

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY (NC)

Date: FEB 04 2016

ORDINANCE NO. 119 (2016)

TITLE: Merge of two Regulatory Agencies-

Tribal Gaming and Alcohol Beverage Control Commission

WHEREAS, in 2009, the Tribal Council of the Eastern Band of Cherokee Indians adopted Chapter 18B of the Cherokee Code for the Regulation of Alcoholic Beverages on the trust lands of the Eastern Band of Cherokee Indians.

WHEREAS, Chapter 18B provides for the regulation of alcoholic beverages by a Tribal Alcoholic Beverage Commission ("Tribal ABC").

WHEREAS, the Tribal ABC currently regulates the sale of alcohol at two locations, Harrah's Cherokee Hotel and Casino and Harrah's Cherokee River Valley Hotel and Casino.

WHEREAS, the sale of alcoholic beverages on the trust lands of the Eastern Band of Cherokee Indians is only authorized at Harrah's Cherokee Hotel and Casino and Harrah's Cherokee River Valley Hotel and Casino, both of which are regulated by the Tribal Gaming Commission ("TGC").

WHEREAS, the Principal Chief and the Tribal Council are undertaking to reorganize aspects of Tribal government to provide for more efficient provision of services and for lower costs.

WHEREAS, each of the 5 positions on the Tribal ABC is paid a salary of \$25,000 on the Commission which regulates only two establishments.

WHEREAS, the role of the Tribal ABC can be fully served by the TGC at substantially lower cost to the Tribe and a substantial amount more dollars can flow back to the Tribe than only \$360,000 from approximately \$2,200,000 budget of the ABC Board.

WHEREAS, both of these regulatory agencies perform very similar type functions, such as backgrounding and licensing vendors and suppliers, oversight of a highly regulated activity, enforcement of a strict regulatory structure, inspections and reviews of all activities, inventory and accountability of licensed, stamped and protected assets of the Tribe.

WHEREAS, by combining these two similar type regulatory agencies into one regulatory agency will create massive cost savings from salary and overhead reductions that will lead to better streamlined services and licensing.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that the Cherokee Code be amended as follows:

Sec. 18-1. - Possession of intoxicating beverages.

The introduction or possession of intoxicating beverages shall be lawful within the Indian Country of the Eastern Band of Cherokee Indians, provided that such introduction or possession is in conformity with the laws of the State of North Carolina and the laws of the Eastern Band of Cherokee Indians. Any Tribal laws, resolutions or ordinances heretofore enacted which prohibit the introduction or possession of intoxicating beverages are hereby repealed.

Sec. 18B-101. - Definitions.

As used in this Chapter, unless the context requires otherwise:

...
(5) *Commission* means the Tribal Alcoholic Beverage ControlGaming and Alcoholic Beverage Control Commission established under with the powers and duties set forth in G.S. 18B-200

...

Sec. 18B-200. - Tribal Alcoholic Beverage Control Commission.

(a) *Creation of Commission; compensation.* The Tribal Gaming and Alcoholic Beverage Control Commission shall mean the Commission set up pursuant to Chapter 16 of the Cherokee Code and shall also function as the Tribal Alcoholic Beverage Control Commission is created to consist of a chairman and four associate members. The Commissioners shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Commission's annual budget. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expensesAny references in the Cherokee Code to the Tribal Alcoholic Beverage Commission shall mean the Tribal Gaming Commission functioning in the roleperform the functions set forth in this Section 18B-200.

(b) *Appointment of members.* Members of the Commission shall be appointed by the Principal Chief subject to approval by Tribal Council. Nominees to the Commission shall be enrolled members and selected on the basis of their commitment to the interests and goals of the Commission without forgetting the interests of the Cherokee community, their preparedness to assume responsibility for the decisions of the Commission and to ensure that said decisions are implemented, and their willingness to devote the time and energy necessary

~~to familiarize themselves with the strategic, financial and operational issues facing the Commission.~~

~~(c) *Terms of members.* The Interim Commission shall serve for a term of two years. Following the expiration of the Interim Commission's term, the Principal Chief shall appoint five Commissioners for a term of four years, four years, three years, two years and one year respectively and at least one appointee will be from the Interim Commission. The Commissioner shall elect their own officers at the start of each fiscal year. Thereafter, all Commission members shall be appointed to terms of four years and the established staggered terms shall continue for each Commission position for future new, renewal or replacement appointments. All Commission members may be removed for cause by a majority vote of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Commission from serving successive terms.~~

~~(d) *Vacancy.* The Principal Chief shall fill any vacancy on the Commission by appointing a successor within 30 days after the date on which the vacancy becomes effective subject to approval by Tribal Council. If the Chairman's seat becomes vacant, the Vice Chairman shall immediately assume the Chairman's seat and complete the remaining term of the vacating Chairman. A new member of the Commission will be appointed by the Principal Chief, subject to approval by Tribal Council, to complete the remaining term of the former Vice Chairman. The Commission will then elect a new Vice Chairman.~~

~~(e) *Employees.* The chairman of the Tribal Gaming and Alcoholic Beverage Control Commission/Tribal Alcoholic Beverage Commission is authorized to employ, discharge, and otherwise supervise subordinate personnel of the Commission.~~

~~(f) *Independence.* In all matters within its purview and responsibilities, the Commission shall be and shall act independently and autonomously from the Principal Chief, Tribal Council, the Tribal Gaming Commission and the Tribal Casino Gaming Enterprise. No prior or subsequent review by the Principal Chief, Tribal Council, the Tribal Gaming Commission or the Tribal Casino Gaming Enterprise shall be required or permitted, except as otherwise explicitly provided in this chapter.~~

~~(g) *Sovereign Immunity of the Commission.* The Commission, as an instrumentality of the Tribe, retains all of the Tribe's rights, privileges and immunities, including sovereign from suit.~~

~~(h) *Oath of Office.* Prior to beginning their official duties, each member of the Commission shall take the following oath before some officer authorized to administer oaths: "I do solemnly swear (or affirm) that I will faithfully execute the duties of Commissioner as a member of the Tribal Gaming and Alcoholic Beverage Control Commission and will to the best of my ability, preserve, protect and defend the charter and governing document and laws confirmed and ratified by the enrolled members of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained my appointment to this Commission by bribery or any undue or unlawful means or fraud, and that in all measures which may come before me, I will so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of the Eastern Band of Cherokees."~~

~~(i) All Commissioners will be subject to initial and subsequent random drug testing per the Tribal personnel policy. Refusal to submit to any drug testing or a positive test result shall result in an immediate dismissal from the Commission. Drug testing shall be paid from the annual budget of the Commission.~~

(i) ~~All Commissioners are subject to the same criminal background checks as TCGE and TGC employees. Each Commissioner is required to update their information.~~

Sec. 16-2.01. - Establishment.

(a) Composition of the Commission: The Tribal Gaming and Alcoholic Beverage Control Commission shall be composed of three enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes.

BE IT FURTHER ORDAINED that on the effective date of this ordinance the current Tribal Alcoholic Beverage Control Commission shall cease to exist and that the current Tribal Gaming Commission shall become the Tribal Gaming and Alcoholic Beverage Control Commission.

BE IT FURTHER ORDAINED that the current Tribal Alcoholic Beverage Control Commission, the current Tribal Gaming Commission, and the Principal Chief take such steps as reasonably necessary to implement this ordinance.

BE IT FURTHER ORDAINED that any other references in the Cherokee Code to either the Tribal Gaming Commission or the Tribal Alcoholic Beverage Control Commission be amended to refer to the Tribal Gaming and Alcoholic Beverage Control Commission.

BE IT FINALLY ORDAINED that all portions of ordinances inconsistent with this ordinance are rescinded, and that this ordinance shall become effective following 45 days after ratification by the Principal Chief.

Submitted by Principal Chief, Patrick H. Lambert.