

TABLED

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: OCT 14 2015

ORDINANCE NO. 28 (2015)

- WHEREAS, The Eastern Band of Cherokee Indians has inherent authority as a self-governing political body to make its own laws to protect the health and welfare of its membership and promote a safe community;
- WHEREAS, Cherokee Code Chapter 150, entitled the "Administrative Procedure Act" serves to delegate regulatory procedures and dispute resolution to administrative agencies or programs serving the public providing basic guarantees of the due process of law;
- WHEREAS, Cherokee Code Chapter 130A-3 outlines the authority and duties of PHHS which includes in subsection (e) the ability to adopt such policies, rules and regulations that may be necessary and desirable for the programs created and/or administered by PHHS;
- WHEREAS, In order to ensure federal reimbursement for certain costs associated with the tribe's human service department the tribal laws, rules, regulations, policies and procedures involving the administration certain services must be in compliance with federal laws, including but not limited to 42 U.S.C. at 671(a)(8) which provides that the child welfare agency must have in place safeguards to prohibit disclosure to any committee or legislative body any information which identifies by name or address any applicant or recipient of services provided by the child welfare agency, and 42 U.S.C. 671 at (a)(12) which requires the child welfare agency to provide an opportunity for a fair hearing before the child welfare agency to any individual whose claim for benefits are denied or not acted upon with reasonable promptness;
- WHEREAS, In order to comply with the above referenced federal laws, PHHS utilized the guidelines established in Cherokee Code Chapter 150 to implement and promulgate the enforcement of administrative rules and actions;
- WHEREAS, But for Cherokee Code Chapter 150 and the administrative rules created by PHHS in substantial compliance with Cherokee Code Chapter 150, PHHS would not have received the federal approval to license foster families and place children in tribally licensed foster homes;
- WHEREAS, Cherokee Code Chapter 150 is permissive in its construction and only applies to those tribal departments and programs which choose to utilize the processes established in that chapter, and only after obtaining authorization by ordinance to utilize such rules or regulations; and

WHEREAS, Nothing in Cherokee Code Chapter 150 expressly or implicitly replaces any existing tribal committee, commission or board, but merely serves to provide tribal members more of an opportunity for direct involvement in rulemaking functions and also provides an opportunity to challenge departmental decisions when a dispute and resolution is finalized by the department.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Annual Council assembled, at which a quorum is present, that Chapter 150 of the Cherokee Code be amended to clarify that the legislative and judicial branch and any political subdivisions or entities of the tribe are not unilaterally subject to the tribe's Administrative Procedures Act as follows:

C.C. § 150. ADMINISTRATIVE PROCEDURE ACT ("APA")

ARTICLE I. SCOPE; DEFINITIONS; AVAILABILITY.

§150-1. Policy and scope.

(b) Scope. – This Chapter ~~applies~~ may apply to all tribal administrative bodies and entities, unless specifically exempted according to the provisions of this Chapter.

(d) Public Policy. – The regulatory power hereby delegated to the administrative bodies is established to bring parties efficient and high quality public service under the basic guarantees of the due process of law while also encouraging the informal solution of administrative issues so that formal solution of the matters submitted to the administrative body will be unnecessary. The administrative bodies which choose to utilize this Chapter as authorized by an enabling ordinance shall establish the rules and procedures that will allow the informal solution of the matters submitted for their consideration without impairing the rights or procedures guaranteed by this Chapter which are intended to ensure fair, economical and equitable solutions of the cases under the consideration of the administrative bodies.

§150-2. Definitions.

As used in this Chapter,

(a) "Administrative bodies" means any tribal division, department, entity or service provider whose operation and actions fall under the scope of the Tribe's jurisdiction and encompasses the authority to administer, regulate, investigate and carry out the decisions and powers of such divisions, departments, entities or service providers.

- (1) Tribal Council ~~and~~, the judicial branch and any political subdivisions or entities of the tribe, including but not limited to the Cherokee Indian Hospital Authority

(CIHA), Tribal Casino Gaming Enterprise (TCGE) and Tribal Gaming Commission (TGC) are not considered administrative bodies for purposes of this Chapter and are hereby specifically exempted.

(g) "Entity" or "Tribal Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or other natural or artificial person or organization. The term "entity" is intended to be as broad as possible to ensure this Chapter's coverage over all applicable activities within the Tribe's jurisdiction except as specifically exempted herein.

§ 150-3. Adoption of Rules of Practice and Procedure – Public Inspection of Administrative body Rules, Determinations, Official Interpretations and Opinions.

(a) Each administrative body may adopt formal procedures prescribed or authorized by this Chapter, together with forms and instructions.

(1) Adoption of formal procedures prescribed or authorized under this Chapter are effective only when the administrative body has received authorization through an enabling ordinance passed by Tribal Council and ratified by the Principal Chief.

§ 150-17. Administrative Appeals; Finality; Exhaustion of Administrative Remedies.

(c) Exhaustion of administrative remedies is a jurisdictional requirement to seeking judicial review thereof. Administrative remedies shall be considered exhausted once an official interpretation has been issued by the administrative body's hearing officer or committee and a mediation has been requested by any party and such mediation was either not agreed to by all parties or was unsuccessful or upon appeal of a final decision issued after a reconsideration hearing.

§ 150-21. General Repeal.

All Tribal law or parts of Tribal laws, whether special or comprehensive in nature, which are expressly subject to the Tribe's Administrative Procedure Act, and which are inconsistent in substantial noncompliance with the provisions of this Chapter, are hereby repealed, but such repeal shall not affect pending proceedings.

§ 150-23. Savings; Authority of Administrative bodies to Comply; Subsequent Legislation.

Nothing in the Tribe's Administrative Procedure Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure under this Chapter shall apply equally to administrative bodies and

persons. Every administrative body with a proper enabling ordinance is granted it the all authority necessary to substantially comply with the requirements of the Administrative Procedure Act is authorized to utilize the guidelines provided in this Chapter. No subsequent Tribal laws shall be held to supersede or modify the provisions of the Administrative Procedure Act or its applicability to any administrative body except to the extent that such Tribal law shall do so expressly.

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

Submitted by: Office of the Attorney General