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## CHEROKEE COUNCIL HOUSE CHEROKEE, NORTH CAROLINA

Date: MAR 14 2019

### ORDINANCE NO. 518 (2019)

WHEREAS, Ordinance No. 408 (2018), which amended the Tribe's election law, deleted Cherokee Code (C.C.) § 161-8, which addressed filling vacancies in elected office; and

WHEREAS, Sec. 161-8 was deleted to remove redundancies and simplify Tribal law by combining the provisions of that section with existing Code sections governing succession in elected offices, including C.C. § 117-7 (Vacancies in Chief Offices) and C.C. § 115-9 (Vacancies in School Board); and

WHEREAS, vacancies in Chief Offices and in Tribal Council are also addressed in Sec. 14 and Sec. 15 of the Tribal Charter and Governing Document, but those sections are short on necessary detail; and

WHEREAS, this amends existing the Code to provide an orderly mechanism for succession in certain elected offices when a vacancy occurs.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that C.C. § 117-7 shall be amended as provided below, that a new section identified as C.C. § 117-11.1 shall be added to the Code, and that C.C. § 115-9 shall be amended to read as follows:

#### **Sec. 117-7. – Succession upon vVacancy in Chief offices.**

(a) The provisions of this section shall be construed consistently with, and to give effect to, Sec. 14 of the Tribal Charter and Governing Document. ~~In the event of the death, resignation or disability of the Principal Chief, the Vice Chief shall become Principal Chief and shall serve the balance of the elected term of office until removal or disability or his successor is elected. In case of death, resignation or disability of the Vice Chief, the Council may elect a successor who shall serve until removal or disability or his successor is elected. In the event the offices of both Principal Chief and Vice Chief become vacant simultaneously, the Chairman of the Council shall become Principal Chief and shall serve the balance of the elected term of office, and the Council shall elect a Vice Chief, who shall serve the balance of the elected term. If the Chairman does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled by an election under rules established by the Council.~~

(b) Vacancy in the Office of Principal Chief. If the office of Principal Chief becomes vacant, the Vice Chief shall become the Principal Chief upon being sworn-in by the Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-in Principal Chief

1 shall serve the balance of the Principal Chief's elected term of office. No special election  
2 shall be held.

3  
4 (c) *Vacancy in the Office of Vice Chief.* If the office of Vice Chief becomes vacant, the Tribal  
5 Council shall elect a successor from the then-current Tribal Council representatives no later  
6 than the next regularly scheduled Tribal Council session after the vacancy occurs. The  
7 Tribal Council representative elected to fill the vacancy shall become the Vice Chief upon  
8 being sworn into the office of Vice Chief by the Chief Justice of the Cherokee Supreme  
9 Court or his/her designee. The newly sworn-in Vice Chief shall serve the balance of the  
10 Vice Chief's elected term of office. No special election shall be held unless none of the  
11 then-sitting Tribal Council representatives are qualified to hold the office of Vice Chief.  
12

13 (d) *Simultaneous Vacancy in the Office of Principal Chief and Office of Vice Chief –*  
14 *Chairman of Tribal Council Qualified.* If the office of the Principal Chief and the office of  
15 the Vice Chief become vacant simultaneously, the Chairman of the Tribal Council, if  
16 qualified, shall become Principal Chief upon being sworn into the vacant position by the  
17 Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-in  
18 Principal Chief shall serve the balance of the Principal Chief's elected term of office.  
19 Additionally, the Tribal Council shall elect a Vice Chief from among the then-serving  
20 Tribal Council representatives qualified to serve as Vice-Chief, and such Tribal Council  
21 election shall be held at the first regularly scheduled Tribal Council session immediately  
22 following the occurrence of the vacancy. The newly elected Vice Chief shall be sworn-in  
23 by the Chief Justice of the Cherokee Supreme Court or his/her designee. The newly sworn-  
24 in Vice Chief shall serve the balance of the Vice Chief's elected term of office. No special  
25 election shall be held unless none of the then-sitting Tribal Council representatives are  
26 qualified to hold the office of Principal Chief and Vice Chief as provided herein. If a  
27 special election is held, the candidate winning the special election shall serve the remaining  
28 time left in the term of office.  
29

30 (e) *Simultaneous Vacancy in the Office of Principal Chief and Office of Vice Chief – Chairman of*  
31 *Tribal Council Not Qualified.* If the office of the Principal Chief and Vice Chief become  
32 vacant simultaneously and the Chairman of Tribal Council is not qualified to fill the vacancy  
33 in the office of Principal Chief, the vacancy shall be filled as provided in this subsection. The  
34 Tribal Council representative elected by Council to fill the vacant office of Vice Chief shall  
35 temporarily serve as "Acting" Principal Chief until the Board of Elections conducts a special  
36 election of all registered and eligible voters within sixty (60) days of the vacancy, pursuant to  
37 rules adopted by the Board. The candidate receiving the greatest number of votes shall be  
38 deemed elected to the office of Principal Chief. Once the Principal Chief is elected and sworn-  
39 in by the Chief Justice of the Cherokee Supreme Court or his/her designee, the "Acting"  
40 Principal Chief shall step down and resume the duties of the office of Vice Chief to which he  
41 or she was previously elected by Tribal Council.

42 (f) *Simultaneous Vacancy in the Office of Principal Chief and Office of Vice Chief – No Qualified*  
43 *Tribal Council Members.* If the offices of the Principal Chief and Vice Chief become vacant  
44 simultaneously and none of the then-sitting Tribal Council representatives are qualified to fill  
45 the vacant positions, the Board of Elections shall hold a special election of all registered and

1 eligible voters to fill both vacancies. In such a situation, the Chairman of the Tribal Council  
2 shall serve as "Acting Chief" until the Principal Chief and Vice Chief are elected and sworn  
3 in to office as provided in subsection (d).

4 (g) Authority of "Acting" Principal Chief. Any person serving as "Acting" Principal Chief as  
5 provided in subsection (e) or (f) of this section during the short interval until a special election  
6 is held, shall have limited authority while he or she is the Acting Principal Chief. His or her  
7 authority shall be limited to performing administrative duties, which shall preclude changes  
8 to the organizational chart of the Tribal government and other large-scale changes .

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10 **Sec. 117-11.1. Succession upon vacancy in Tribal Council.**  
11

12 (a) The provisions of this section shall be construed consistently with, and to give effect to, Sec.  
13 15 of the Tribal Charter and Governing Document.

14 (b) In the event of a vacancy on Tribal Council that has more than six months remaining in the  
15 elected term applicable to that Council seat, the Board of Elections shall conduct, pursuant to  
16 rules adopted by the Board, a special election of registered voters in that township within  
17 forty-five (45) days of the date the Tribal Council seat became vacant. The candidate receiving  
18 the greatest number of votes cast in the special election shall be deemed elected to the vacant  
19 Tribal Council seat. If there are six (6) months or less remaining in the term of the vacated  
20 Tribal Council seat, no special election shall be held and the Tribal Council seat shall remain  
21 vacant until the next regular election.

22  
23 **Sec. 115-9. - - Succession upon vVacancy in School Board.**  
24

25 ~~If a vacancy occurs within the School Board due to death, resignation or removal, the~~  
26 ~~Tribal Council shall call a special election within 30 calendar days of the vacancy, and a new~~  
27 ~~board member shall be elected in the community in which the vacancy occurs. However, if less~~  
28 ~~than 90 days remains in the original term on the date of vacancy, the seat shall remain vacant~~  
29 ~~until the next regular election.~~  
30

31 In the event of a vacancy in one of the seats for School Board, if that seat has more than six  
32 (6) months remaining in the elected term of office, the Board of Elections shall conduct a special  
33 election, pursuant to rules adopted by the Board, within forty-five (45) days of such vacancy.  
34 The candidate receiving the highest number of votes in the special election for the vacant School  
35 Board seat shall be deemed elected to the vacant seat. If there are six (6) months or less  
36 remaining in the term of the vacated seat, the seat shall remain vacant until the next regular  
37 election.  
38

39 **BE IT FINALLY ORDAINED** that all ordinances that are inconsistent with this ordinance are  
40 rescinded, and that this ordinance shall become effective when ratified by the  
41 Principal Chief.  
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44 *Submitted by the Office of the Attorney General and the Board of Elections*