

1 significant public health threats posed by the non-traditional, commercial use of tobacco, and it is
2 toward this type of tobacco use that these regulations apply.

3
4 **§ 130-3501. Legislative findings and intent.**

5
6 (a) Findings. – The Eastern Band of Cherokee Indians finds that secondhand smoke has been
7 proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In
8 2006, a report issued by the United States Surgeon General stated that the scientific evidence
9 indicates that there is no risk-free level of exposure to secondhand smoke.

10 (b) Intent. – It is the intent of the Eastern Band of Cherokee Indians to protect the health of
11 individuals from the risks related to secondhand smoke.

12
13 **§ 130-3502. Definitions.**

14 (a) The following definitions apply in this Article:

- 15 (1) "Bar". – An establishment with a permit to sell alcoholic beverages pursuant to
16 tribal law..
- 17 (2) "Employee". – A person who is employed by an employer, or who contracts
18 with an employer or third person to perform services for an employer, or who
19 otherwise performs services for an employer with or without compensation.
- 20 (3) "Employer". – An individual person, business, association, political
21 subdivision, or other public or private entity, including a nonprofit entity, that
22 employs or contracts for or accepts the provision of services from one or more
23 employees.
- 24 (4) "Enclosed area". – An area with a roof or other overhead covering of any kind
25 and walls or side coverings of any kind, regardless of the presence of openings
26 for ingress and egress, on all sides or on all sides but one.
- 27 (5) "Grounds". – An unenclosed area owned, leased, or occupied by Tribal
28 government.
- 29 (6) "Lodging establishment". – An establishment that provides lodging for pay to
30 the public.
- 31 (7) "Minor". – A person under the age of 18.
- 32 (8) "Playground". – Means any park or recreational area specifically designed to
33 be used by children that has play equipment installed, or any similar facility
34 located on Tribal lands.
- 35 (9) "Private residence". – A private dwelling that is not a child care facility and not
36 a long-term care facility.
- 37 (10) "Private vehicle". – A privately owned vehicle that is not used for commercial
38 or employment purposes.
- 39 (11) "Public place". – An enclosed area to which the public is invited or in which
40 the public is permitted.
- 41 (12) "Restaurant". – A food or lodging establishment that prepares and serves drink
42 or food.
- 43 (13) "Smoke or smoking". – Means inhaling, exhaling, burning, or carrying any
44 lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco
45 or plant product intended for inhalation, whether natural or synthetic, in any
46 manner or in any form. "Smoking" includes the use of an electronic smoking

1 device that creates an aerosol or vapor, in any manner or in any form, or the use
2 of any oral smoking device for the purpose of circumventing the prohibition of
3 smoking.

4 (14) "Tobacco product". – Means any of the following:

5 (A) A product containing, made, or derived from tobacco or nicotine that is
6 intended for human consumption, whether smoked, heated, chewed, absorbed,
7 dissolved, inhaled, snorted, sniffed, or ingested by any other means, including,
8 but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco,
9 or snuff.

10 (B) An electronic device that delivers nicotine or other vaporized liquids to the
11 person inhaling from the device, including, but not limited to, an electronic
12 cigarette, cigar, pipe, or hookah.

13 (C) Any component, part, or accessory of a tobacco product, whether or not
14 sold separately.

15 (15) "Tot lot sandbox area". – Means a designated play area within a public park
16 for the use by children under five years of age. Where the area is not contained
17 by a fence, the boundary of a tot lot sandbox area shall be defined by the edge
18 of the resilient surface of safety material, such as concrete or wood, or any other
19 material surrounding the tot lot sandbox area.

20 (16) "Tribal government". – For the purposes of this Part, Tribal government refers
21 to the Eastern Band of Cherokee Indians and any of its government entities or
22 political subunits or political subdivisions and specifically excludes for the
23 purpose of this Part any commercial gaming or bingo enterprises owned by the
24 Tribe.

25 (17) "Tribal government building". – A building owned, leased as lessor, or the area
26 leased as lessee and occupied by Tribal government.

27 (18) "Tribal vehicle". – A passenger-carrying vehicle owned, leased, or otherwise
28 controlled by Tribal government and assigned permanently or temporarily by
29 the Tribal government to employees, agencies, institutions, or facilities for
30 official Tribal government business.

31
32 **§ 130-3503. Smoking prohibited in Tribal government buildings and Tribal vehicles.**

33 (a) Smoking is prohibited in all Tribal government buildings, except as provided in
34 subsection (b) of this section.

35 (1) The individual in charge of the Tribal government building or a designee shall
36 post signs in conspicuous areas of the building. The signs shall state that "smoking is
37 prohibited" and may include the international "No Smoking" symbol, which consists of a
38 pictorial representation of a burning cigarette enclosed in a red circle with a red bar
39 across it. In addition, the individual in charge of the building or a designee shall direct a
40 person who is smoking inside the building to extinguish or stop the use of the smoking
41 product.

42 (b) Smoking is prohibited inside Tribal vehicles. Managers of Tribal programs shall ensure
43 that each program is trained on and provided notice that smoking is prohibited in Tribal vehicles.

44 (c) Continuing to smoke in a nonsmoking area described in this Part following oral or written
45 notice by the person in charge or the person's designee constitutes an infraction, and the person

1 committing the infraction may have an administrative citation issued for the payment of a fine of
2 fifty dollars (\$50.00) per occurrence.

3 (d) Administrative fines imposed under this Part against a person who fails to comply with
4 the provisions of this Article and the rules adopted by the Public Health and Human Services
5 division to implement the provisions of this Part shall be enforced by the Secretary of Public
6 Health and Human Services or their designee under rules adopted by the Secretary pursuant to
7 Chapter 150 of the Cherokee Code.

8
9 **§ 130-3504. Smoking prohibited in restaurants and bars.**

10 (a) Smoking is prohibited in all enclosed areas of privately-owned restaurants and bars,
11 except as provided in subsection (b) of this section.

12 (b) Smoking may be permitted in the following places:

13 (1) A designated smoking guest room in a lodging establishment. No greater than
14 twenty percent (20%) of a lodging establishment's guest rooms may be designated
15 smoking guest rooms.

16 (2) A cigar bar if it is located in a freestanding structure occupied solely by the cigar
17 bar and smoke from the cigar bar does not migrate into an enclosed area where smoking
18 is prohibited pursuant to this Part.

19 (c) A person who manages, operates, or controls a restaurant or bar in which smoking is
20 prohibited shall:

21 (1) Conspicuously post signs clearly stating that smoking is prohibited. The signs
22 may include the international "No Smoking" symbol, which consists of a pictorial
23 representation of a burning cigarette enclosed in a red circle with a red bar across it.

24 (2) Remove all indoor ashtrays and other smoking receptacles.

25 (3) Direct a person who is smoking to extinguish the lighted tobacco product.

26 (d) Continuing to smoke in a nonsmoking area described in this Part following oral or written
27 notice by the person in charge of the area or the person's designee constitutes an infraction, and
28 the person committing the infraction may be assessed a fine of fifty dollars (\$50.00).

29
30 **§ 130-3505. Smoking prohibited at licensed children's residential facilities and facility**
31 **vehicles both privately owned and tribal government operations.**

32 (a) A licensed children's residential facility shall maintain a smoke-free environment in the
33 facility.

34 (b) A person who is licensed, certified, or approved pursuant to provide residential care in a
35 foster family home, certified family home, or resource family home shall not smoke
36 a tobacco product or permit any other person to smoke a tobacco product inside the home or in
37 the presence of a child when outdoors at the home.

38 (c) A person who is licensed, certified, or approved to provide residential foster care shall
39 not smoke a tobacco product in any motor vehicle that is regularly used to transport a child.

40 (d) Continuing to smoke in a nonsmoking area described in this Part following oral or written
41 notice by the person in charge of the area or the person's designee constitutes an infraction, and
42 the person committing the infraction may be assessed a fine of fifty dollars (\$50.00).

43
44 **§ 130-3506. Smoking prohibited at day care facilities.**

1 (a) The smoking of a tobacco product in a private residence that is licensed as a family day
2 care home shall be prohibited in the home and in those areas of the family day care home where
3 children are present.

4 (b) The smoking of a tobacco product on the premises of a licensed day care center shall be
5 prohibited.

6 (c) Continuing to smoke in a nonsmoking area described in this Part following oral or written
7 notice by the person in charge of the area or the person's designee constitutes an infraction, and
8 the person committing the infraction may be assessed a fine of fifty dollars (\$50.00).
9

10 **§ 130-3507. Smoking prohibited at playgrounds and tot lot sandbox areas.**

11 (a) A person shall not smoke a cigarette, cigar, or other tobacco product within 25 feet of any
12 playground or tot lot sandbox area.

13 (b) A person shall not dispose of cigarette butts, cigar butts, or any other tobacco-related
14 waste within 25 feet of a playground or a tot lot sandbox area.

15 (c) The prohibitions contained in this section shall not apply to a public sidewalk located
16 within 25 feet of a playground or a tot lot sandbox area.

17 (d) Continuing to smoke in a nonsmoking area described in this Part following oral or written
18 notice by the person in charge of the area or the person's designee constitutes an infraction, and
19 the person committing the infraction may be assessed a fine of fifty dollars (\$50.00).
20

21 **§ 130-3508. Other prohibitions.**

22 Nothing in this Part repeals any other law prohibiting smoking.
23

Chapter 130 - PUBLIC HEALTH AND SANITATION

ARTICLE I. - IN GENERAL

Sec. 130-1. - State sanitation laws.

All businesses located within the Qualla Boundary shall comply with all health and sanitation requirements of the State of North Carolina as it concerns food handling and preparation, lodging establishments and public pools. The Tribe's Department of Public Health shall ensure that these sanitation services from county departments of health are provided and reported to the Tribe's Public Health Department for compliance and enforcement when required.

Sec. 130-2. — Division of Operations; Private sanitation services.

- (a) Businesses located on the Qualla Boundary shall be permitted to hire or contract sanitation services from the private sector rather than using the services of the Tribal Sanitation Department.
- (b) The Division of Operations is established and shall adopt administrative rules according to Chapter 150 which shall include but not be limited to sanitary waste disposal and permitting private sector solid waste collection and disposal.
- ~~(b) Businesses providing contract sanitation services shall be granted the use of Cherokee landfill but they shall not dispose in the Tribal landfill any material or matter collected from outside the Cherokee Reservation.~~

Sec. 130-3. - Tribal Health Board.

- (a) The Tribal Health Board shall consist of 13 members. One person shall be appointed by the Principal Chief; six Council representatives shall sit on the Tribal Health Board, one member from Tsali Manor, one member from Family Safety, one member from PHHS, and one member from Child Care. These members shall be voting members of the Tribal Health Board. Two members (non-voting) shall be from the Cherokee Indian Hospital Authority~~PHS~~: one patient advocate, and one employee advocate (to be voted on by members of the Employees Association).
- (b) The Board shall adopt a constitution and By-laws to govern their acts and deliberations. The Board shall meet monthly.
- (c) The Board shall monitor and investigate health care delivery to members of the Eastern Band of Cherokee Indians and their families. The Board shall seek to ensure efficient and appropriate health care to Tribal members, promote maximum utilization of all available medical resources, plan for health care programs, be responsible for budget preparation and allocation, establish health and medical priorities for the Cherokee Indian Reservation, assist or advise in the selection of medical personnel, plan and provide for training of medical personnel and Board members, plan for construction of all new health facilities, investigate availability of scholarships in the health services field, and investigate all contracted services for health care delivery offered by public health services.

Sec. 130-4. - ~~Public Health and Sanitation Code~~ Prohibition of Certain Food Sales Practices.

~~The Tribal Council endorses the Public Health and Sanitation Code as the official Tribal document for the regulation and control of health and sanitation activities on the Cherokee Reservation. This chapter represents the proper references for any and all questions concerning legality, conformance of standards and enforcement.~~

- (a) It shall be unlawful for any person, individual, firm, association, organization, partnership, business trust, corporation or company to sell at wholesale or retail any meats, meat food products, poultry, poultry products, fish, shellfish, crustacea, scallop, and seafood products from any nonpermanent structure. Nonpermanent structures include, but are not limited to, trucks, vans and other mobile units. Delivery units that transfer products between approved processors and meat and seafood markets possessing a valid operational permit required by North Carolina Administrative Code 10.A 0502 are exempted from this chapter.
- (b) Any person, firm or corporation subject to the criminal jurisdiction of the Cherokee Court violating this chapter shall be guilty of a misdemeanor, and each violation shall be not less than \$100.00, nor more than \$1,000.00, or shall be imprisoned for not more than 60 days, or both.
- (c) Any person, firm or corporation ~~not~~ subject to the civil jurisdiction of the Cherokee Court who violates this chapter shall be subject to administrative fines ~~guilty of a civil violation of the Cherokee Code and may be subject to a fine~~ not more than \$1,000.00 for each offense. Persons, firms or corporations violating this provision may lose their privilege of continuing to conduct business on Cherokee Tribal lands, at the discretion of the Tribal Business Committee.
- (d) The Division of Public Health and Human Services shall make administrative rules according to Chapter 150 and shall enforce this section.

ARTICLE II. - ~~INFECTIOUS DISEASES OF HUMANS AND ANIMALS; QUARANTINE~~
Reserved. (Repealed and Replaced by Article IV)

Sec. 130-5. — Definitions.

~~The following definitions shall apply throughout this chapter unless otherwise specified:~~

~~Authority~~ means the Cherokee Indian Hospital Authority

~~Communicable condition~~ means the state of being infected with a communicable agent but without symptoms.

~~CEO~~ means the Chief Executive Officer, or successor office, of the Cherokee Indian Hospital Authority

~~*Communicable disease* means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.~~

~~*Division* means the Health and Medical Division of the Eastern Band of Cherokee Indians.~~

~~*Executive Director* means the Executive Director of Health and Medical Division~~

~~*Imminent hazard* means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.~~

~~*Isolation authority* means the authority to issue an order to limit the freedom of movement or action of a person or animal with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.~~

~~*Lands held in trust for the Eastern Band of Cherokee Indians* means land held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians, and includes but is not limited to the trust lands within the Qualla Boundary, and those lands commonly referred to as "the 3200 Acre Tract," the "Snowbird Community," and trust lands in Cherokee County, NC.~~

~~*Local board of health* means the Health Board, a committee of Tribal Council, or its successor committee.~~

~~*Outbreak* means an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.~~

~~*Person* means an individual, corporation, company, association, partnership, unit of local government or other legal entity.~~

~~*Quarantine authority* means the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to issue an order to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.~~

~~*Vital records* means birth, death, fetal death, marriage, annulment, divorce and enrollment records registered with the Tribal Court, Tribal Enrollment Office, Tribal Operations Office, or any state's or county's official records repository.~~

~~Sec. 130-6. Quarantine and isolation authority.~~

- ~~(a) Within all lands held in trust for the Eastern Band of Cherokee Indians, the Deputy Health Officer is empowered to investigate, or invite appropriate Federal or North Carolina state health officials in to investigate, communicable diseases and communicable conditions reported to him/her, and to exercise quarantine and isolation authority. Quarantine and~~

~~isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.~~

- ~~(b) No person other than a person authorized by the Deputy Health Officer shall enter quarantine or isolation premises. Nothing in this subsection shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.~~
- ~~(c) Before applying quarantine or isolation authority to livestock or poultry for the purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the Deputy Health Officer shall consult with the North Carolina State Veterinarian in the Department of Agriculture and Consumer Services, and with any tribal officials in whom general agricultural responsibilities are vested.~~
- ~~(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed ten calendar days. Any person substantially affected by that limitation may institute in Cherokee Tribal Court an action to review that limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. If the Deputy Health Officer determines that a ten-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the Deputy Health Officer must institute in Cherokee Tribal Court an action to obtain an order extending the period of limitation of freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in Cherokee Tribal Court, the two issues must be joined in the same case. The court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. Before the expiration of an order issued under this section, the Deputy Health Officer may move to continue the order for additional periods not to exceed 30 days each.~~
- ~~(e) No pre-emption of federal law. Nothing in this chapter shall pre-empt the quarantine and contagious disease authority granted to the United States Secretary of the Interior under 25 US Code 198 or successor provisions.~~
- ~~(f) Penalties for violation. Violations of orders lawfully issued under the authority created in this article are misdemeanors punishable by one year's imprisonment, and/or by a civil fine of not more than \$2,000.00.~~

~~Sec. 130-7. Abatement of an imminent hazard.~~

~~If the Executive Director determines that an imminent hazard exists, the Executive Director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property, enter upon any property and take any action necessary to abate the imminent hazard. If the Executive Director abates the imminent hazard, the Department shall have a lien on the property of the owner, lessee, operator, or other person in~~

~~control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of North Carolina General Statutes, except that no sale of trust land may be affected, but where sale of land is permitted, forfeiture of a possessory holding and restoration of that tract to tribal ownership shall be the remedy. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Executive Director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.~~

~~Sec. 130-8.— Suspected terrorist attack.~~

- ~~(a) If the State Health Director or the Executive Director reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Executive Director is authorized to order any of the following:~~
- ~~(1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.~~
 - ~~(2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.~~
 - ~~(3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed ten calendar days. If the Executive Director determines that a longer period of closure is necessary to complete the investigation, the Executive Director may institute an action in Cherokee Tribal Court to order the property to remain closed until the investigation is completed.~~
 - ~~(4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals.~~
 - ~~(5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals. Nothing in this subdivision shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.~~
- ~~(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons, the Executive Director shall consult with the State Health Director, State Veterinarian in the Department of Agriculture and Consumer Services, and with any tribal officials in whom general agricultural responsibilities are vested. The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not~~

~~exceed ten calendar days. Any person substantially affected by that limitation may institute, in Cherokee Tribal Court, an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The court shall reduce the limitation if it determines, by the preponderance of the evidence, that the limitation is not reasonably necessary to prevent or limit the conveyance of biological, chemical or nuclear agents to others, and may apply such conditions to the limitation as the court deems reasonable and necessary. If the Executive Director determines that a ten-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the Executive Director must institute in Cherokee Tribal Court, an action to obtain an order extending the period limiting the freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in Cherokee Tribal Court, the two issues must be joined in one action. The court shall continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable and necessary, if it determines by the preponderance of the evidence, that additional limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical, or nuclear agents to others. Before the expiration of an order issued under this section, the Executive Director may move to continue the order for additional periods not to exceed 30 days each.~~

- ~~(c) If the Executive Director reasonably suspects that there exists a public health threat that may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Executive Director shall notify the State Health Director, the Governor and the Secretary of Crime Control and Public Safety, the Executive Director of Community Services, and the Principal Chief.~~
- ~~(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.~~
- ~~(e) Nothing in this section shall limit any authority otherwise granted to any public health officials under this Chapter.~~

~~Sec. 130-9. Access to health information.~~

- ~~(a) In this section the following terms shall include:~~
 - ~~(1) "Health care provider" includes a physician licensed to practice medicine in any state, US territory or possession or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and~~
 - ~~(2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned.~~
- ~~(b) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of government may report to the Executive Director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard~~

that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over the counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally identifiable information. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. Notwithstanding the foregoing, if a health care provider or unit of government willfully does not disclose information pursuant to this subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in N.C.G.S. 14-288.21(e).

- (c) ~~The Executive Director may issue a temporary order, or implement a temporary order of the State Health Director, requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.~~
- (d) ~~The Executive Director may examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, that pertain to a report authorized by subsection (a) or required by subsection (b) of this section.~~
- (e) ~~A person who makes a report pursuant to subsection (b) of this section or permits examination, review, or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.~~
- (f) ~~Confidential or protected health information received by the Executive Director pursuant to this section shall be confidential and shall not be released, except when the release is:~~
 - (1) ~~Made pursuant to any other provision of law;~~
 - (2) ~~To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or~~
 - (3) ~~To a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a terrorist incident using nuclear, biological, or chemical agents. A court or law enforcement official or law enforcement officer who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the Executive Director seeks the assistance of~~

~~the court or law enforcement official or law enforcement officer in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.~~

~~Sec. 130-10. Abatement of public health threat.~~

~~If it is determined that a public health threat may exist because of the contamination of property caused by a terrorist incident using nuclear, biological, or chemical agents, the Executive Director may initiate his own order, or implement any order of the State Health Director, that directs any action to abate that public health threat. To the extent that any owner, lessee, operator, or other person in control of the property is innocent of culpability in the creation of the public health threat, that person shall not be responsible for the costs of abating the public health threat.~~

~~Sec. 130-11. Reports of infectious disease in livestock and poultry to veterinary authorities.~~

~~All persons practicing veterinary medicine within the external boundaries of the Cherokee Indian Reservation, or on animals found or primarily living on the Cherokee Indian Reservation, shall report promptly to the State Veterinarian, to any tribal officials in whom general agricultural responsibilities are vested, to the Executive Director of Health & Medical Division, and to the CEO of CIHA the existence of any reportable contagious or infectious disease in livestock and poultry, as well as their report of any occurrence or potential outbreak of anthrax, arboviral infections, brucellosis, epidemic typhus, hantavirus infections, murine typhus, plague, psittacosis, Q fever, hemorrhagic fever, virus infections, and any other disease or condition transmissible to humans that may have been caused by a terrorist act.~~

~~Sec. 130-12. Confidentiality of records.~~

~~All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported as a communicable disease shall be strictly confidential. This information shall not be released or made public except under the following circumstances:~~

- ~~(1) Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified;~~
- ~~(2) Release is made of all or part of the medical record with the written consent of the person or persons identified or their guardian;~~
- ~~(3) Release is made to health care personnel providing medical care to the patient;~~
- ~~(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions;~~
- ~~(5) Release is made pursuant to other provisions of law;~~
- ~~(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case;~~

- ~~(7) Release is made by the Department to a court or a law enforcement official for the purpose of enforcing terrorism or communicable disease laws, or investigating a terrorist incident using nuclear, biological, or chemical agents. A law enforcement official who receives the information shall not disclose it further, except (i) when necessary to enforce terrorism or communicable disease laws, or when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the Department seeks the assistance of the law enforcement official in preventing or controlling the spread of the disease or condition and expressly authorizes the disclosure as necessary for that purpose;~~
- ~~(8) Release is made by the Department to another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition.~~

~~Sec. 130-13.— Arrest to enforce quarantine ordinance.~~

~~A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to Cherokee Code Chapter 130-6 or 130-7 in the area designated by the Executive Director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to Cherokee Code Chapter 15-8.~~

~~Sec. 130-14.— Detention to protect public health.~~

~~If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violation of an order limiting freedom of movement or access issued pursuant to Cherokee Code Chapter 130-6 or 130-7 poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by the judicial official. Such pretrial confinement shall terminate when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the Executive Director has made recommendations to the court.~~

Article III. Sec. 130-16 --130-99 (Reserved).

1
2 **Chapter 15A. Administrative Inspection Warrants.**

3
4 **Sec. 15A-1. Warrants to conduct inspections authorized by law.**

5 (a) Any official or employee of the Tribe may, under the conditions specified in this section of this
6 Chapter, obtain a warrant authorizing him to conduct an inspection of property if such an
7 inspection is one that is elsewhere authorized by tribal law, either with or without the consent of
8 the property owner, in order to enforce the health and safety laws of the Tribe.

9 (b) The warrant may be issued by any judge of the Cherokee Court.

10 (c) The issuing judge shall issue the warrant when he is satisfied the following conditions are met:

11 (1) The official or employee seeking the warrant must establish under oath or affirmation
12 that the property to be inspected is to be inspected as part of a legally authorized program
13 of inspection which naturally includes that property, or that there is probable cause for
14 believing that there is a condition, object, activity, or circumstance which legally justifies
15 such inspection of that property;

16 (2) An affidavit indicating the basis for the establishment of one of the grounds described
17 in section (1) above must be signed under oath or affirmation by the affiant; and

18 (3) The judge must examine the affiant under oath or affirmation to verify the accuracy of
19 the matters indicated by the statement in the affidavit.

20 (d) The warrant shall be validly issued only if it meets the following requirements:

21 (1) It must be signed by the issuing judge and must bear the date and hour of its issuance
22 with a notation that the warrant is valid for only 24 hours following its issuance;

23 (2) It must describe, either directly or by reference to the affidavit, the property where the
24 search or inspection is to occur and be accurate enough in description so that the
25 executor of the warrant and the owner or the possessor of the property can reasonably
26 determine from it what property the warrant authorizes an inspection of;

27 (3) It must indicate the conditions, objects, activities, or circumstances which the
28 inspection is intended to check or reveal; and

29 (4) It must be attached to the affidavit required to be made in order to obtain the warrant.

30 (e) Any warrant issued under this section for a search or inspection shall be valid for only 24 hours
31 after its issuance, must be personally served upon the owner or possessor of the property between
32 the hours of 8:00 A.M. and 8:00 P.M., and must be returned to the Court within 48 hours. If the
33 owner or possessor of the property is not present on the property at the time of the inspection and
34 reasonable efforts to locate the owner or possessor have been made and have failed, the warrant or
35 a copy thereof may be affixed to the property and shall have the same effect as if served personally
36 upon the owner or possessor.

37 (f) No facts discovered or evidence obtained in an inspection conducted under authority of a
38 warrant issued under this section shall be competent as evidence in any civil, criminal or
39 administrative action, nor be considered in imposing any civil, criminal, or administrative sanction
40 against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid
41 or if what is discovered or obtained is not a condition, object, activity, or circumstance which was
42 the legal purpose of the search or inspection to discover; but this shall not prevent any such facts
43 or evidence to be so used when the warrant issued is not required in those circumstances.

1 (g) The warrants authorized under this section shall not be regarded as search warrants for the
2 purposes of application of Chapter 15. The warrants authorized under this section shall not be
3 used as a replacement for the search warrants of Chapter 15.

4 (h) Obstructing or failing to abide by a validly issued warrant under this section may subject such
5 person to the Court's contempt powers.

6

7

Chapter 87 - PROFESSIONS AND OCCUPATIONS

Sec. 87-1. - Licenses required.

- (a) Except as otherwise provided in Tribal law, the following professionals, in order to practice their profession within the territory of the Eastern Band, must have a current license issued by the appropriate state regulatory agency authorizing them to practice their profession in the State of North Carolina, and must be in good standing with that regulatory agency:
- (1) Professionals in the construction trades required to be licensed in Chapter 87 of the North Carolina General Statutes;
 - (2) Health care professionals required to be licensed in Chapter 90 of the North Carolina General Statutes;
 - (3) Alarm systems contractors;
 - (4) Architects;
 - (5) Attorneys;
 - (6) Certified public accountants;
 - (7) Engineers;
 - (8) Fire sprinkler contractors;
 - (9) Geologists;
 - (10) Land surveyors, except BIA staff members certified under federal law to perform their duties;
 - (11) LP gas technicians;
 - (12) Notaries public;
 - (13) Real estate appraisers;
 - (14) Pesticide applicators and other parties applying pesticide chemicals intended for use by a licensed professional for hire or in public places must be licensed in structural pest control and wood destroying organisms or work under the direct supervision of a licensed holder; ~~and-~~
 - (15) Water Treatment Facilities Operators
- (b) Territory of the Eastern Band means all lands held by the United States in trust for the Eastern Band of Cherokee Indians or its enrolled members, and all other lands owned or acquired by the Eastern Band, notwithstanding the issuance of any right-of-way.

Sec. 87-2. - Violations.

Persons practicing the professions described in section 87-1 in violation of this chapter:

- (a) Shall be guilty of a misdemeanor punishable by a fine of up to \$5,000.00, by a term of imprisonment for up to one year, or both;
- (b) Shall be subject to civil actions and sanctions set forth in section 14-1.2, Cherokee Code, and other criminal and civil actions as may apply; and/or
- (c) Shall be reported to the appropriate state licensing board.

Sec. 87-3. - Reports by health care professionals; treatment of minors.

Health care professionals who in good faith rely on Tribal or North Carolina law in treating minors or in making reports to law enforcement, government agencies, regulatory bodies, etc. or who give testimony about an individual's mental or physical condition as required by Tribal or North Carolina law

shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of such testimony.

Chapter 131 - CHEROKEE WATER CODE

ARTICLE I. - IN GENERAL

Sec. 131-1. - Declaration of rights.

In order to promote the general welfare of the Eastern Band of Cherokee Indians and to develop, manage and preserve the waters and other resources of the Cherokee trust lands, to provide for the exercise of inherent sovereign power of self-government by the Tribe and to further the preservation and development of the resources of the Tribe, the Tribe hereby asserts its prior, exclusive and supreme rights in, ownership of and jurisdiction over the waters of the Cherokee trust lands.

Sec. 131-2. - Nature of ownership.

- (a) The Eastern Band of Cherokee Indians is the owner of the full equitable title of the rights to and the use of all of the waters of Cherokee trust lands and that title remains undiminished in the Tribe. The United States of America owns only the naked legal title to such waters and rights solely as trustee for the Tribe.
- (b) All rights to the use of Cherokee waters are held by the Tribe in perpetuity for the use and benefit of the Tribe and the lands and other resources of the Tribe. No rights or privileges of any kind shall be recognized except as they are subject to the overriding, prior and supreme right and interest of the Tribe and the policies and provisions of this Chapter, together with any regulations established thereunder. No agent of the Tribe, the Tribal Council or the United States shall take any action or recognize any right affecting the water resources of the Tribe and its trust lands which shall in any way decrease or threaten to decrease the prior and supreme rights and interests of the Tribe.

Sec. 131-3. - Waters defined.

The waters of the Eastern Band of Cherokee Indians are defined as:

- (a) All waters located upon or bordering Cherokee trust lands, whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined watercourse or water body of any kind;
- (b) All waters reserved or granted to the Tribe or to Cherokee trust lands by the United States and the Tribe; and
- (c) All water which in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.

Sec. 131-4. - Water policy.

In taking any action under this Chapter, the Tribal Council and Executive Branch ~~or the Tribal Business Committee~~ shall be guided by the following policy guidelines:

- (a) Whenever practicable, action should benefit the Tribe and its members and further the objective for which Cherokee lands were placed in trust, namely to provide a permanent

home for the Tribe and its members, now and in the future. Alternatives to existing or proposed uses shall be considered whenever practicable.

- (b) In taking any action under this Chapter which may impose substantial economic hardship on persons or entities presently using water, or which threaten the degradation of other economic, historical, aesthetic, natural, health or environmental values, the Tribal Council and the Executive Branch Business Committee shall consider and give weight to:
 - (1) The economic impact~~dislocation~~ and hardship which will be imposed by its actions;
 - (2) The investment in time, money and other resources made by the parties affected in reliance upon the existing system of distribution and use of water;
 - (3) Such other burdens as may be imposed by the action; and
 - (4) The nature and extent of degradation of other economic, cultural, historical, aesthetic, natural, health and economic values.
- (c) Unless otherwise provided, the Tribal Council or Executive Branch~~Business Committee~~ shall give preference in the following order:
 - (1) Domestic use,
 - (2) Municipal/Tribal use,
 - (3) Fish and wildlife,
 - (4) Agriculture,
 - (5) Industry,
 - (6) Power,
 - (7) Other uses.

Sec. 131-5. - Guidelines for effective use of resources.

In addition to policy guidelines contained in Section 131-4, the Tribal Council establishes the following priorities for guidance in the administration of this Chapter~~and Business Committee may take appropriate action, in its discretion, to:~~

- (a) Ensure an adequate supply of safe drinking water,
- (b) Maintain water levels for the public water system,
- (c) Maintain pressure in surface and underground water,
- (d) Prevent or reduce obstruction of surface water or groundwater flow,
- (e) Maximize use of the available supply,
- (f) Create and enhance the efficiency of storage,
- (g) Prevent or reduce pollution or the effects of pollution,
- (h) Shape use of available supplies to promote economic, scenic, aesthetic, historical, cultural, natural or domestic values,

- (i) Provide for long term development,
- (j) Penalize misuse,
- (k) Prevent interference with Tribal administration of water,
- (l) Retain a base flow of rivers, streams and springs necessary to provide for the preservation of wildlife, fish, scenic, aesthetic and other environmental values, or
- (m) Otherwise ensure conformity with the provisions of this Chapter.

Sec. 131-6. - Rights reserved to Tribe.

- (a) The following rights shall be reserved by the Tribe when possessory holdings are issued to individual Tribal members:
 - (1) All rights to issue water rights in or through leases and permits and to draw the income therefrom or allocate the income therefrom between the Tribe and the possessory holder;
 - (2) The power and responsibility to control and regulate the use of water on the possessory holding.
- (b) The following rights shall be reserved by the Tribe when leases or other use permits are issued to individuals or other legal entities, whether Tribal members or not:
 - (1) To negotiate any lease fees, permit fees, royalty fees or use fees and rates for consumption or for commercial or industrial use;
 - (2) The power and responsibility to control and regulate the use of water on the leased property.

Sec. 131-7. - Rights granted to member when possessory holding issued.

The following rights shall be granted by the Tribe to a Tribal member when a possessory holding is issued:

- (a) Riparian rights to use of water standing or flowing through or along the possessory holding, subject to the right of other riparian possessory holdings to make reasonable use of the water and subject to reasonable regulations of the Tribe;
- (b) Use of any surface or subsurface water for domestic purposes, subject to health and sanitation regulations of the Tribe or other governmental agencies with lawful authority within Cherokee trust lands.

Sec. 131-8. - Prohibited acts and penalties.

- (a) ~~Any Indian person or firm~~ who shall willfully violate any provision of this Chapter ~~or the water policy, including the violation of any use permit, license or right exercised under a lease,~~ shall be guilty of a criminal offense and, upon conviction, shall be fined and imprisoned in the discretion of the court, with each offense not to exceed a fine of \$1,000.00 and imprisonment not to exceed six months.
- (b) All persons or entities ~~firms~~ whose employees, owners or agents are responsible for violations of this Chapter ~~convicted of any such offense~~ shall be subject to the revocation,

cancellation or termination of ~~the rights to hold a business license their use permit, license, lease~~ or other use rights granted by the Tribal Business Committee.

- (c) Any person or ~~firm entity not subject to the criminal jurisdiction of the Cherokee Court~~ who shall willfully violate any term or provision of this Chapter, ~~the water policy, any use permit, license, lease or use right granted by or through the Tribe,~~ shall be subject to a civil fine of up to \$2,000.00 per violation, ~~together with being subject to revocation of Trader's License, use permit, license, lease or other use right by the Tribal Business Committee.~~ All such civil fines shall be administered under rules adopted for the administration of this Chapter and in accordance with Chapter 150. ~~assessed by the Tribe through the Tribal Business Committee and may be enforced by civil suit in the Cherokee Court.~~

ARTICLE II. - WATER CONSERVATION

Sec. 131-9. - Proclamation of shortage.

In the event it appears that water demand on the Tribe's water system may exceed supply and transmission capabilities, the Principal Chief may declare a Stage I Water Shortage Condition Advisory, requiring water conservation by consumers. In the event that Stage I conservation measures fail to relieve the demand on the system, the Tribe may advance to a Stage II or Stage III Water Shortage Condition.

Sec. 131-10. - Stage I: Water Shortage Advisory.

- (a) In the event a Stage I Water Shortage Advisory is declared, the following shall apply:
- (1) An extensive publicity campaign will be initiated using public media and specialized methods to inform the public of an impending or existing water shortage.
 - (2) Conservation measures will be encouraged year round for efficient water use.
- (b) In the event a Stage I Water Shortage Advisory is declared, the public shall be required to adhere to the following:
- (1) Limit car washing to the minimum.
 - (2) Limit lawn and garden watering to that which is necessary for plants to survive—pulling river water for this use if in vicinity recommended and encouraged.
 - (3) Washing outside areas such as sidewalks, patios, parking lots, service bays is limited to three days out of a seven-day period.
 - (4) Do not leave faucets running while shaving or rinsing dishes.
 - (5) Water shrubbery to the minimum required, reusing household water when possible.
 - (6) Limit use of clothes washers and dish washers and when used operate fully loaded.
 - (7) Use showers, rather than bathtub, for bathing and limit showers to no more than four minutes.
 - (8) Limit flushing of toilets by multiple usage.
 - (9) Use disposable and biodegradable dishes when possible.
 - (10) Use flow-restrictive and water-saving devices.

- (11) Limit hours of operation of water-cooled air conditioners.
- (12) Limit use for industrial purposes.
- (c) GOAL: To reduce water consumption by three to five percent.

Sec. 131-11. - Stage II: Mandatory Water Restriction.

- (a) Compliance: In the event the Principal Chief issues a proclamation of a Stage II Mandatory Water Restriction, it shall be unlawful for any person, firm or corporation to use or permit the use of water from the tribal water system for any purpose hereinafter set forth until such time as the proclamation of water shortage has been rescinded. In exercising the authority for declaring a Mandatory Water Restriction, consideration shall be given to water storage levels and available sources of supply, available usable storage on hand, draw down rates, the projected supply capability, outlook for precipitation, daily water use patterns and availability of water from other sources.
- (b) In the event that a Stage I Water Shortage Advisory is in effect and any tribal storage tank drops to 15 feet or less of storage, a Stage II Mandatory Water Restriction may be declared. In addition to the Stage I requirements already in effect, it shall be unlawful to use water supplied by the Tribe's water system in the following manner:
 - (1) To water lawns, grass, shrubbery, trees, flowers and vegetable gardens except by hand-held hose or drip irrigation system only.
 - (2) To fill newly constructed swimming and/or wading pools or refill swimming and/or wading pools which have been drained.
 - (3) To wash automobiles, trucks, trailers, boats or any other type of mobile equipment, with the exception of construction, emergency or public transportation vehicles if necessary to preserve the proper functioning and safe operation of the vehicle. Businesses that require large amounts of water to operate shall adhere to restrictions set by the Utilities Commission.
 - (4) To wash outside areas such as streets, driveways, service station aprons, parking lots, office buildings, exteriors of existing or newly constructed homes or apartments, sidewalks or patios, or to use water for other similar purposes.
 - (5) To operate or induce water into any ornamental fountain, pool or pond or other structure making similar use of water.
 - (6) To serve drinking water in restaurants, cafeterias or other food establishments, except upon request.
 - (7) To operate water-cooled air conditioners or other equipment that does not recycle cooling water, except when health and safety are adversely affected.
 - (8) To use water for any unnecessary purpose or to intentionally waste water.
 - (9) To use water for commercial/industrial purposes in an amount in excess of that amount set by the Utilities Commission.
 - (10) Athletic fields and fairways may submit an alternative watering plan to achieve conservation goals.

(c) GOAL: To reduce water consumption by five to ten percent.

Sec. 131-12. - Stage III: Mandatory Water Shortage Crisis.

- (a) Compliance: In the event the Principal Chief issues a proclamation of Stage III Mandatory Water Shortage Crisis it shall be unlawful for any person, firm or corporation to use or permit the use of water from the tribal water system for any purpose hereinafter set forth until such time as the declaration of a water shortage has been rescinded. In exercising the authority for declaring a Mandatory Water Shortage Crisis, consideration shall be given to water storage levels and available sources of supply, available usable storage on hand, draw down rates, the projected supply capability, outlook for precipitation, daily water use patterns and availability of water from other sources.
- (b) At this stage a State of Emergency may be issued.
- (c) In the event a Stage II Mandatory Water Shortage is in effect and any tribal storage tank drops to ten feet or less of storage, a Stage III Mandatory Water Shortage Crisis may be declared. In addition to restrictions for Stage I and Stage II Water Shortage Conditions, fire protection shall be maintained by drafting of ponds, rivers, and the like wherever possible, the use of throw-away utensils and plates shall be encouraged and recommended at all eating establishments, and it shall be unlawful:
 - (1) To induce water into any pool, fountain or pond.
 - (2) To use water outside a structure for any use other than an emergency involving a fire.
 - (3) No burning permits will be issued during this time.
 - (4) To operate an evaporative air conditioner which recycles water, except during operating hours of business.

(c) GOAL: To reduce water consumption by 20 to 25 percent.

Sec. 131-13. - Priority uses.

- (a) *Essential water use*: Essential water use means water necessary to maintain public health and safety. All entities charged with ensuring those services are deemed essential functions. In emergencies, water delivery may be limited to specific locations.
 - (1) Place medical facilities, nursing homes, elderly and disabled individuals at the highest priority standing for available water;
 - (2) Fighting fires;
 - (3) Testing for public safety standards;
 - (4) Essential water use customers (hospitals, nursing homes, emergency care providers, etc.) are asked to monitor their use for opportunities to conserve.
- (b) *Community/business water use*: Community/business use defines any use of water that is to the function of a business or institution that has a significant value to the community. These activities are the first to be regulated when restrictive measures are enacted.
 - (1) Watering plant stock at nurseries, tree farms, etc.;
 - (2) Commercial car washing;

- (3) Maintaining community pools;
- (4) Agriculture applications;
- (5) Water used in production of a product;
- (6) Ornamental water use—foundations, decorative use;
- (7) Water to fill or re-fill pools;
- (8) Noncommercial car/vehicle washing;
- (9) Water applied to impervious surfaces - driveways, streets, sidewalks, parking lots.

(Ord. No. 235, 5-9-2008)

Sec. 131-14. - Enforcement of mandatory water restrictions.

The Division of Operations shall administer and enforce this Chapter through rules adopted pursuant to Chapter 150.ment will be accomplished through The Division may coordinate enforcement objectives through collaboration with other tribal divisions, departments and programs daily patrol by all Tribal Utilities employees and public safety staff, including patrol officers. Any resident or business that violates waterthese restrictions imposed under this chapter may be subject to civil or criminal penalties. Willful disregard of these restrictions will also result in water service being temporary disconnected. A reconnect fee will be imposed before restoration of service.

Sec. 131-15 – Sec. 131-19. – (reserved).

Article III. Water and Wastewater Treatment Facilities.

Sec. 131-20. Purpose and Authority.

- A. It is the purpose of this Article to protect the public health and to conserve and protect the water resources of the Tribe; to protect the public investment in the Tribe's public wastewater system and water treatment facilities; and to require that the water treatment facility operators are certified by the North Carolina Board of Certification and are competent to supervise the operation of the Tribe's water treatment facilities. Further, it is the purpose of this Article to provide for the certification of personnel operating the distribution portion of a water treatment facility.
- B. The Division of Operations shall be responsible for the Tribe's raw water and wastewater treatment facilities and for the maintenance of the public infrastructure of water and sewer lines that comprise the Tribe's public water system. It is authorized to adopt administrative rules that will ensure the Division's proper administration of this law and to collaborate with the Division of Agriculture and Natural Resources and the Division of Public Health and Human Services.

Sec. 131-20.1. Definitions.

In this Article, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Board" or "Board of Certification" means the North Carolina Water Treatment Facility Operators Board of Certification.
- (2) "Operator" means a person who operates, maintains or inspects water treatment facilities or "Operator" means a person who holds a currently valid certificate as a water pollution control system operator issued by the State of North Carolina.
- (3) "Operator in responsible charge" means a person designated or hired by the Division of Operations to be responsible for the total operation and maintenance of a water treatment facility and its functions.
- (4) "Public water system" means a system for the provision of piped water for human consumption as defined in N.C.G.S. 130A-313(10).
- (5) "Wastewater system" means a system for the collection, treatment or disposal of waste water and is sometimes called "sewer system".
- (6) "Wastewater treatment facility" means a mechanical or chemical treatment facility serving a site with multiple wastewater sources.
- (7) "Water treatment facility" means any facility or facilities used or available for use in the collection, treatment, testing, storage, pumping, or distribution of water for a public water system.
- (8) "Waste" has the same meaning as in N.C.G.S. 143-213.
- (9) "Water pollution control system" means a system for the collection, treatment, or disposal of waste.

Sec. 131-24. Water Treatment Operator Certification.

The Tribe's water and wastewater treatment facility operators shall receive certification from the North Carolina Board of Certification and the water and wastewater treatment facilities of the Tribe shall be adequately supervised by certified operators. No person shall perform the duties of a water pollution control system operator in responsible charge without being duly certified by the State of North Carolina.

Sec. 131-25. Investigation and action of licensing boards have no bearing on employment decisions.

(a) Misconduct. - A person may refer to the North Carolina Board of Certification charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board. Nothing about the certification or licensing Board of North Carolina, including its decisions or processes, shall interfere with the decisions of the Tribe concerning corrective actions of its employees or contractors carrying out functions or services authorized under tribal law.

Chapter 143 - BUILDING CODES AND FLOOD CONTROL

ARTICLE I. - IN GENERAL

Sec. 143-1. - Plan review by the Business Committee.

The Tribal Business Committee shall review and approve all construction, structural alterations and beautification plans for all business enterprises located on the Cherokee Indian Reservation. One copy of plans and specifications shall be filed with the Committee prior to approval.

- (a) The Business Committee ~~and the Realty Office of the Cherokee Indian Agency~~ will review and approve or disapprove plans for construction and beautification of business sites. Before any construction or major alteration of business places is done, plans for same must be approved by the Business Committee.
- (b) Any person or firm violating the provisions of this chapter shall be subject to a fine of \$500.00.

Sec. 143-2. - Flood control—Standards for modifications.

Any construction or improvements proposed in a location that has a flood hazard must be designed and carried out in compliance with article II of this chapter.

Sec. 143-3. - Reserved.

Sec. 143-4. - Upgrade of water system in floodplain.

The Tribal ~~Council upon the recommendation of the Divisions of Operations and Agriculture and Natural Resources Business Committee~~ shall ~~authorize~~ require new or replacement water systems and sanitation systems ~~be designated~~ to minimize infiltration of floodwater into the systems and discharges from the systems into floodwaters, and require on-site disposal systems be located so as to avoid impairment or contamination during flooding.

Sec. 143-5. - Reserved.

Sec. 143-6. - Building code.

- (a) The Eastern Band of Cherokee Indians adopts the North Carolina State Building Code, which shall apply to all construction on the Cherokee Indian Reservation, as set forth below.
- (b) The North Carolina State Building Code provisions apply to:
 - (1) All commercial construction of any size, cost, type or purpose, regardless of whether it is new construction, addition, or renovation, and regardless of whether humans will occupy it; and
 - (2) For residential structures, the construction, alteration, repair, use, occupancy, prefabrication, or maintenance of, or any addition to, detached one- and two-family dwellings and one-family townhouses not more than three stories in height, and their accessory structures, provided those accessory structures have any dimension greater than 12 feet.
- (c) *Exceptions.* Specific exceptions, to which the North Carolina State Building Code shall not apply, are the following construction activities conducted for residential structures:
 - (1) Fences;
 - (2) Structures, such as barns, garages, tool sheds, pre-fabricated buildings, that do not contain sleeping quarters or are not inhabitable by humans,
 - (3) Additions or renovations that cost under \$5000.00, whether or not habitable by humans;
 - (4) Driveways and concrete slabs;

- (5) Additions, repairs, or maintenance that do not impact on load-bearing walls;
- (6) Repairs to roofs;
- (7) Pre-fabricated buildings already bearing evidence of inspection by applicable governmental authorities;

For commercial structures, the North Carolina State Building Code shall not apply to the mere repair or maintenance of an existing commercial building or accessory structure.

- (c1) Tribal members shall not be required to obtain an engineering certification for a structure built on pilings, provided that none of the pilings is taller than four feet from the ground to the floor sills, and that the structure is built in compliance with standard specifications developed by the Tribal building inspector in consultation with a certified engineer. The Tribal building inspector is authorized and directed to develop such standard specifications within 90 days of the effective date of this subsection, and make them available to tribal members seeking to build a structure in compliance with this subsection.
- (d) Other codes and regulations applicable. All electrical wiring, HVAC and plumbing to any structure, whether residential or commercial, and of any size, cost, type or purpose, is subject to all Tribal, state and federal laws and required inspections relating to wiring, HVAC or plumbing, regardless of whether the North Carolina State Building Code applies.
- (e) Building permits. No construction project to which the North Carolina State Building Code applies may begin prior to the issuance of a building permit. Persons proposing projects for which this chapter is applicable shall obtain a permit from the Tribal building inspector according to rules adopted by the Division of Operations and C.C. Chapter 150. The Division building inspector is authorized to set requirements and procedures, that are consistent with this chapter and the North Carolina State Building Code, for the issuance of permits. ~~Those requirements and procedures, and any changes thereto, shall be submitted to the Business Committee, which is empowered to approve or reject them based on their reasonableness and adherence to this chapter and the North Carolina State Building Code.~~
- (f) The Division of Operations Tribal Business Committee shall ensure that a public comment period is afforded when adopting administrative rules setting be consulted concerning the rules adopted that set is empowered to and shall enact, after consultation with the building inspector, a fee schedule establishing charges for the issuance of building permits. The schedule may be revised from time to time at the committee's discretion.
- (g) An applicant for a building permit shall provide evidence of the approval of his project by the Business Committee to the building inspector at the time he applies for the permit. No permit application shall be accepted and no permit shall issue prior to Business Committee approval of the project to which the application relates.
- (h) Fees ~~established by the Business Committee pursuant to subsection (f)~~ must be paid, and evidence of payment provided to the building inspector's office, prior to issuance of a building permit within the Qualla Boundary. The following categories of projects are exempt from paying the fee, but not from obtaining a permit:
 - (1) Residential construction projects to which the North Carolina State Building Code applies;
 - (2) Construction projects of the Tribal government, except for projects of the Tribal Gaming Commission, Tribal Bingo Enterprise, Tribal Casino Gaming Enterprise, Cherokee Boys Club, Tribal Health Enterprise, any other Tribal enterprise, or corporations organized as non-profits under Chapter 55A; or
 - (3) Fees for Qualla Housing Authority projects are covered by an annual transfer from its budget to the building inspector's office, in an amount to be determined by the Business Committee after consultation with the building inspector, finance department and Qualla Housing Authority.

- (i) Payment of fees. Payment of building permit fees shall be made to and collected by the finance department, which shall provide satisfactory evidence of the payment made, in accordance with its policies, to the payor at the time of payment.
- (j) Certificate of occupancy. All Tribal and North Carolina State Building Code requirements shall be met by applicants throughout the building process, and applicants shall make their construction site available to the Tribal building inspector for the 14-step building inspection process administered by the Tribal building inspector. The building inspector shall conduct this inspection on all such residential construction projects, and shall issue a certificate of occupancy to applicants who pass this inspection.
- (k) Native stone and stone masons.
 - (1) As part of the building code adopted in this section, all commercial construction on Tribal owned lands for which the Tribe is a contracting party and which includes stone work, shall be required to use native stone and native stone masons that is supplied from Tribal owned lands and approved for the project, on the contract that is being let for bid, provided that:
 - a. Adequate supplies of native stone can be supplied to meet scheduling requirements of the project in question; and
 - b. The native stone is competitive in kind, quality and price when compared to stone from sources off of the Tribal owned lands;
 - (2) Persons or businesses providing or delivering stone to projects described in this subsection shall provide documentation to the building inspector as to whether the stone provided is native to and supplied from Tribal owned lands.
 - (3) The Tribe and contractors shall make all reasonable efforts to include the building inspector in the early stages of project design or construction to help ensure that native stone is used.
 - (4) In this subsection, "Tribe" means the government of the Eastern Band of Cherokee Indians including, but not limited to, all of its divisions, programs, enterprises and business entities. The Tribal building inspector is responsible for enforcing this requirement.
 - (5) In this subsection, "Native Stone" means stone that is located on Tribal owned lands and "Native Stone Mason(s)" mean members of the Eastern Band of Cherokee Indians that are certified according to Chapter 92 of the Cherokee Code and/or licensed with the Tribe.
 - (6) Stone masons certified under the Tribal Business Preference law, chapter 92, Cherokee Code, shall be given the first option to bid on and contract for jobs described in subsection (1), pursuant to chapter 92, Cherokee Code.

Sec. 143-7. - Hazardous and condemned structures.

To meet the special requirements of the Eastern Band of Cherokee Indians for rehabilitation or removal of hazardous or condemned structures, the following provisions are adopted applicable to residential structures, and to the extent that the North Carolina State Building Code contains provisions inconsistent with the following, those North Carolina provisions are not applicable.

For rehabilitation or removal of hazardous or condemned structures that are non-residential, the North Carolina State Building Code applies. In applying that Code to any rehabilitation or removal activities on the Qualla Boundary, references to "city" or "county" shall mean "Tribe" or "Tribal", as best fits the context, references to "city council" or its county equivalent shall mean "Tribal Business Committee", references to "Code Enforcement Official" shall mean "Tribal Building Inspector", and offenses referred to as Class 1 Misdemeanors shall be classified as misdemeanors with up to 30 days confinement and fines of up to \$1000.00

For structures that are of mixed residential and non-residential use, the Tribal Building Inspector shall, in his discretion, select the procedure that is best suited to preservation of the safety of life and property in the particular situation.