

EASTERN BAND OF CHEROKEE INDIANS

CHEROKEE CODE

ARTICLE IV. - MISCELLANEOUS

Sec. 117-45. - Standards of ethical conduct.

Sec. 117-45.1. Definitions.

- (a) For purposes of this section, the following terms have the meanings defined below:
- (1) *Tribal officials*. Any individual serving in an office of the Tribal government, including but not limited to any person:
 - a. Holding an elective office, winning an election with a majority vote by enrolled members;
 - b. Serving as a member of an authority, board, committee, commission, team or other similar body appointed by Tribal Council or the Executive Office; or
 - c. Appointed by Tribal Council or the Executive Office to carry out actions, provide guidance, or assistance to the Tribal Council or the Executive Office.
 - (2) *Tribal resources*. Refers to instruments belonging to, held by, or received by the EBCI utilized for the economic, social, and political development of the EBCI as a community; and the Tribal offices and programs of the EBCI. Such instruments may include but are not limited to the following:
 - a. Land, physical property, and services owned, provided, distributed, administered or allocated by Tribal officials that have been paid for, subsidized, or otherwise acquired by the offices and agencies of the EBCI;
 - b. Funds and other financial assets of the EBCI; and
 - c. Other Tribal materials made available to Tribal officials while acting in an official capacity, which includes documentation, communications, and other records made available to a Tribal official.
 - (3) *Personal interest*. Means any interest in which there exists a likelihood for direct or indirect gain of any kind, including, but not limited to, employment contracts, benefits, salaries, funding, or ownership or investment held by a Tribal official, employee, or immediate family member of Tribal officials.
 - (4) *Conflict of interest*. A conflict of interest shall be deemed to arise when the elected or appointed official, or executive staff employee or any member of their immediate family, or an organization or firm which employs such official, executive staff employee or family member has a financial or other interest in the firm or person selected for the contract or grant award.
 - (5) *Immediate family* shall be defined as spouse, parent, child or brother or sister.
 - (6) *EBCI* refers to the Eastern Band of Cherokee Indians and Tribe.

Sec. 117-45.2. Purpose and applicability.

- (a) It is the policy of the Eastern Band of Cherokee Indians that high moral and ethical standards among the elected officials, appointed officials, and executive staff employees are necessary in order to eliminate conflicts of interest in Tribal offices, improve standards of Tribal service, preserve the sacred public trust, and promote and strengthen the faith and confidence of the members of the EBCI in their government. This Code of Ethics is to provide a mechanism whereby the Tribe may hold such officials accountable for their conduct in performing the duties and responsibilities of their Tribal office.

Sec. 17-45.3. Code of Ethics.

- (a) No Tribal official of the Eastern Band of Cherokee Indians shall participate in the selection or in the award or administration of a contract or grant award of funds from any government agency, if a conflict of interest, real or apparent, shall be involved.
- (b) No Tribal official or any member of their immediate family shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors who are contracting to perform services or sell goods or property to the Tribe or a Tribal program.
- (c) No Tribal official shall enter into any contract for services or goods with any Tribal entity, enterprise, or program for the purpose of either receiving or providing services or goods. This provision shall not apply to such persons qualifying for housing benefits from the Qualla Housing Authority or for medical benefits from the Indian Health Service or other programs available to all Tribal members.
- (d) The following represents the very minimum standards of conduct on the part of Tribal officials important to ensure ethical behavior and maintenance of public trust:
 - (1) Tribal officials of the EBCI shall treat service to the EBCI as a sacred public trust with fiduciary responsibility to the EBCI, which requires upholding and acting in accordance with the laws of the EBCI and engaging in the proper governance of the EBCI in a manner, which is placed above personal and private gain.
 - (2) Tribal officials of the EBCI shall not allow financial interests to conflict with the conscientious performance of obligations inherent in fulfilling the duties and responsibilities associated with their respective offices.
 - (3) Tribal officials of the EBCI shall protect and conserve Tribal resources and ensure the appropriate use of Tribal resources falling under the scope of the office of the Tribal official.
 - (4) Tribal officials of the EBCI shall provide every enrolled member a time to be heard in a formal setting on a Tribal issue.
 - (5) Tribal officials of the EBCI shall not use prestige of the office to advance personal interests of others or themselves.
 - (6) Tribal officials of the EBCI shall disclose instances when they believe there has been fraud, waste, abuse, corruption, or violations of this Chapter to the Office of Internal Audit.
 - (7) Tribal officials of the EBCI shall respect and honor the customs and traditions of the EBCI.
 - (8) Tribal officials of the EBCI shall abide by the laws of any sovereign jurisdiction in which they are present. Tribal officials of the EBCI shall disclose any charges and/or convictions that occur in any jurisdiction while in office to the Office of Internal Audit.
 - (9) Any gift, donation, or contribution received or provided by a Tribal official, irrespective of value, must be reported by the official who received or provided the gift, donation, or contribution to the Office of Internal Audit.
 - (10) Tribal officials of the EBCI shall not act individually, jointly or through another, threaten, intimidate, or discipline any person as reprisal for any legitimate action taken by the person.
 - (11) Tribal officials of the EBCI shall not offer, solicit or accept, directly or indirectly, anything of value if the gift could reasonably be expected to influence the vote, official actions, or judgment of, or for, the official or could reasonably be considered a reward for any official action or inaction.
 - (12) Tribal officials of the EBCI shall not make public policy statements that could reasonably be understood to reflect the sentiments or intention of the EBCI as a whole without obtaining approval through appropriate procedures and mechanisms.
 - (13) Tribal officials of the EBCI shall not withhold materials or information from the public pertaining to those items discussed in closed session unless such materials or information

disclosed in closed session are deemed private in accordance with Chapter 132 of the Cherokee Code.

- (14) No Tribal official of the EBCI shall take any official action or participate in a decision with respect to a matter if it will have a direct and predictable effect on the financial interest, personal interest, or present a conflict of interest for the official or employee or his or her immediate family member. Any official in such situation shall recuse himself or herself from participating in a discussion and/or vote on the matter giving rise to such conflict.
 - (15) Tribal officials of the EBCI may participate in private, public, civic, and/or charitable activities provided such activities do not detract from the dignity of the office or interfere with the performance of official duties.
 - (16) Tribal officials shall maintain or enhance the honesty and integrity of their respective offices; and safeguard the reputation of the EBCI as a whole.
 - (17) Tribal officials shall protect and enhance the environmental and cultural resources, whether natural or man-made, of the EBCI to ensure the security and prosperity of future generations.
- (e) Failure to meet the minimum requirements described in this Section may constitute a violation of this Code of Ethics as determined by the Office of Internal Audit as outlined below, until such time as the Office of Government Ethics is established.
 - (f) Any violation of this Article will be considered a misdemeanor by the Cherokee Court, or any successor court.
 - (g) Any Tribal official who violates Cherokee Code, Chapter 117, Article IV, Section 117-45, Standards of Ethical Conduct, shall be guilty of a misdemeanor and may be punished by the Cherokee Court or any successor court, by a fine of no more than \$5,000.00 or 12 months' confinement, or both.

(Ord. No. 507, 9-11-1995; Ord. No. [152](#), 7-28-2016)

Sec. 117-46. - Financial accountability.

- (a) Subsequent to the approval of Annual Budgets by the Tribal Council, no funds may be expended for any line item in excess of the budgeted amounts. The Budget Committee shall have authority to reallocate appropriations within the overall budget. The Tribal Council shall have sole authority to amend the overall budget.
- (b) Inadvertent expenditures in excess of a budgeted line item amount shall be reimbursed by the authorizing official unless the Tribal Council approves the expenditure and amends the appropriate line item.
- (c) Intentional or flagrant expenditures in excess of a budgeted amount shall constitute a criminal offense by the authorizing official against the Tribe. Punishment for violation of this section shall be a fine of not more or less than \$1,000.00, imprisonment for up to 30 days and reimbursement to the Tribal Finance Office.
- (d) The Tribal Finance Office shall not knowingly issue payments in excess of a budgeted amount.
- (e) The Tribal Council shall not approve or adopt an Annual Budget in excess of its projected income.

(Ord. No. 624, 5-8-1987)

Sec. 117-47. - Balanced budget act.

- (a) *Balanced budget required.* The Executive Committee shall propose, and the Tribal Council shall pass, only a balanced budget.

- (b) *Definition.* "Balanced budget" means a budget in which expenditures for the fiscal year in question do not exceed the projected revenues for that fiscal year.
- (c) *Budgets based on need.* Tribal division program, commission and enterprise budgets shall be based on justified need. Increases and decreases in the budgets shall be tailored to the needs of individual divisions and programs, commission and enterprise. Across-the-board increases are prohibited. Increases shall not exceed five percent of the total General Fund gaming appropriations for the current fiscal year.
- (d) *Executive director/chairman reports.* The executive directors/chairmen of each tribal division, commission and enterprise shall provide to the Principal Chief, orally and in writing, a report consisting of a budget- to-actual comparison of revenues and expenses within their division, commission and enterprise (including for each program). The report shall be presented every six months. For the six-month period ending March 31, reports are due on or before June 15. For the six-month period ending September 30, reports are due on or before January 15. Within 30 days of the date on which the reports are due, the Principal Chief shall present to Tribal Council a written summary for each division, commission and enterprise.
- (e) *Amendments.* An annual budget approved by Tribal Council shall not be amended if the amendment will cause the Tribe to exceed the projected revenues of the current fiscal year. This restriction does not apply in cases of emergency caused by natural disasters.
- (f) *Grants.* When possible, grants shall be written to include administrative costs. If the grant does not allow for inclusion of administrative costs, the program manager or other representative shall explain in detail why the grant cannot be written to include administrative costs. If a grant presents recurring costs to the Tribe, the Tribal Council shall carefully scrutinize the grant requirements, the projected recurring costs, the need for the grant money, and other relevant details to determine whether participating in the grant is fiscally responsible. The request to Tribal Council to approve a grant shall be made in the form of a resolution which shall be reviewed by the Grants Administration program and the Budget and Finance Division before being presented to the Budget Committee. The Deputy Officer of each division shall inform Tribal Council of the impending expiration or sunset of each grant within their division at least six months before the expiration or sunset of each grant.
- (g) *Annual budget and report.* As provided in section 21 of the Tribal Charter, the Executive Committee shall present to Tribal Council a proposed budget. Additionally, the Principal Chief shall present an oral summary of the proposal to the members of the Tribe and Council in a televised Council session within 30 days after submitting the proposed budget to Council. The proposed budget shall be in the form of a detailed outline of the administration's policy and funding priorities, as well as a presentation of the Tribe's economic outlook for the coming fiscal year. The proposed budget shall estimate spending, revenue and borrowing levels, with input from Tribal divisions, programs, commission and enterprise with funding broken down by budget and/or function categories.
- (h) *Quarterly reports.* Each quarter, the Principal Chief shall provide a written and oral financial report to Tribal Council describing the Tribe's current financial condition.
- (i) *Strategic plans.* The Executive Committee shall develop one-year strategic plan and a five-year strategic plan and shall submit the plans to Tribal Council for review and approval. Strategic plans shall be submitted to Tribal Council on or before April 15 of each year, and shall be revised regularly to reflect changing circumstances. A strategic plan shall not be effective to guide the Tribe until it is passed by Tribal Council and ratified by the Principal Chief. Strategic plans shall address the long-term financial and operational parameters of the Tribe, and shall be written according to an analytical process developed by the Executive Committee. Strategic plans shall include divisional and cross-divisional assessments of needs and services provided by the executive branch of Tribal government.
- (j) *Endowment and investment funds.* The Principal Chief shall prepare and submit an annual budget for the first and second Endowment and Investment Funds created in section 16C-10 to the Tribal Council at the same time he or she submits the Tribe's annual operating budget. The Endowment and Investment Funds budget shall include any matching provisions for tribal enterprises and other detail costs that can be reasonably projected. The Endowment and Investment Funds budget shall

not include recurring operating costs of Tribal divisions and programs, which shall be taken from the General Fund.

- (k) *Borrowing permitted.* Nothing in this section shall be construed to prevent the Tribe from borrowing money for any appropriate purpose approved by Tribal Council, provided that the Tribe has sufficient projected receipts to repay the debt within a reasonable time.

(Ord. No. 815, 9-23-2003; Ord. No. 282, 8-20-2004; Ord. No. 428, 11-2-2010)

Sec. 117-48. - Alcohol and drug testing of elected and appointed officials.

- (a) Elected and appointed officials, including persons elected or appointed to Tribal boards and committees, are subject to random drug testing as provided in the Tribal employee personnel policy, except as otherwise provided in this section.
- (b) Elected and appointed officials shall have their names included in the database used by the Tribe for random selection of tribal employees for drug testing or another database that may be used for the same purpose. The goal of this selection process is for all elected and appointed officials to be tested no less than once a year.
- (c) Random selection of elected and appointed officials shall be overseen by the Tribe's Employment Office. When an elected or appointed official is selected for testing, the Employment Office shall notify that person in writing that they must report to the testing location within the time identified in the notice. Reasonable accommodation for persons on travel may be made, and may include rescheduling the test. The Employment Office shall also provide written notification to the testing facility that the person has been randomly selected and must report for testing within the time identified in the notice. Once notified, the elected or appointed official is solely responsible for delivering him or herself to the testing facility and for having the test performed within the time identified in the notice.
- (d) Negative test results are confidential information between the Employment Office, the testing facility and the person tested. Information from a positive test result is confidential, except for the following, which is public information: the name of the person tested, the date and time of the test, and the substance for which the positive test result was returned.
- (e) If an elected or appointed official tests positive, or does not show up for the test, that information shall be communicated by the testing facility to the Employment Office and the person tested. If a positive test result is returned, the option for re-testing shall be communicated by the testing facility to the Employment Office and the person tested.
- (f) Upon notice of a positive test result or that the person did not show up for the test, the Employment Office shall notify in writing the Principal Chief and the Chair of Tribal Council. The notification shall include, at a minimum, the public information described in subsection (d). The results of a re-test, if any, also shall be communicated to the same persons in the same manner.
- (g) Upon receipt of notice of a positive test result or that the person did not show up for their test, the Chair of Tribal Council shall place the matter on the agenda of the next regularly scheduled monthly meeting of Tribal Council. Persons subject to this section who receive a positive test result shall attend that meeting of Tribal Council and report the result to Council and the public. The report shall be broadcast on the tribal cable television channel. At that time Tribal Council may inquire about the behavior that resulted in the positive test, request more information, examine whether the behavior has or may effect the person's actions as an elected or appointed official, and may issue a written reprimand in the form of a resolution.
- (h) By this section Tribal Council seeks to inform the public of elected or appointed officials who test positive for drugs and thereby violate the public trust. This information will allow the public to make informed choices in elections and appointments. With this goal in mind, Tribal Council states its opinion, but not a legal conclusion, that a positive drug test result is not an impeachable offense.

(Ord. No. 428, 3-30-2005)

Sec. 117-49. - Official name and identification of the Tribe.

"Eastern Band of Cherokee Indians" is and shall be the official name and legal identification for the Tribal government. All Tribal agents and entities of the Tribe shall conduct Tribal business including publications and promotions for any and all Tribal enterprises and businesses using the official and legal name of the Tribe.

(Ord. No. [262](#), 7-28-2016)

Sec. 117-50. - Lobbyists and outside legislation.

- (a) Any lobbyist hired by Tribal government, Tribal entities or Tribal organizations must do so by way of approval through a resolution of Tribal Council.
- (b) Any legislation presented at the state or federal level must be approved through a resolution of Tribal Council.

(Ord. No. [360](#), 10-20-2016)

Secs. 117-51—117-99. - Reserved.