

TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

FEB 07 2019

DATE

ORDINANCE NO. 486 (2019)

- WHEREAS, Cherokee Code Chapter 106 governs the issuance and administration of EBCI Tribal Business Licenses; and
- WHEREAS, the current language of the Cherokee Code does not sufficiently address if a Tribal Business License is required for an entity or person entering into a contractual agreement with the Eastern Band of Cherokee Indians; and
- WHEREAS, a person or entity shall be required to obtain a Tribal Business License when entering into a contractual agreement with the Eastern Band of Cherokee Indians and any of its entities.

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, the Cherokee Code Section 106 shall be amended to read as attached.

BE IT FURTHER ORDAINED any ordinance that conflicts with this ordinance is hereby rescinded.

BE IT FINALLY ORDAINED the Principal Chief and Secretary of Treasury shall carryout the intent of this ordinance.

*Submitted by: Cory M. Blankenship, Secretary of Treasury*

## ARTICLE I. - BUSINESS LICENSES<sup>(1)</sup>

### Sec. 106-1. - Definitions.

- (a) *Business* means any person or entity selling, purchasing or trading goods, services or information on tribal land or conducting such activity at retail or wholesale, on tribal land.
- (b) *Tribe* means the Eastern Band of Cherokee Indians.
- (c) *Tribal land* means real property held in trust by the Eastern Band of Cherokee Indians or the federal government for the benefit of the Eastern Band of Cherokee Indians.

(Ord. No. 624, 3-30-2005; Ord. 801, 7-27-2009)

### Sec. 106-2. - License required.

- ~~(a)~~ ~~(a)~~—Any person or entity that wants to conduct business on Tribal land may do so only with permission of the Tribe as evidenced by issuance and maintenance of a current, valid Tribal business license.
- ~~(b)~~ Any person or entity entering into a contractual agreement with the Eastern Band of Cherokee Indians or any of its entities may do so only with the permission of the Tribe as evidenced by issuance and maintenance of a current, valid Tribal business license.
- ~~(c)~~ Persons and entities that have been issued a Tribal business license must prominently display the license at each business location so they are easily visible to tribal inspectors and the public.
- ~~(d)~~ A separate license is required for each business operating under a different name, even if owned or operated by the same person or entity. A separate license is required for each business location.
- ~~(e)~~ On and after January 1, 2006, Traders licenses issued by the BIA will not be accepted by the Tribe as authority for operating a business on Tribal land. Persons and entities operating under Traders licenses on that day must obtain a Tribal business license, but in most cases will not be subject to background checks under Cherokee Code Section 106-50.

(Ord. No. 624, 3-30-2005; Ord. No. 801, 7-27-2009)

### Sec. 106-3. - Tribe has sovereign authority.

The Tribe has the sovereign authority to regulate commerce on Tribal land and to issue licenses to conduct businesses on Tribal land.

(Ord. No. 624, 3-30-2005)

### Sec. 106-4. - Business committee discretion.

The Business Committee shall administer this Article and has the discretion to take all steps necessary and proper to enforce compliance with this Article including, but not limited to, prohibiting the introduction of certain goods or services onto tribal land, directing that any or all tribal business licenses be suspended or revoked, and directing that any or all applications for tribal business licenses or renewals thereof be rejected.

(Ord. No. 624, 3-30-2005; Ord. No. 630, 2-1-2007)

Sec. 106-5. - Fine for no license.

Any person or entity who attempts to operate a business located on Tribal land without a tribal business license or entering into a contractual agreement with the tribe or tribal entity without a tribal business license issued pursuant to this chapter shall be fined \$500.00. Such fines may be levied by the ~~Revenue Officer~~Office of Budget & Finance and/or the Business Committee.

(Ord. No. 624, 3-30-2005)

Sec. 106-6. - Application for license.

- (a) Application for a business license must be made in writing on a form approved by the Tribe, setting forth the full name and mailing address of the applicant; if a firm, the firm name and the name of each member thereof; the legal formation of the business, the name and mailing address of its registered agent; the place where it is proposed to carry on the business; whether business is conducted with the benefit of a lease of real property or improvements thereon, the name and mailing address of the lessor; two satisfactory testimonials on a Tribal approved form as to the character of the applicant and its fitness to operate a business on Tribal land; and other information as may be required by the Tribe.
- (b) The application must be provided to the ~~Tribal Revenue Officer~~Office of Budget & Finance.
- (c) Certain applicants may be subject to a business background check as provided in Section 106-50.
- (d) A business license fee of \$25.00 for businesses located on tribal lands shall be imposed and collected for each new application and each renewal, at the time of application and renewal.
- (e) A business license (contracts only) fee of \$100.00 for businesses located off tribal lands who enter into a contractual agreement with the Eastern Band of Cherokee Indians or any of its entities shall be imposed and collected for each new application and each renewal, at the time of application and renewal.
- (f) The ~~Revenue Officer~~Office of Budget & Finance shall approve or deny each license application no later than 30 days after receipt of a completed application. Denials of licenses by the ~~Revenue Officer~~Office of Budget & Finance may be appealed to the Business Committee.
- (g) If necessary, and pursuant to criteria provided by the Business Committee, the ~~Revenue Officer~~Office of Budget & Finance shall refer applications to the Business Committee for final decision.

(Ord. No. 624, 3-30-2005)

Sec. 106-7. - Employees.

Persons and entities required to obtain a tribal business license are responsible for the job-related conduct of their employees.

(Ord. No. 624, 3-30-2005)

Sec. 106-8. - Temporary vendors, crafters and other small businesses.

Every person or entity wanting to conduct a business located on Tribal land must obtain a Tribal business license; provided, however, that the following persons and entities do not have to pay the licensing fee: persons exempt from paying the tribal sales levy, which exemptions are expressed in Chapter 105, and enrolled members of the Eastern Band of Cherokee Indians making less than one thousand dollars (\$1,000.00) annually from the business.

(Ord. No. 624, 3-30-2005)

Sec. 106-9. - Proof of right to use real property.

Business licenses shall not be issued unless the applicant / licensee has a documented right to the use of the real property and improvements thereon on which the business is to be located, for the use of the business. "Documented right" means a written agreement between the parties setting out the nature, duration, consideration and other fundamentals of the agreement.

(Ord. No. 624, 3-30-2005)

Sec. 106-10. - License period.

The maximum effective period for a business license is one year, measured from January 1 to December 31. All licenses expire at midnight on December 31 of the year they were issued; provided, however, that they may be renewed as provided in this chapter.

(Ord. No. 624, 3-30-2005)

Sec. 106-11. - Renewal.

Annual renewal of a business license must be made on the form provided by the Budget and Finance Office and submitted to the ~~Revenue Officer~~Office of Budget & Finance before the license expires. It is the applicant's responsibility to submit the renewal form early enough before the license expires to provide enough time for the Revenue Officer to examine the applicant's record. The ~~Revenue Officer~~Office of Budget & Finance must examine the record the renewal applicant has made as a business operator and the applicant's fitness to continue as such under a renewed license, and determine if the application for renewal should be approved or denied. Denials may be appealed to the Business Committee.

(Ord. No. 624, 3-30-2005)

Sec. 106-12. - Power to close unlicensed businesses.

If a person or entity conducts business on Tribal land or enters into a contractual agreement with the Eastern Band of Cherokee Indians or one of its entities without a valid, current business license or after expiration of a license without applying for renewal, the ~~Revenue Officer~~Office of Budget & Finance will provide notice and 30 days in which to cure the breach. If a cure is not provided within that 30 day period, the ~~Revenue Officer~~Office of Budget & Finance shall notify the Business Committee, which may

take appropriate action to obtain compliance with this chapter, including directing the Chief of the Cherokee Police Department to close the business.

(Ord. No. 624, 3-30-2005)

Sec. 106-13. - Business limited to specified premises.

- (a) A license to operate a business located on Tribal land shall not be issued unless the applicant has a documented right to use the land and improvements in which the business is to be located and/or conducted. "Documented right" means a written agreement between the parties setting out the nature, duration, consideration and other fundamentals of the agreement.
- (b) Business may be conducted only at the place specified in the business license. Licenses shall not cover branch stores or more than one specified businesses at any store. A separate license for each business use must be furnished for each such store.

(Ord. No. 624, 3-30-2005)

Sec. 106-14. - License applicable for business only by original licensee.

No person or entity may lease, sublet, rent, or sell any of the buildings which he occupies, for any purpose to any other person or concern, without the approval of the Business Committee.

(Ord. No. 624, 3-30-2005)

Sec. 106-15. - Unlawful and prohibited conduct.

- (a) No person or entity may use or permit its business to be used for any unlawful conduct or purpose. Violation of this section shall subject the violator to criminal prosecution, suspension or revocation of the business license, and other action as the Tribe deems necessary under law. This section is deemed to be violated when someone is charged with unlawful conduct or purpose. Violations do not require convictions and/or sentencing.
- (b) No person or entity, regardless of whether they are required to be licensed under this chapter, may engage in unfair methods of competition or engage in unfair or deceptive acts or practices in or effecting commerce on Cherokee trust lands. In this section, "commerce" shall include, but is not limited to, the exchange of property, goods or services for anything of value, lease transactions, assignments and debt collection.
  - (1) An "unfair act" is an act that offends established public policy, as well as when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.
  - (2) A "deceptive act" means an act that has capacity or tendency to deceive. Proof of actual deception is not required.
- (c) After notice and an opportunity to be heard before the Business Committee, a person or entity found by the Business Committee to have violated this section may be ordered by the Committee to pay fines not to exceed \$1,000.00 per violation, restitution to the Tribe and victims in amounts considered reasonable and appropriate by the Committee, and may have their business license denied, suspended or revoked.

(Ord. No. 624, 3-30-2005; Ord. No. 630, 2-1-2007; Ord. No. 991, 10-8-2007)

Sec. 106-16. - Inspection of records.

Persons and entities required to be licensed under this chapter shall on request submit to the Revenue Officer, or inspecting officials, original invoices, receipts, business tax returns, and other records necessary for the Tribe to determine compliance with Tribal laws.

(Ord. No. 624, 3-30-2005)

Sec. 106-17. - Dealing in antiquities prohibited.

Persons and entities required to be licensed under this chapter may not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States, state, or any Indian tribe recognized by the federal government or any state; and may not knowingly buy, sell, rent, lease or have in their possession any artifact created before 1930 that was removed from any state or federally recognized Indian site, historic ruin or monument. Antiquities that meet this definition shall be seized by the Tribal Police Chief and turned over to the Tribe's THPO Department in a manner consistent with applicable law before placement in the local Museum of Cherokee Indians. Violation of this section may subject the violators to federal and Tribal prosecution; in addition violators will be subject to suspension or revocation of their Tribal business license and such other action as may be necessary.

(Ord. No. 624, 3-30-2005)

Sec. 106-18. - Trade in certain plants and animals.

Persons and entities required to be licensed under this chapter shall not introduce into, sell, or spread within Tribal land any plant, plant product, seed, or any type of vegetation, or any animal, which is infested, or infected or which might act as a carrier of any pests of infectious, transmissible, or contagious diseases, as determined by the Tribe.

(Ord. No. 624, 3-30-2005)

Sec. 106-19. - Certain dextromethorphan sales prohibited to minors.

(a) *In general.*

(1) *Sale.*

- (A) In general. Except as provided in paragraph (2), it shall be unlawful for any person to knowingly sell, cause to sell, or conspire to sell a product containing dextromethorphan (DXM) to an individual under the age of 18 years.
- (B) Failure to check identification. If a person fails to request identification from an individual under the age of 18 years and sells a product containing dextromethorphan to that individual, that person shall be deemed to have known that the individual was under the age of 18 years.

- (C) Retailers selling products containing dextromethorphan should impose appropriate safeguards against theft of these products by placing products containing dextromethorphan behind counter or locked container.
- (2) *Exception.* This Section shall not apply to any sale made pursuant to a validly issued prescription.
- (b) *Fines.* Any person or entity who attempts to sell dextromethorphan to a minor on Tribal land shall be fined. Such fines are levied by the Revenue Officer and/or the Business Committee.
  - (1) *Maximum amount.*
    - (A) Not more than \$1,000.00 for the first violation of a person;
    - (B) Not more than \$2,000.00 for the second violation of a person; and
    - (C) Not more than \$5,000.00 for the third violation, or a subsequent violation of a person.
  - (2) *Number of violations.* If a person makes sales of dextromethorphan at more than one location, for purposes of determining the number of violations by that person under this Subsection each individual location operated by that person shall be considered a separate violation.

(Ord. No. 337, 6-27-2008)

Sec. 106-20. - Consent to jurisdiction.

As a condition to doing business on Tribal land, each person or entity required to be licensed under this Chapter consents to the jurisdiction of the Cherokee Tribal Court and agrees to voluntarily submit the applicant and the applicant's employees or agents to the jurisdiction of the Court for the purpose of the adjudication of any dispute, claim or obligation arising under Tribal law relating to commerce carried out by the person or entity.

(Ord. No. 624, 3-30-2005; Ord. No. 337, 6-27-2008)

Editor's note— Ord. No. 337, ratified June 27, 2008, amended the Code by adding a new § 106-19 and renumbering former §§ 106-19—106-22 as new §§ 106-20—106-23.

Sec. 106-21. - Failure to pay levy and other fees.

Any person or entity required to be licensed under this Chapter that fails to pay wages, Tribal levy, privilege and license fees has violated this Chapter. Compliance may be by suspension or revocation of the business license by the ~~Revenue Officer~~ Office of Budget & Finance after notice and 30 days is provided in which to cure the breach. If a cure is not provided within that 30 day period, the ~~Revenue Officer~~ Office of Budget & Finance shall suspend or revoke the license. Such action may be appealed to the Business Committee.

(Ord. No. 624, 3-30-2005; Ord. No. 337, 6-27-2008)

Note— See editor's note, § 106-20.

Sec. 106-22. - Appeal.

- (a) Decisions of the ~~Revenue Officer~~Office of Budget & Finance may be appealed to the Business Committee. Such appeals must be filed in writing with the Business Committee secretary, with a copy to the ~~Revenue Officer~~Office of Budget & Finance, within 30 days of the receipt of notice of the decision of the ~~Revenue Officer~~Office of Budget & Finance.
- (b) If the subject of the appeal is a denial by the ~~Revenue Officer~~Office of Budget & Finance of an application for a new license, the decision of the Business Committee shall be final and no appeal beyond the Business Committee is allowed.
- (c) If the subject of the appeal is any decision of the ~~Revenue Officer~~Office of Budget & Finance not identified in Subsection (b), the decision of the Business Committee may be appealed to the Cherokee Tribal Court; provided, however, that the Court's review shall be limited to whether the decision of the Business Committee was an abuse of discretion.

(Ord. No. 624, 3-30-2005; Ord. No. 337, 6-27-2008)

Note— See editor's note, § 106-20.

Sec. 106-23. - Remedies not exclusive.

Any right or remedy expressed in this Chapter is not exclusive. The Tribe reserves the right to enforce compliance with this Chapter by any and all actions available under law, including but not limited to civil and criminal actions.

(Ord. No. 624, 3-30-2005; Ord. No. 337, 6-27-2008)

Note— See editor's note, § 106-20.)

Secs. 106-24—106-49. - Reserved.