

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: OCT 15 2018

ORDINANCE NO.: 383 (2018)

WHEREAS, Cherokee Code § 117-40 governs protests and rehearing of Tribal Council decisions; and

WHEREAS, Cherokee Code § 117-40 gives enrolled members the right to protest Tribal Council decisions and decisions of one of Tribal Council's appointed committees; and

WHEREAS, the Indian Civil Rights Act of 1968 (ICRA) § 1302 states that "*No Indian tribe in exercising powers of self-government shall: ... (a)(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances*"; and

WHEREAS, Cherokee Code § 117-40 should be amended to clarify our inherent right as enrolled members of the Eastern Band of Cherokee Indians to protest any actions of the Tribal Council and the decisions of one of Tribal Council's appointed committees.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that Cherokee Code § 117-40 is amended to read as follows:

Sec. 117-40. - Protest and rehearing of tribal council decisions.

(a) Any ~~interested party enrolled member~~ who disagrees with a decision of the Tribal Council, or one of its appointed committees, shall have the right to one protest of the decision. ~~For purposes of this section, an "interested party" is a person who has a direct financial stake in the outcome of the decision being protested or a person whose individual property interests will suffer a direct adverse effect because of the decision being protested.~~

(b) To exercise the right to protest, ~~the an interested party enrolled member~~ shall submit a written protest package to the Tribal Council Chairman or the Tribal Operations Program (TOP) within ten calendar business days following the decision that is being protested. The writing written submission of a protest package shall clearly describe include the a statement of protest and a statement explaining the direct impact to of the interested party's financial or property interests-enrolled member's concern. Failure to include the statement of direct impact shall render the protest void and it shall not be placed on the Tribal Council agenda.

47 If no valid protest is received within ten calendar business days, then the decision of the
48 Tribal Council or committee shall be final, except for rehearing permitted in subsection (e)
49 or as provided by other Tribal law.
50

51 (c) Protests shall be accompanied by a written resolution stating the action or amendment
52 sought from Tribal Council by the protesting party enrolled member(s). Protests shall not
53 serve to delay the implementation of legislation passed by Tribal Council. ~~Protests shall be~~
54 ~~limited to specific government actions and shall not be used to air generalized grievances~~
55 ~~against any official, person, entity, or policy.~~
56

57 (d) If a decision affects the interests of multiple interested parties enrolled members, then a
58 protest of that decision shall not be heard or decided until a hearing is scheduled and all
59 interested parties are provided reasonable notice of that hearing. Notice to private parties of
60 matters involving personal or property interest shall be accomplished by mail, telephone, or
61 personal service at least ten days before the scheduled hearing. Notice to the public of
62 matters involving general legislation shall be accomplished by the usual publication of the
63 Tribal Council agenda.
64

65 (e) If a protest to modify a Tribal Council or committee decision involving private property
66 rights is received after the deadlines set forth in subsection (b), or if an interested party files
67 another protest to such a decision after one protest has already been heard, then the Tribal
68 Council shall not hear that matter unless:

69 (1) The interested party provides significant new evidence that the Tribal Council
70 Chairman determines was not available and could not have been reasonably obtained at
71 the time of the prior hearing; or

72 (2) The interested party demonstrates that there has been a substantial change of
73 circumstances that the Tribal Council Chairman determines justifies a modification of
74 the prior decision and that the modification will not constitute a taking of private
75 property.
76

77 (f) Nothing in this section shall prohibit any person from proposing an amendment to general
78 legislation of the Tribe, other than a decision involving specific private property rights. The
79 protest remedy described in this section shall not be used to repeal or amend ordinances that
80 establish the codified law of the Tribe expressed in the Cherokee Code. Repeal or
81 amendment of ordinances may only be performed by a subsequent ordinance.
82
83

84 BE IT FURTHER ORDAINED, that all ordinances and resolutions inconsistent with this
85 ordinance are rescinded, and this ordinance shall become effective upon
86 ratification by the Principal Chief.
87
88

89 *Submitted by the Becky Walker, Concerned Enrolled Member*