his/her enrollment card and a copy of his/her government issued
14 photo ID card with the application for absentee ballot. The application shall require the voter
15 to certify as follows:

16 "I, (Print Full Name), do certify, under penalty of perjury, that I am a voter in the
17 _____ Township of the Eastern Band of Cherokee Indians, duly registered in
18 accordance with the Cherokee Code. I understand it is a ~~criminal offense~~ violation of
19 Tribal law to falsely sign this certificate knowing that what I am certifying is not true.

20 _____

21 Signature of Voter

22 Date: _____

23 Witness: _____

24 Address: _____

25 Witness: _____

26 Address: _____

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

31 (1) On one side shall be printed an identified number of the voter and the following
32 statement which shall be certified by one member of the Board of Elections: "Certification
33 of Election Board Member: The undersigned Election Board Member certifies that
34 _____ is a registered and qualified voter of _____ Township and has
35 made proper request to vote under the laws of the Eastern Band of Cherokee Indians.
36 _____

Chairman/Member

Date: _____

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

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

Signature of Voter: _____

Date: _____

Witness: _____

Address: _____

Witness: _____

Address: _____

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

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

- (1) Record the absentee applications and ballots issued.

- a. Name of the voter requesting an absentee ballot.
- b. Number assigned to voters ballot when issued.
- c. The township in which applicant is registered.
- d. Address to which the ballot is mailed.
- e. The date the request for ballot was received.

- (2) When the Board of Elections receives and approves an application for absentee ballots, it shall promptly issue and transmit the ballot to the voter only, not to a relative, in accordance with the following instructions:

- a. On a detachable tab, the Board of Elections shall have printed the words "Absentee Ballot No. _____" and insert in the blank space the number assigned to the absentee voter. The Board shall not write, type, or print any other matter upon the ballot.

1 b. The Board shall detach the numbered tab, fold and place the ballot in a return
2 envelope and write or type in the appropriate blanks thereon the absentee voters
3 name, his/her ballot number and the designation of the township in which the voter
4 is registered. The Board of Elections shall leave the return envelope holding the
5 ballots unsealed.

6 c. The Board of Elections shall then place the unsealed return envelope holding the
7 ballot, together with printed instructions for voting and returning the ballot, in an
8 enveloped addressed to the voter at the address stated in his/her request, seal the
9 envelope, and mail it at the expense of the Board of Elections. Alternatively, a voter
10 may personally pick up the ballot at the Board of Elections office.

11 (3) If the voter does not meet the criteria for absentee voting, the Board of Elections will
12 notify the voter in writing of the reason for denial. The decision of the Board of Elections
13 to deny an absentee ballot application shall be final.
14

15 **Sec. 161-15.1. - Early voting.**

16 (a) Any ~~eligible~~ registered voter may vote early under the provisions of this subsection.

17 (b) Early voting opens at 9:00 a.m. on the second Monday of May and ends the fourth Monday
18 of May before the primary election and the second Monday of August and ends the fourth
19 Monday of August before the general election and closes at 4:30 4:00 p.m. on regular business
20 days except for the last Saturday prior to the closing of early voting; the last Saturday hours
21 shall be 8:00 9:00 a.m. until 4:30 4:00 p.m. The location for early voting shall be determined
22 by the Board of Elections and shall be located on Tribal trust lands. The Board of Elections
23 shall not extend the dates and times for early voting for any reason.

24 (c) All ~~eligible-early~~ registered voters who desire to vote early shall follow the voting procedures
25 set forth in Section 161-14.

26 (1) The early voting ballots shall be marked and distinctly colored from the absentee and
27 regular voting ballots. On a detachable stub, the Board of Elections shall have printed the
28 words "Early ballot No. _____" and insert in the space the number assigned to
29 the early voter. The Board shall not write, type, or print any other matter upon the stub.
30 The Board shall detach the numbered ballot tab.

31 (2) After voting in a private area, the voter shall place the ballot in a sealed envelope provided
32 and witnessed by a Board Member or Election Officials and placed in a locked ballot box.

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

37 (e) Election irregularities and protests shall be conducted in accordance with the procedures as
38 set forth in Section 161-16 of this chapter.
39

1 **Sec. 161-16. - Election irregularities and protests.**

- 2 (a) All protests must be submitted to the Board of Elections in writing and on forms provided by
3 the Election Board or, if not on forms provided by Board, then in a typed or legible writing.
4 Each protest shall contain sufficient detail to give the Board adequate notice of the alleged
5 irregularity being protested. All protests shall, at a minimum, contain the following
6 information: (1) the name, mailing address, physical address, telephone number and email
7 address (if one is available) of the protester; (2) the dates and approximate times of the act(s)
8 being protested; (3) a description of the subject of the protest; (4) the name, mailing address,
9 telephone number and email address (if one is available) of all witnesses known to the
10 protester; and (5) copies of all supporting records, photos and other documentary evidence in
11 the possession or control of the protester that the protester wants the Board to consider. All
12 protests must include a sworn statement signed by the protester, before a notary, that the
13 allegations presented in the protest are true or that the protester, upon information and belief,
14 believes them to be true. All hearings for election irregularities and protests shall be set
15 according to this Section.
- 16
- 17 (b) The person filing the protest shall pay the protest filing fee expressed by the Board in its
18 schedule of fees.
- 19 ~~(b) A protest of a voter's township registration may be made by any enrolled member or candidate~~
20 ~~who is a registered voter, as specified in Section 161-11.1 through 161-11.3. No protests of a~~
21 ~~voter's township registration shall be accepted or acted upon by the Board of Elections~~
22 ~~between April 14 and the first business day following the certification of the general election~~
23 ~~results. [Editors note: this paragraph was moved to Sec. 161-11.2 ("Challenges to Voter~~
24 ~~Registration")]~~
- 25 (c) Except as otherwise provided in this section, A a protest of irregularities in the conduct of an
26 election must be submitted to the Board of Elections no later than five (5) business days after
27 the close of the polls and, if the Board orders a hearing to hear the protest, the a hearing shall
28 be set by the Board within five (5) business days after the receipt of the written protest.
29 Pursuant to C.C. Sec. 161-19(g), the Board has authority to not order a hearing in certain
30 situations. The parties to the protest shall be allowed adequate time to prepare their case and
31 be allowed to call witnesses and subpoena documents, not to exceed ten (10) business days.
32 It is imperative to proceed in a timely manner, therefore the normal rules of civil procedure
33 are not applicable. However, the Board of Elections shall give the parties every reasonable
34 consideration and opportunity to provide a solid prepare their case and may extend any
35 deadlines or hearing to assure that it has all the facts in order to make a valid final decision.
36 All persons that the protest may directly affect shall be notified of the scheduled hearing by
37 the Election Board. Notice shall be provided by any means authorized in C.C. § 161-29
38 ("Service of Communications by the Board of Elections").
- 39 (d) ~~Any person filing a protest for election irregularities under Subsection 161-16(e) this section~~
40 must establish during a hearing in front of the Board of Elections that the alleged irregularities
41 unfairly and improperly or illegally affected the actual outcome of the election, and but for
42 the irregularity, the winning candidate would not have prevailed at the polls.
- 43 (e) ~~All persons shall have the right to have legal counsel an attorney or lay advocate represent~~
44 them at the hearing before the Board of Elections. Any attorney who represents a person at a

1 hearing before the Board of Elections shall comply with Tribal law governing the practice of
2 law in Cherokee.

3 (f) After all parties have had an opportunity to be heard and present evidence the Board of
4 Elections shall issue a final written decision ~~stating their findings and decision.~~ The decision
5 shall be issued within five (5) business days after the conclusion of the hearing. The written
6 decision shall be sent to all affected person(s) by means authorized in C.C. § 161-29 (“Service
7 of Communications by the Board of Elections”), ~~of certified mail with return receipt~~
8 ~~requested, or shall be hand delivered by an officer of the Cherokee Police Department. Proof~~
9 ~~of service of process is a return receipt from the United States Postal Service or a return of~~
10 ~~service from the Cherokee Police Department.~~

11 (g) The Board has the power to:

12 (1) Find that the protest did not meet the requirements set forth in this Chapter and dismiss
13 the protest; or

14 (2) Find that the protest did meet the requirements set forth in this Chapter and issue the
15 appropriate relief.

16 (3) If the Board of Elections finds that ~~there was an election irregularity~~ protester has met the
17 burden expressed in subsection (d) of this section, then the Board of Elections is
18 authorized to issue relief in the form of ordering a new election or a run-off election
19 between two or more candidates affected by the election irregularity. If it is shown by the
20 evidence presented that a crime may have been committed during the course of the
21 election, the Board of Elections may present evidence to the Tribal Prosecutors Office for
22 possible criminal charges.

23 (4) The Board of Elections shall use the same procedure set out in Section 161-7 of this
24 Chapter, if a new or run-off election is warranted.

25 (5) The powers given to the Board of Elections in this subsection are in addition to, and are
26 a supplement to, the powers given to the Board in C.C. § 161-19.

27 (h) The Board of Elections shall issue a final, written decision. The decision is not required to
28 take any particular form or to formally express findings of facts and conclusions of law as
29 might be written in a court decision; provided, however, the final decision shall contain
30 sufficient information to enable the Court on appeal, if an appeal is filed, to make an
31 informed judgment as to facts considered by the Board of Elections in making its decision
32 so that the Court can determine whether the Board committed an error of law.

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

35
36 **Sec. 161-16.1. - Certification of election results.** [No changes are made to this section.]
37

38 **ARTICLE III. - BOARD OF ELECTIONS**

1 **Sec. 161-17. - Board established.**

- 2 (a) The Board of Elections shall be composed of six (6) members, one from each township. Each
3 member of the Board shall be appointed by the Tribal Council effective September 1 in non-
4 election years, with the term of each member to run for four years from that date. The terms
5 shall be staggered with one representative appointed from Painttown, Wolfetown/Big Y,
6 Snowbird/Cherokee County in 2012 and each four years thereafter; and one representative
7 appointed from Big Cove, Birdtown and Yellowhill in 2014 and each four years thereafter.
- 8 (b) In order to serve as a member of the Board of Elections, a candidate must:
- 9 (1) Be an enrolled member of the Eastern Band of Cherokee Indians; and
- 10 (2) Be at least 18 years of age on the date of appointment; and
- 11 (3) Reside on Cherokee Trust Lands for a least one year prior to the date of appointment
12 and continue to reside on the Cherokee Trust Land for the duration of their term; and
- 13 (4) Have received a high school diploma or equivalent prior to the date of appointment.
- 14 (c) No Election Board member shall be a candidate for any Tribal office or actively support any
15 candidate for Tribal office during the term for which the member is appointed to the Board.
16 For purposes of this section, "actively support" means contributing money to, campaigning
17 for, or openly declaring support for any candidate.
- 18 (d) Every person who is a member of the Board of Elections shall take the same oath required of
19 election officials in C.C. § 161-13.
- 20

21 **Sec. 161-18. – Vacancies on election board.** [No changes are made to this section.]

22 **Sec. 161-19. – Powers and Duties of the election board.**

- 23 (a) The Board shall have the power to do all things necessary and proper, consistent with this
24 Chapter, to effectuate the intent of this Chapter. Those powers include, but are not limited to,
25 the following: to make final decisions on candidate eligibility, proper voter and candidate
26 registrations and eligibility, absentee voter eligibility, and protest decisions; to provide for the
27 proper conduct of elections; to hire and/or contract with firms and individuals to assist the
28 Board in the conduct of its business; to resist, report and take action against illegal or unethical
29 conduct affecting Tribal elections; to set and impose reasonable filing fees, protest fees and
30 other fees; to provide for the imposition of civil fines and other consequences for unlawful
31 conduct; and to make administrative rules pursuant to Cherokee Code Chapter 150
32 (Administrative Procedure Act). The Board, in carrying out its decision, shall have the
33 authority to subpoena documents and witnesses and shall have quasi-judicial powers to make
34 the final rulings on all election protests properly before it.
- 35 (b) The Board shall appoint all election officials necessary for the proper supervision of Tribal
36 elections as set forth in Article II of this Chapter.
- 37 (c) The Board shall provide to the election officials at each ~~precinct~~ polling place a list of
38 registered voters for their respective ~~precincts~~ polling place.

- (d) The Board shall be responsible for the preparation of the official ballots to be used in each of the ~~election precincts~~ polling places for all Tribal elections and shall furnish such ballots to the elections officials in each ~~precinct~~ polling place.
- (e) The Board shall be responsible for certifying each applicant as eligible or ineligible, notifying each applicant of its decision, and holding appeal hearings as set forth in this Chapter. The Board shall make public the names of the candidates certified as eligible on the ballot for each Tribal office no later than May 10 of an election year for the primary election and August 10 of an election year for the general election,
- (f) The Board, together with the election officials for each ~~precinct~~ polling place shall conduct all ballot counts after the closing of the polls. The Board shall thereafter make public unofficial reports of election returns. The Board shall certify elections as specified in Section 161-16.1.
- (g) The Board shall investigate irregularities and nonperformance of duty and violation of Tribal election rules and regulations by election officials or other persons. The Board may hold hearings in the course of such investigations in accordance with Section 161-16, but is not required to hold a hearing on any particular matter if the Board determines that it can render an informed decision based on the written protest and supporting materials provided by the parties or the Board, including information obtained by the Board through its own independent research and investigation.
- (h) The Board shall have access to all ballot boxes and their contents, all voting machines and their contents, all registration records, and all necessary enrollment records in the Tribal Enrollment Office to carry out its duties under this Chapter. The Board of Elections is authorized to utilize all resources available to properly document a voter's residence for registration purposes.
- (i) The Board shall conduct an instructional meeting for ~~precinct~~ township officials at ~~each precinct~~ a location to be determined by the Board and such meeting shall be held no later than the week preceding each election. All election officials shall receive training and instruction in the proper execution of their duties before the beginning of early voting, if possible. All election officials shall receive a copy of a written training handbook detailing the election day process.
- (j) The Board shall keep a tape recording or written record of all Board meetings.
- (k) The Board shall prepare and submit to the Tribal Council a budget request, which shall include all anticipated Tribal election expenses for the coming fiscal year. The request should include payment of all persons working with elections and all known registration costs.
- (l) The Board shall have the authority to fully implement and carry out all other duties set forth in this Chapter.
- (m) Whenever the Board of Elections votes on a matter, the decision receiving the majority of votes shall prevail. If a vote taken on a matter results in a tie among the members of the Board, the matter fails.

ARTICLE IV. - GENERAL PROVISIONS

Sec. 161-20. - Definitions.

1
2 The terms defined in this Section shall, for all purposes of this Chapter, have the meanings
3 specified below:

4
5 Business day shall mean any day of the week in which Tribal offices are open for regular
6 business in whole or in part. This does not include Saturday, Sunday, or any other Tribal or
7 federal holiday or Tribal administrative leave day in which Tribal offices are closed for the
8 whole day.

9
10 Calendar day shall mean any day of the week.

11
12 Candidate shall mean the person running for elective office and includes his or her agent.
13 Candidate also includes any person or entity who files a ballot measure including, but not be
14 limited to, initiative questions, referendum questions and amendments to the Tribal Charter and
15 Governing Document or to the adopted constitution of the Tribe if a constitution is adopted.

16
17 Domicile shall have the meaning provided in C.C. § 161-3.

18 Election period shall mean the period beginning January 1 and ending on September 30 of
19 each year of a regularly scheduled primary and general election for Tribal Council, Principal Chief
20 or Vice Chief. In a special election, the election period shall mean the period beginning five (5)
21 months immediately before the date set for the special election called to fill a vacancy in a Tribal
22 office and extending five (5) months beyond the date of the special election.

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

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

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

31 ~~Preeinct~~ Polling Place shall mean the ~~polling place~~ actual physical location where votes are
32 cast during an elections. The Board of Elections shall authorize and designate one polling place
33 in each voting township, referring specifically to trust land, except for the Wolfetown Township,
34 which shall have two polling places – one in Wolfetown and one in Big-Y.

35 Receipt shall mean three (3) days, not including Sunday, following the post-mark of registered
36 or certified mail.

37
38 Run-off election shall mean a second election conducted after a primary or general election
39 usually involving a subset of the candidates who participated the original election and is held for
40 the following purposes: (1) to resolve a tie between candidates who received the same number of
41 votes in the original election; or (2) to re-do the election in whole or in part because the Board of
42 Elections has determined, upon its own independent research and investigation prompted by a

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

5
6 Township shall mean the six (6) established communities on the Qualla Boundary recognized
7 by the Tribal Council and in the Charter and Governing Document as having Tribal Council
8 representatives: Big Cove (including Tow String), BirdTown (including 3200 Acre Tract),
9 PaintTown, YellowHill, WolfeTown (including Big Y), SnowBird, and Cherokee County trust
10 lands combined.

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

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

15
16 Vacancy shall mean that an elected official has resigned or died, or has been impeached or
17 removed, or has been removed after having been found to be disabled to the extent that he or she
18 is unable to discharge the powers and duties of the office during his or her term of office.

19
20 **Sec. 161-21. - Prosecution.**

21
22 Any violation of this Chapter that may constitute commission of crime shall be referred by
23 the Board of Elections to the Tribal prosecutor for review and potential prosecution in the
24 Cherokee Court or in federal court depending on the nature and extent of the crime. ~~Any voting~~
25 ~~irregularities will be dealt with and prosecuted according to appropriate laws including, but not~~
26 ~~limited to, 25 C.F.R. § 11.426.~~

27 Any person who, in any official proceeding of the Board of Elections or in any official
28 document submitted to the Board or submitted to another entity or person as required in this
29 Chapter, makes a false statement under oath or affirmation, or who swears or affirms the truth of
30 a statement previously made when the statement is material and the person believes the statement
31 not to be true, shall be subject to prosecution under C.C. Chapter 14, Article XII (Perjury and
32 Obstructing Justice).

33
34 **Sec. 161-22. - Effective date; amendment; severability; weekends.**

- 35
36 (a) This Chapter and amendments to it shall be effective upon ratification by the Principal
37 Chief.
38 (b) ~~The provisions of this Chapter that established election requirements or procedures shall~~
39 ~~not be amended during an election year as defined in Section 161-20, except as provided in~~
40 ~~Section 161-24.~~
41 (e b) If any provisions of this Chapter are found to be invalid because it is inconsistent with
42 another law, then the inconsistent portion shall be reviewed and amended until all conflicts
43 are resolved. All other provisions of this Chapter shall remain in full force and effect.

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

Sec. 161-23. – Appellate review. [No changes are made to this section.]

ARTICLE V. - MISCELLANEOUS

Sec. 161-24. – Unlawful campaign practices.

In addition to other prohibitions in this Chapter, the following acts are unlawful:

- (1) Campaigning within 100 yards of a polling place. No person shall campaign, attempt to persuade voters, place campaign literature or signs, or otherwise attempt to influence the outcome of a Tribal election within 100 yards of a polling place. This restriction shall be applied in concert with the 100 yard restrictions provided in C.C. § 161-12 and § 161-13(d).
- (2) Buying or selling votes. No person, corporation, partnership, or any other legal entity shall attempt to influence a person or obtain his or her vote, or obtain his or her signature on a petition, by making a direct and specific offer to that individual, or to another person on behalf of that individual, of money, goods or services. This subsection is not intended to limit the making of "campaign promises", i.e., generalized suggestions that people will benefit from policies associated with particular candidates or particular issues on the ballot.
- (3) Tampering with ballots. No person shall tamper with, alter, destroy, deface or mutilate ballots that have been cast in an election, or perform any such acts in connection with an official record of ballots cast in an election, except as authorized by law.
- (4) Giving false information in registering or voting. No person shall knowingly or willfully give false information as to his name, address or period of residence in the township for the purpose of establishing his eligibility to register or to vote, or conspire with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pay or offer to pay or accept payment for registering to vote or for voting.
- (5) Falsification or concealment of material facts. It shall be unlawful for any person to knowingly and willfully falsify or conceal a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.
- (6) No intimidation. No person, organization, association, corporation or other entity shall use or threaten to use physical force, job discrimination, employment reprisal, employment reward, or financial reprisal or financial reward, to solicit or accept money or any other thing of value for the purpose of influencing the result of an election or to assist a candidate or office holder.

(7) Voting more than once in an election. No person shall vote more than once in an election, except as provided by law.

(8) Marking the ballot of another person. No person shall mark the ballot of another voter without that voter's express approval. No person shall execute the signature of another voter on any document submitted to the Board of Elections without that voter's express approval.

Sec. 161-25. - Amendment to this Chapter.

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

Sec. 161-26. – Board of Elections office.

(a) The Board of Elections shall have an office or offices that are secured so that access to the offices is limited to authorized persons only.

(b) The Board of Elections offices shall have working security cameras that shall record all persons coming and going from the offices during an election period, and to record the handling and securing of all ballots, and to provide for the security of all ballots.

(c) Keys and codes to Board of Election offices shall only be provided to authorized personnel. All access to Election Board offices shall be logged remotely, providing the ability to review who has been in and out of the offices.

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

(a) All ballots shall be secured in a locked safe or cabinet with access limited to authorized personnel only. The Board of Elections shall maintain a log indicating who accesses the ballots and the day, date and time (example: "Monday, 08/28/2017, 2:00 p.m.") access was made.

(b) If bins or containers are used to store marked or unmarked ballots, the bins or containers shall be sturdy enough to preclude reasonable attempts at unauthorized access and shall have a secure locking system to safeguard sensitive data and to prevent tampering, theft or destruction of documents.

- 1 (c) If security seals are used to securely lock bins or containers, the security seals shall be
2 secured in a locked cabinet with limited access controlled by the Board of Elections.
3 A log shall be maintained to monitor who has accessed the security seals, as well as
4 reason access to the seals was necessary. The log shall contain day, date and time
5 entries. Two signatures shall be noted on the log each time a bin or container is
6 opened, with one signature being that of a Board of Elections members.
- 7 (d) Security seals shall be uniform and pre-numbered sequentially.
- 8 (e) The Board of Elections shall log spoiled ballots.

9 **Sec. 161-28. – Poll Books.**

10
11 All poll books shall be reconciled and verified daily by two members of the Board of
12 Elections.

13
14 **Sec. 161-29. – Service of communications by the Board of Elections.**

15
16 Wherever in this Chapter the Board of Elections is required to serve an official notice,
17 fine or decision on a person, the Board may serve the official communication in any of the ways
18 expressed in this section. Regardless of the manner of service, the Board shall keep records
19 establishing that the communication was made, actually received by the intended recipient, and
20 when it was received. The following methods of service are acceptable:

- 21
- 22 (a) By requiring the recipient to personally appear at the Board of Elections office to
23 pick-up and sign for the document; or
- 24
- 25 (b) By mailing the document to the recipient by United States Postal Service certified
26 mail with return receipt requested, or by delivery by FedEx or United Parcel Service;
27 or
- 28
- 29 (c) By personal delivery by an officer of the Cherokee Indian Police Department with
30 proof or return of service to be provided by the officer to the Board. The Cherokee
31 Indian Police Department is hereby authorized and required, if requested by the
32 Board, to deliver such communications and provide proof or return of service to the
33 Board.
- 34
- 35 (d) Any other means agreed to by the recipient, such as by email or telephone call;
36 provided, however, that the Board shall preserve all such emails and shall keep
37 records of all such telephone calls with sufficient detail so the Board can show when
38 the communication was made, who received it and when it was received.
- 39

40 **Sec. 161-30. – Calculation of days.**

41

1 Unless a different meaning is clearly expressed, wherever in this Chapter a time period of
2 ten (10) days or less is expressed for the performance of an act (such as for filing a required
3 document, scheduling a hearing or providing notice of an event), those days shall mean business
4 days; and any time period greater than ten (10) days shall mean calendar days.
5

6 **Sec. 161-31. – Legal representation at hearings.**
7

8 Parties to hearings before the Board of Elections shall have the right to have an attorney or
9 lay advocate represent them at the hearing. Any attorney who represents a person at a hearing
10 before the Board shall comply with Tribal law governing the practice of law in Cherokee.
11

12 **Sec. 161-32. – Control of hearings.**
13

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

20
21 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
22 rescinded, and that this ordinance shall become effective when ratified by the
23 Principal Chief.
24

25
26 *Submitted by the Board of Elections*