

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

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

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

29 (c) Election Clerks.

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

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

43  
44 (d) Door Marshals.

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

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

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

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

22 (f) Certification.

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

40 (g) Early voting.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 \_\_\_\_\_

21 Signature of Voter

22 Date: \_\_\_\_\_

23 Witness: \_\_\_\_\_

24 Address: \_\_\_\_\_

25 Witness: \_\_\_\_\_

26 Address: \_\_\_\_\_

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

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

Chairman/Member

Date: \_\_\_\_\_

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

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

Signature of Voter: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16  
17   (b) The person filing the protest shall pay the protest filing fee expressed by the Board in its  
18   schedule of fees.

19   ~~(b) A protest of a voter's township registration may be made by any enrolled member or candidate~~  
20   ~~who is a registered voter, as specified in Section 161-11.1 through 161-11.3. No protests of a~~  
21   ~~voter's township registration shall be accepted or acted upon by the Board of Elections~~  
22   ~~between April 14 and the first business day following the certification of the general election~~  
23   ~~results. [Editors note: this paragraph was moved to Sec. 161-11.2 ("Challenges to Voter~~  
24   ~~Registration")]~~

25   (c) Except as otherwise provided in this section, A a protest of irregularities in the conduct of an  
26   election must be submitted to the Board of Elections no later than five (5) business days after  
27   the close of the polls and, if the Board orders a hearing to hear the protest, the a hearing shall  
28   be set by the Board within five (5) business days after the receipt of the written protest.  
29   Pursuant to C.C. Sec. 161-19(g), the Board has authority to not order a hearing in certain  
30   situations. The parties to the protest shall be allowed adequate time to prepare their case and  
31   be allowed to call witnesses and subpoena documents, not to exceed ten (10) business days.  
32   It is imperative to proceed in a timely manner, therefore the normal rules of civil procedure  
33   are not applicable. However, the Board of Elections shall give the parties every reasonable  
34   consideration and opportunity to provide a solid prepare their case and may extend any  
35   deadlines or hearing to assure that it has all the facts in order to make a valid final decision.  
36   All persons that the protest may directly affect shall be notified of the scheduled hearing by  
37   the Election Board. Notice shall be provided by any means authorized in C.C. § 161-29  
38   ("Service of Communications by the Board of Elections").

39   (d) ~~Any person filing a protest for election irregularities under Subsection 161-16(e) this section~~  
40   ~~must establish during a hearing in front of the Board of Elections that the alleged irregularities~~  
41   ~~unfairly and improperly or illegally affected the actual outcome of the election, and but for~~  
42   ~~the irregularity, the winning candidate would not have prevailed at the polls.~~

43   (e) ~~All persons shall have the right to have legal counsel an attorney or lay advocate represent~~  
44   ~~them at the hearing before the Board of Elections. Any attorney who represents a person at a~~



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

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

11 (g) The Board has the power to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE IV. - GENERAL PROVISIONS

##### Sec. 161-20. - Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE V. - MISCELLANEOUS

### Sec. 161-24. – Unlawful campaign practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **Sec. 161-28. – Poll Books.**

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

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

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

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

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

41



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

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

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

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

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

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

25  
26 *Submitted by the Board of Elections*