

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: _____

ORDINANCE NO.: _____ (2024)

An ordinance amending the disenrollment procedure.

WHEREAS, the Eastern Band of Cherokee Indians is duly authorized to establish and regulate membership and enrollment under its sovereign powers as a federally recognized Indian Tribe; and

WHEREAS, Chapter 49 of the Cherokee Code sets out the requirements for membership with the Tribe; and

WHEREAS, Cherokee Code Section 49-10 sets out the conditions by which a person may be disenrolled as a member of the Tribe; and

WHEREAS, amendments to Cherokee Code Section 49-10 are needed to clarify and improvement the disenrollment process; and

WHEREAS, in order to clarify the Cherokee Code to reflect the policy of balancing the need for a consistent and efficient process with fairness and due process for everyone involved, the Enrollment Committee suggests an amendment to the Cherokee Code.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that in order to allow enrollment of persons who are currently prevented from enrollment by the situation described above, Cherokee Code Chapter 49 is hereby amended as follows:

Sec. 49-10. Loss of membership.

(a) *Relinquishments.*

(1) Any adult member of the Eastern Band of Cherokee Indians may voluntarily relinquish his/her membership. Such a relinquishment must be in writing, and the signature must either be notarized or witnessed by two persons. A person who has relinquished his/her membership in Eastern Band as an adult, over the age of 18, may not reapply for membership.

(2) The membership of any member of the Eastern Band of Cherokee Indians who is not at least 18 years of age may not be relinquished by anyone. The only exception is when the parent or guardian desires to enroll the minor child into another federally recognized Indian Tribe. However, this may only be accomplished on a conditional relinquishment form. A person whose membership in the Eastern Band was relinquished by a parent or guardian while the person was a minor may reapply for membership after reaching the age of 18.

1 (3) Any member wishing to relinquish will be encouraged to do so on a conditional
2 relinquishment form. In such case, the relinquishment will become effective upon the
3 acceptance of that individual into membership of another Tribe. The member's name will
4 not be removed from the Eastern Cherokee Tribal Roll until documentation of the
5 acceptance into the other Tribe's membership is received.

6 (4) Should a member insist upon relinquishing in writing, without using the conditional
7 relinquishment form, the Tribe will comply with the member's wishes and will remove
8 the member's name from the Eastern Cherokee Tribal Roll on the effective date specified
9 in the relinquishment submitted.

10 (b) *Disenrollments.* Disenrollment is defined as revoking a person's membership in the Eastern
11 Band of Cherokee Indians ~~when it is found that said person did not meet the eligibility criteria~~
12 ~~existing at the time of said person's enrollment.~~ Disenrollment prevents an individual from
13 receiving any monetary benefits, education, housing, possessory holdings, or any and all other
14 services offered and provided to enrolled members by the Tribe. The following Disenrollment
15 Procedures are adopted to ~~correct mistakes that resulted when tribal membership was~~
16 ~~mistakenly approved and to~~ provide a process that would allow a fair hearing in the
17 disenrollment procedure.

18 (1) *Grounds for disenrollment.* A Tribal member may be subject to disenrollment ~~if records~~
19 ~~reveal for~~ one or more of the following ~~criteria conditions exist:~~

20 (A) The member was erroneously enrolled (that is, he/she did not meet the eligibility
21 criteria in existence at the time of his/her enrollment).

22 (B) The member has accepted benefits of land, money, or other financial gain from
23 another Indian Tribe while enrolled as a member of the Eastern Band of Cherokee
24 Indians as an enrolled member of another Indian Tribe after the effective date of
25 this chapter (9-11-1995).

26 (C) The member is currently enrolled with another Indian Tribe and has either refused
27 to relinquish membership in the other Tribe or has failed to respond to a notice of
28 the requirement to relinquish membership in the other Tribe.

29 (D) The member has been permanently excluded from Cherokee trust lands by Tribal
30 Council.

31 (2) *Procedures for disenrollment.* Any person may submit evidence to the Enrollment Office
32 that a person may be subject to disenrollment. The Enrollment Office shall evaluate any
33 such evidence and The Enrollment Office shall notify the Enrollment Committee of any
34 member who may be subject to disenrollment. The Enrollment Committee initiates the
35 disenrollment process against any member by authorizing, through a majority vote, the
36 Enrollment Office to:

37 a. Provide written notice, by certified mail, return receipt, to the individual to be
38 summoned to appear before the Enrollment Committee. The notice must:

39 i. State ~~the criteria for which the person could be disenrolled that the Enrollment~~
40 ~~Committee has questions regarding the individual's enrollment and state the~~
41 ~~nature of the questions and what documentation the individual must provide~~
42 ~~to the Committee to retain his/her membership.~~

43 ii. State that the individual has 30 calendar days from the date of receipt of the
44 notice to contact the Enrollment Office and set a date for the individual to
45 appear before the Enrollment Committee.

- 1 iii. State that if the individual does not contact the Enrollment Office within the
2 prescribed time period, the individual's non-response will be interpreted as
3 his/her choice to be automatically disenrolled and the individual will be
4 disenrolled at the next meeting of the Enrollment Committee. The date of that
5 meeting will be stated in the letter. No further notice will be given to the
6 individual of his/her disenrollment.
7 iv. Members on active duty with the military shall have six calendar months to
8 contact the Enrollment Office.

- 9 b. ~~The individual has the burden to prove his/her eligibility for enrollment at the time
10 of enrollment. The Enrollment Office has the burden to prove to the Enrollment
11 Committee by clear and convincing evidence that at least one criterion for
12 disenrollment exists for the individual. The Enrollment Committee may issue
13 subpoenas for witnesses and documents to be available during hearing. The
14 Enrollment Committee may, by majority vote, request that a person subject to
15 disenrollment submit to DNA testing for purposes of providing evidence for the
16 Enrollment Committee's consideration during the disenrollment hearing. Refusing
17 to comply with any such request by the Enrollment Committee creates a rebuttable
18 presumption that the results of the DNA test would be unfavorable to the person
19 subject to disenrollment.~~
20 c. The individual, at his/her own expense, may be represented by legal counsel at the
21 individual's appearance before the Enrollment Committee. The individual,
22 however, must personally appear before the Enrollment Committee and cannot have
23 a legal representative or other agent appear on his/her behalf.
24 d. ~~If the Enrollment Committee does not find that clear and convincing evidence for
25 disenrollment exists. If the individual provides evidence that satisfies the
26 Enrollment Committee, by majority vote, the process is terminated and the
27 individual retains his/her membership.~~
28 e. ~~If the Enrollment Committee, by majority vote, does find that clear and convincing
29 evidence for disenrollment exists. If the individual does not provide evidence which
30 satisfies the Enrollment Committee, by majority vote, the individual will shall be
31 disenrolled effective immediately. The Enrollment Committee's decision to
32 disenroll shall be reduced to writing and provided to the individual.~~
33 f. The disenrolled individual may file a written appeal of the Enrollment Committee's
34 decision to the Tribal Council within ~~15~~ 30 calendar days of the Committee's
35 decision. The written appeal is to be directed to the Tribal Council Chairman and is
36 to request a hearing before ~~Tribal Council~~ the six Tribal Council members who do
37 not comprise the Enrollment Committee. The appeal stays the individual's
38 disenrollment until such time as the appeal is heard and decided.
39 g. At the appeal hearing, the Tribal Council only reviews the decision of the
40 Enrollment Committee ~~documentation that the Enrollment Committee reviewed~~
41 and no new evidence or oral argument is allowed to be presented. ~~The Tribal~~
42 ~~Council may only determine if the Enrollment Committee failed to follow the steps~~
43 ~~of the disenrollment procedure or was negligent in any way.~~ If the Tribal Council
44 finds, by majority vote, there was clear error ~~or negligence~~ on the part of the
45 Enrollment Committee, ~~the matter is returned to the Enrollment Committee for~~
46 ~~reevaluation. If the appeal is successful,~~ the individual's membership is restored.

1 The Tribal Council's decision is final. If Tribal Council finds that no clear error
2 occurred, the individual shall be disenrolled effective as of the date of the
3 Enrollment Committee's decision.

4 h. Any files indicating fraud in the enrollment process shall be forwarded to the
5 Cherokee Indian Police Department Tribal prosecutor for investigation.

6 i. Persons who retain their membership after a disenrollment hearing shall not be
7 subject to subsequent disenrollment hearings unless the Enrollment Committee
8 finds that new substantial evidence exists that was not previously presented to the
9 Enrollment Committee.

10 (3) *Property.*

11 a. Upon receipt of the list of members whose status is subject to review the Council
12 of the EBCI may impose a temporary stop on all property transfers affecting
13 possessory holdings held by members subject to review. All services, monetary and
14 otherwise, will also be placed on hold and held in escrow until the disenrollment
15 process is completed either by reinstatement of membership or disenrollment.

16 b. Once an individual is removed from the Tribe's Roll they shall be deemed to hold
17 a life estate in any possessory holding that was in their name prior disenrollment.

18 c. Such life estate shall revert to the Eastern Band of Cherokee Indians upon
19 expiration.

20 d. Alternatively, a disenrolled individual may transfer any of their possessory holding
21 held prior to disenrollment to an enrolled member blood relative.

22 (4) *Policies.*

23 a. The Enrollment Committee shall have the authority to develop policies and
24 procedures to consistent with this ordinance.
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27 BE IT FINALLY ORDAINED, that all ordinances and resolutions inconsistent with this ordinance
28 are rescinded, and this ordinance shall become effective upon ratification by the
29 Principal Chief.
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31 *Submitted by the Enrollment Committee.*