

AMENDED TABLED

Cherokee Council House
Cherokee, North Carolina

FEB 07 2019

Date

RESOLUTION NO. 489(2019)

WHEREAS, this resolution provides for an election by referendum to adopt a constitution for the Eastern Band of Cherokee Indians; and

WHEREAS, through this process, we acknowledge the historical foundation laid for this document by Form of Government Declaration (1868), Lloyd Welch Constitution (1870) Lloyd Welch Constitution Amendment (1875), North Carolina State Charter (1889), NC State Charter Amendment (1897), NC State Charter Amendment (1931), NC State Charter Amendment (1933), and the Charter and Governing Document (1986); and

WHEREAS, as the Eastern Band of Cherokee Indians is a sovereign nation, it is necessary and proper to adopt a Constitution to strengthen separation of governmental power, implement protection of the citizens and ensure stronger civil rights to individuals, among other areas; and

WHEREAS, the Cherokee Code, Chapter 161 – Elections, Sec. 161-9(c) creates process that establish a referendum issue shall only be established by resolution of the Tribal Council, duly ratified by the Principal Chief.

NOW, THEREFORE, BE IT RESOLVED by the Eastern Band of Cherokee Indians in Tribal Council Assembled, at which a quorum is present that the Tribal Council of the Eastern Band of Cherokee Indians does hereby place the following Ballot Question before the people at the next General Election, regarding the constitution document attached hereto:

Ballot Question:

Question: Should the Eastern Band of Cherokee Indians adopt the constitution attached within Res. No. _____ (2019)?

Yes _____

No _____

1 BE IT FINALLY RESOLVED that all resolutions inconsistent with this resolution are rescinded,
2 and that this resolution shall become effective when ratified by the Principal
3 Chief.
4

5
6 *Submitted by: Citizens for a Constitution;*
7 *Albert Rose, Birdtown Representative;*
8 *Perry Shell, Big Cove Representative;*
9 *Tom Wahnetah, Yellowhill Representative;*
10 *Jeremy Wilson, Wolftown Representative;*
11 *Boyd Owle, Birdtown Representative;*
12 *Bo Crowe, Wolftown Representative;*
13 *Bucky Brown, Snowbird/Cherokee Co. Representative*
14

Cherokee Council House
Cherokee, North Carolina
___February 7, 2019_
Date

AMENDMENT TO RES. 489 (2019):

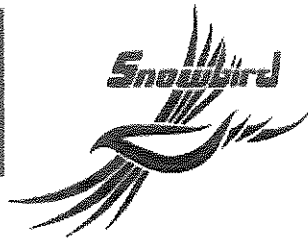
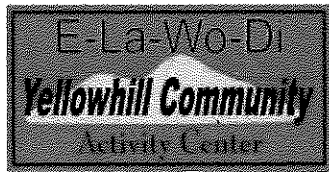
- Amend the "NOW THEREFORE BE IT RESOLVED," to read,
" The Eastern Band of Cherokee Indians shall adopt the document attached to Res. No. 489 (2019) as the official constitution for the Nation of the Eastern Band of Cherokee Indians"

For _____

Against _____

Constitution of the Eastern Band of the Cherokee Indians

BY THE PEOPLE, FOR THE PEOPLE



**C.H.A.
WOLFTOWN**

S.S.Y

Tow String

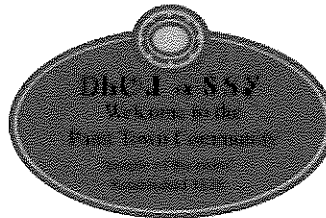
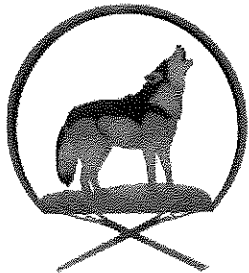


TABLE OF CONTENTS

PREAMBLE.....3

ARTICLE I – ORGANIZATION OF THE GOVERNMENT3

ARTICLE II – TERRITORY & JURISDICTION.....4

ARTICLE III - CITIZENSHIP5

ARTICLE IV – LEGISLATIVE BRANCH.....6

ARTICLE V – EXECUTIVE BRANCH10

ARTICLE VI – JUDICIAL BRANCH12

ARTICLE VII – GRAND COUNCIL.....14

ARTICLE VIII – OATH OF OFFICE15

ARTICLE IX – IMPEACHMENT OF ELECTED OFFICIALS16

ARTICLE X – RECALL.....18

ARTICLE XI – CIVIL RIGHTS.....19

ARTICLE XII – PUBLIC LAND.....21

ARTICLE XIII – SOVEREIGN IMMUNITY.....22

ARTICLE XIV – SAVINGS CLAUSE AND TRANSITIONAL PROVISIONS23

ARTICLE XV – AMENDMENTS24

ARTICLE XVI – ADOPTION25

**CONSTITUTION
OF THE EASTERN BAND OF CHEROKEE INDIANS**

PREAMBLE

We, the Principal People, the Eastern Band of Cherokee Indians, acknowledging the Creator, being determined to maintain our sovereignty, hold fast to our ancestral homelands and our natural resources; and, to establish justice, ensure tranquility, promote our culture, our education, our language and our common welfare; and, to secure for ourselves and our posterity the blessings of liberty, do establish this Constitution of the Eastern Band of Cherokee Indians. Herein we do acknowledge the foundation laid by the 1875 Lloyd Welch Constitution, Chapter 207 of the 1887 North Carolina State Charter and the 1986 Eastern Band of Cherokee Indians Charter and Governing Document and declare that this Constitution supersedes these and all other previous governing documents.

Article I – Organization of Government

Section 1. Sovereignty. The People of the Eastern Band of Cherokee Indians bear the right to self-determination and hereby establish a government that possesses inherent powers of sovereignty and protections granted by territorial integrity.

Section 2. Branches of Government. The powers of the government shall be divided into three separate but equal branches consisting of the Legislative, Executive and Judicial. In addition to the electoral process, the will of the People can be voiced by the Grand Council.

Section 3. Separation of Powers. No official of any Branch of Government shall exercise any power granted in this Constitution to any other Branch of Government except as expressly directed or permitted by this Constitution.

Section 4. Seat of Government. The seat of government of the Eastern Band of Cherokee Indians shall be located upon Tribal trust lands.

Article II – Territory and Jurisdiction

Section 1. Territory. The Territory of the Eastern Band of Cherokee Indians shall be comprised of all Tribal lands within the Qualla Boundary, and all lands held by the United States for the benefit of the Eastern Band of Cherokee Indians or its citizens, and any additional lands acquired by the Eastern Band of Cherokee Indians in fee. The Territory shall include all surface and subsurface lands and waters, submerged lands under navigable or non-navigable water, all air, water, minerals, timber, and any other natural resources.

Section 2. Jurisdiction. The Jurisdiction of the Eastern Band of Cherokee Indians shall extend to all persons, activities, and property within the Territory based upon inherent sovereignty of the Cherokee tribe. Every public highway or any other ingress into the Territory shall be accompanied by a public notice that entry is conditioned upon the acceptance of the Jurisdiction of the Eastern Band of Cherokee Indians. Any person who enters the Territory shall, by entering, be deemed to have consented to the Jurisdiction of the Eastern Band of Cherokee Indians. Every license or permit issued under the authority of the Eastern Band of Cherokee Indians or within the Territory shall include a provision submitting all parties and their assigns to the Jurisdiction of the Eastern Band of Cherokee Indians.

Article III – Citizenship

The citizenship of the Eastern Band of Cherokee Indians shall consist of all persons whose names validly appear on an official membership roll used by the Eastern Band of Cherokee Indians on the date of the adoption of this Constitution. Future citizenship shall be determined as provided for by Cherokee Code.

Article IV – Legislative Branch

The Legislative powers shall be vested in the Tribal Council which shall consist of twelve Council Representatives and shall constitute the Legislative Branch of government for the Eastern Band of Cherokee Indians.

Section 1. Composition. The Tribal Council shall consist of the following: two Representatives from each of the five (5) Qualla Boundary Townships of Yellowhill, Big Cove, Birdtown, Wolfstown, Painttown; together with two Representatives from Cherokee and Graham Counties, North Carolina, which two counties shall constitute one Township, for a total of twelve Tribal Council Representatives.

Section 2. Qualifications. In order to run for and/or serve as Tribal Council Representative a candidate must be a citizen of the Eastern Band of Cherokee Indians; must be at least twenty-five (25) years of age either by the date of the upcoming General Election or upon entering into service; and must have legally resided continuously in the representative Township for at least two (2) years immediately preceding the date of filing for election.

Section 3. Election for Tribal Council. Council Representatives shall be elected to their respective offices by the registered citizens of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years and are constituent citizens of the respective Townships.

Clause 1. Time of Election. The general election for Tribal Council Representatives shall be held on the first Thursday in September of 2021, following the adoption of this Constitution and every two years thereafter under such rules and regulations as may be adopted by the Board of Elections, consistent with this Constitution.

Clause 2. Selection. The successful candidate elected as a Tribal Council Representative shall be the candidate who receives a simple majority of votes cast by registered voters of each respective Township.

a. First Election after Adoption. In the first election after this Constitution is adopted, the two Council Representatives from each Township shall be selected as follows. The candidate that receives the most votes shall serve the full four (4) year term while the candidate that receives the next highest number of votes shall only serve a one-half term of two (2) years for the purpose of staggering terms of Representatives in each Township.

Clause 3. Vacancy in Office. In case of death, resignation, removal or any cause that a Tribal Council Representative becomes unable or unfit to perform the duties to the end of his/her current term of office, he/she shall be replaced as follows within fifteen (15) days.

a. Replacement. If more than twelve (12) months remain in the vacant term of office from the date of vacancy, the replacement shall be on an interim basis until the Board of Elections can hold a special election. If twelve (12) months or less remains in the vacant term of office from the date of vacancy, the interim

replacement shall finish out the vacant term. Whosoever completes the vacated term shall be deemed to have served a full term of office.

- b. Order of Succession.** The order of succession for interim replacement shall be as follows, unless the individual is unable to meet eligibility requirements for Tribal Council Representative as prescribed by this Constitution and the Board of Elections, or is unwilling to serve:
- i. Tribal Council candidate from the most recent election receiving the next highest number of votes of the Township where the vacancy exists;
 - ii. Community Club Chairperson for said Township at the time of vacancy

Section 4. Term of Office. The Representatives elected to the Tribal Council shall hold office for a term of four (4) years, not to exceed two (2) consecutive terms. The Representative that serves the first two (2) year term is limited to a total of six (6) consecutive years. Representatives who have reached this limitation shall be allowed to run again for office in the election cycle two (2) years next following their departure from office.

Section 5. Compensation. The Representatives serving on Tribal Council shall be compensated for their service by a series of calculations based upon their individual circumstance with no change in pay to take effect until the new Tribal Council is seated as a result of a General Election. In no way shall the Legislative branch directly adjust or otherwise influence any elected official's compensation.

Clause 1. Base Rate. The non-incumbent Representatives elected to the Tribal Council shall receive such compensation that shall be equal to an average salary of the full-time Tribal government employees plus ninety percent (90%) of that average salary, rounded up to the nearest thousand dollars (\$1,000). The determination of the average salary shall occur on a specific day within the same fiscal year as the Tribal Council election and after that fiscal year's new salaries have been installed but no later than three (3) months prior to primary elections. This method will determine the base rate of compensation.

Clause 2. Merit Increases. The calculation for a merit increase shall occur immediately following the determination of the base rate. The incumbent Representatives re-elected to the Tribal Council shall receive the merit increase in their compensation equal to the maximum merit increase accorded to the full-time Tribal government employees, rounded up to the nearest thousand dollars (\$1,000).

Clause 3. Chair of Council. The Chair of the Tribal Council shall receive such compensation that shall be equal to the Representative's compensation as determined by the appropriate prior clause, plus an additional six percent (6%), rounded up to the nearest thousand dollars (\$1,000). The additional compensation will apply only to this specific Representative, so long as they are filling the position of Chair.

Clause 4. Vice-Chair of Council. The Vice-Chair of the Tribal Council shall receive such compensation that shall be equal to the Representative's compensation as determined by the appropriate prior clause, plus an additional four percent (4%), rounded up to the nearest thousand dollars (\$1,000). The additional compensation will apply only to this specific Representative, so long as they are filling the position of Vice-Chair.

Section 6. Duties. The Tribal Council is hereby authorized and empowered to adopt laws and regulations for the general government of the Tribe; govern the management of real or personal property held by the Tribe; initially assign among its citizens thereof possessory holdings in land held in trust by the United States for the benefit of the Tribe or any possessory holdings that by operation of law revert back to the Tribe; appropriate the use of tribal funds in accordance with an annual budget and; is hereby vested with full power to enforce obedience to such legislations as may be enacted.

Section 7. Officers. All officers elected by the Tribal Council, including but not limited to; Chair, Vice-Chair, English and Cherokee Clerks shall hold office until the first Annual Council held after the next tribal election and all officers shall hold office until their successors are duly installed. These officers shall serve during the term of council. Tribal Council may remove and replace any officer by the same standard adopted for election.

Clause 1. Election of the Chair and Vice-Chair. An election of the Tribal Council Chair and Vice-Chair shall take place after the newly elected council is seated and shall be selected from among their member Representatives.

Clause 2. Vacancy of the Chair or Vice-Chair. If the conditions of Article IV Section 3 Clause 3 involve the Chair or Vice-Chair of Tribal Council, such officer shall be replaced by an election of the current seated members of Council at its next meeting when business can be transacted.

Section 8. Annual Council. There shall be an Annual Council held on the first Monday in October of every year. No business shall be transacted unless a quorum of Council Representatives are present, with a quorum consisting of a majority of the current members of Council.

Section 9. Council Actions. All Council Representatives, including the Chairman, shall be entitled to vote on all issues. All acts of Council shall be signed by the Council Chairman and the appropriate Council clerk(s). All acts neither ratified nor vetoed by the Executive branch within thirty (30) calendar days of signing by the Council Chairman shall be deemed enacted.

Section 10. Weighted Vote. In order to provide equal representation to all citizens of the Eastern Band of Cherokee Indians, a census survey of the Tribal citizenship, based upon the information located within the official citizenship rolls, shall be initiated by Tribal Council for the purposes of determining a census of the citizenship and of the Townships. The results of the census will determine the weight of the votes to be cast by each Tribal Council Representative and shall be conducted prior to the 2021 Tribal election and prior to the general election each ten years thereafter to determine the number of Tribal citizens affiliated with a Township.

After the regular 2021 general tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting authority to each Council Representative. The voting weight allotted to each Council Representative shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of Tribal citizens who are counted in each Township and the total number of Tribal citizens. The Cherokee Supreme Court shall have original

jurisdiction to resolve any dispute pertaining to the voting weight attributed to a Tribal Council Representative.

Section 11. Veto. Any legislation of Tribal Council may be vetoed by the Executive branch. A veto shall not prevail against a two-thirds (2/3) unweighted vote of Tribal Council.

Article V – Executive Branch

The Executive powers shall be vested in the Executive Officers and shall constitute the Executive Branch of government for the Eastern Band of Cherokee Indians.

Section 1. Composition. The Executive Officers of the Tribe shall consist of a Principal Chief and a Vice-Chief.

Section 2. Qualifications. In order to run for and/or serve as Principal Chief or Vice-Chief a candidate must be a citizen of the Eastern Band of Cherokee Indians; must be at least thirty-five (35) years of age either by the date of the upcoming General Election or upon entering into service; and must have legally resided on Cherokee trust lands continuously for at least two (2) years immediately preceding the date of filing for election.

Section 3. Election for Executive office. The Principal Chief and Vice-Chief shall be elected to their respective offices by the registered citizens of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years.

Clause 1. Time for Election. The election for Principal Chief and Vice-Chief shall be held on the first Thursday in September of 2023, following the adoption of this Constitution and every four years thereafter under such rules and regulations as may be adopted by the Board of Elections.

Clause 2. Selection. Election for Principal Chief and Vice-Chief shall be the candidates who each receive a majority of votes cast by the registered voters of the Eastern Band of Cherokee Indians.

Clause 3. Vacancy of Chief. In case of death, resignation, removal or any cause that the Principal Chief becomes unable or unfit to perform the duties of the current term of office, the Chief shall be replaced immediately by the Vice-Chief.

Clause 4. Vacancy of Vice-Chief. In case of death, resignation, removal or any cause that the Vice-Chief becomes unable or unfit to perform the duties of the current term of office, the Vice-Chief shall be replaced immediately by an elected member of Tribal Council, chosen by Tribal Council.

Clause 5. Vacancy of Executive Branch. In the event that both Principal Chief and Vice-Chief simultaneously are unable or unfit to perform their duties, the Chair of Tribal Council shall replace the Principal Chief immediately, the Vice-Chief shall be replaced immediately by any remaining elected member of Tribal Council, chosen by Tribal Council.

Clause 6. Interim Term. If more than twelve (12) months remain in the vacant term of office identified in the above Clauses 3, 4, or 5, the replacement shall be on an interim basis until the Board of Elections can hold a special election. If twelve (12) months or less remains in the vacant term of office identified in the above Clauses 3, 4, or 5, the replacement shall finish out the vacant term.

Section 4. Term. The elected Principal Chief and Vice-Chief each shall hold office for a term of four (4) years, not to exceed two (2) consecutive terms.

Section 5. Compensation. The Principal Chief and Vice-Chief shall receive as compensation for services such sum as shall be determined by a series of calculations based upon their individual circumstance. No change in pay shall take effect until the next elected Tribal Council are seated as a result of a General Election. In no way shall the Executive branch directly adjust or otherwise influence any elected official's compensation.

Clause 1. Principal Chief's Rate. The non-incumbent seated to the position of Principal Chief shall receive such compensation that shall be equal to an average salary of the full-time Tribal government employees plus three hundred thirty-five percent (335%) of that average salary, rounded up to the nearest thousand dollars (\$1,000). The determination of the average salary shall occur on a specific day within the same fiscal year as the Tribal Council election and after that fiscal year's new salaries have been installed but no later than three (3) months prior to primary elections.

Clause 2. Vice-Chief's Rate. The non-incumbent seated to the position of Vice-Chief shall receive such compensation that shall be equal to an average salary of the full-time Tribal government employees plus two hundred seventeen percent (217%) of that average salary, rounded up to the nearest thousand dollars (\$1,000). The determination of the average salary shall occur on a specific day within the same fiscal year as the Tribal Council election and after that fiscal year's new salaries has been installed but no later than three (3) months prior to primary elections.

Clause 3. Increases. The calculation for merit pay increase shall occur immediately following the determination of the new base pay rate. The incumbent Principal Chief and/or Vice-Chief, if re-elected to their respective offices shall receive an increase in their compensation equal to the maximum merit increase accorded to the full-time Tribal government employees, rounded up to the nearest thousand dollars (\$1,000).

Section 6. Powers and Duties. There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief. The Committee shall execute and carry out tribal legislation.

Clause 1. Legislation. The Principal Chief, or in his/her absence, the Vice-Chief shall ratify or veto any legislation passed by Tribal Council. Ratification or veto must take place within thirty (30) days of passage of legislation.

Clause 2. Budgets. The Executive Committee shall present a proposed budget based on projected annual revenues to Tribal Council no later than July 1 of each year.

Section 7. Fiscal Duty. No money shall be paid out except upon direction of the Principal Chief as authorized by an act of the Tribal Council.

Article VI – Judicial Branch

The Judicial powers shall be vested in the Justices and Judges of the Cherokee Courts as herein provided, which shall constitute the Judicial Branch of government for the Eastern Band of Cherokee Indians. The Judicial Branch shall have sole power to interpret the Constitution, laws, treaties, customs and traditions of the Eastern Band of Cherokee Indians, and issue all legal and equitable orders, writs, and decrees in aid of its jurisdiction.

Section 1. Composition. The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, and such other inferior appellate courts and Trial Courts of Special Jurisdiction as may be established by law. The Supreme Court shall be known as the “Cherokee Supreme Court” and the Trial Court shall be known as the “Cherokee Trial Court.” Other courts may be established by the Tribal Council only upon the recommendation of the Chief Justice.

Clause 1. Cherokee Supreme Court. The Supreme Court shall be comprised of one Chief Justice and no less than two Associate Justices. The Cherokee Supreme Court shall always sit with an odd number of Justices.

Clause 2. Cherokee Trial Court. The Trial Court shall be comprised of one Chief Judge and no less than two Associate Judges.

Clause 3. Courts of Special Jurisdiction. The Trial Courts of Special Jurisdiction shall be comprised of Judges as assigned by the Chief Justice.

Clause 4. Temporary Adjudicators. The Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice.

Section 2. Qualifications.

Clause 1. Chief Justice. The Chief Justice shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association shall be a member in good standing with the Cherokee Bar for ten (10) consecutive years with demonstrated knowledge of Federal Indian law, and shall have no less than five (5) years of experience as a judge in a Tribal, state or Federal court.

Clause 2. Associate Justices. The Associate Justices shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association shall be members in good standing with the Cherokee Bar for five (5) consecutive years with demonstrated knowledge of Federal Indian law, and shall have no less than two (2) years of experience as a judge in a Tribal, state or Federal court.

Clause 3. Chief Judge. The Chief Judge shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association shall be a member in good standing with the Cherokee Bar for five (5) consecutive years with demonstrated knowledge of Federal Indian law, and shall have no less than two (2) years of experience as a judge in a Tribal, state or Federal court.

Clause 4. Associate Judges. The Associate Judges shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association and shall be members in good standing with the Cherokee Bar.

Section 3. Installation.

Clause 1. Chief Justice.

a. Appointment. Recommendations for the position of Chief Justice shall be submitted to the Principal Chief by a panel consisting of the Community Club Council Officers and active Justices and Judges of the Cherokee courts. The Principal Chief shall make a nomination from the recommendations presented by the panel which must be confirmed by Tribal Council.

b. Vacancy of office or reappointment. In the event that the Chief Justice is unable to complete the current term of service or successfully completes the current term of service, Article VI, Section 3.1.a of this Constitution shall apply.

Clause 2. Other Justices and Judges. The positions of Associate Justices, Chief Judge and other judges shall be selected and nominated by the Chief Justice and confirmed by Tribal Council.

Clause 3. Temporary Adjudicators and Magistrates. Prior to assignment, temporary Justices and Judges shall be nominated by the Chief Justice and confirmed by Tribal Council. Magistrates shall be appointed exclusively by the Chief Justice.

Clause 4. Adjudicators at the time of adoption. Notwithstanding any other provision of this Constitution, any Justice or Judge of the Eastern Band of Cherokee Indians Courts who holds that office at the time this Constitution is adopted shall continue to assume all powers and duties of that office as set forth in this Constitution.

Section 4. Term.

Clause 1. Supreme Court. The Chief Justice shall be appointed for a term of six (6) years and shall serve no more than three (3) consecutive terms. Associate Justices shall be appointed for a term of four (4) years and shall serve no more than three (3) consecutive terms.

Clause 2. Cherokee Trial Court. The Chief Judge shall be appointed for a term of six (6) years and shall serve no more than three (3) consecutive terms. Associate Judges shall be appointed for a term of four (4) years and shall serve no more than three (3) consecutive terms.

Section 5. Compensation. The Justices and Judges shall be compensated from the Judiciary budget as administered by the Chief Justice of the Cherokee Supreme Court. No Justice or Judge shall be subjected to a reduction in compensation during a term in office.

Section 6. Powers and Duties. The Chief Justice for the Judicial branch shall present a proposed Judiciary budget to Tribal Council no later than July 1 of each year and shall thereafter be empowered to administer such budget exclusively.

Article VII – Grand Council

Grand Council is a unique body in Cherokee culture and tradition. Grand Council is and has been an assembly of the Principal People which consists of Tribal citizens eighteen (18) years of age or older who wish to take part in issues that are facing the Tribe. The Community Club Council shall convene, establish the procedures for, set the agenda for, and preside over Grand Council.

Section 1. Call for Grand Council. The Community Club Council Officers shall have the exclusive right to call a Grand Council of all eligible Tribal citizens.

Section 2. Agenda. Any agenda item(s) for Grand Council must be submitted to the Community Club Council Officers for prior approval ninety (90) days before a Grand Council is convened.

Section 3. Officers. The Community Club Council Officers will determine the roles and responsibilities of the officers of the Grand Council and who will fill them.

Section 4. Quorum. A quorum of Grand Council shall consist of no less than twenty-five (25) percent of the eligible Tribal citizens.

Section 5. Results from Grand Council. Any resolutions decided upon in Grand Council shall be placed on the legislative agenda for the next meeting of Tribal Council for legislative action.

Article VIII – Oath of Office

The Oath of Office is a solemn promise between the elected or appointed officials and the Cherokee People for whom they are elected or appointed to represent.

Section 1. Agreement to Ethics. All elected or appointed officials of the Eastern Band of Cherokee Indians, before taking their oath of office, shall agree by signature, to conform their conduct to the Standards of Ethical Conduct as promulgated by the Audit and Ethics Committee.

Section 2. Oath of Office. All elected or appointed officials of the Eastern Band of Cherokee Indians before entering upon the duties of office shall take the following oath before the Chief Justice of the Cherokee Supreme Court, or his/her designee:

“I do solemnly swear (or affirm) that I will faithfully execute the duties of (the elected or appointed officials as applicable) of the Eastern Band of Cherokee Indians and will to the best of my ability, preserve, protect and defend the Constitution of the Eastern Band of Cherokee Indians and the Constitution of the United States, and laws confirmed and ratified by the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained Tribal office by any undue or unlawful means, and that in all measures which may come before me I will so conduct myself in a manner most conducive to the interest and prosperity of the Eastern Band of Cherokee Indians.”

Article IX – Impeachment of Elected Officials

Section 1. Allegations of Misconduct. Any claims of misconduct by an elected official shall be referred to the Audit and Ethics Committee who shall meet within thirty (30) days to determine whether any further action is warranted.

Section 2. Drafting of Charges. If further action is warranted, the Audit and Ethics Committee shall investigate and determine whether there is sufficient cause to draft an Information Listing Articles of Impeachment. If there are multiple officials to be charged, a separate Information shall be drafted for each official. The Audit and Ethics Committee will select one of its own to present the Information(s) to Tribal Council.

Section 3. Acceptance of Charges. In open session where a quorum is present, Tribal Council shall hear the allegations of misconduct presented in the Information and more fully described in the Articles of Impeachment. A member of the Audit and Ethics Committee shall bring the allegations of misconduct to the floor for a majority vote on whether to accept any Article of Impeachment. Upon acceptance, a date shall be set no later than sixty (60) days from the date of ratification for a hearing on any Article so ratified.

Clause 1. Limited Presence. Anyone named in an Article of Impeachment shall be permitted to be present while the Information is read into the record but shall not be permitted to be present during any discussions or vote on the Article wherein they are named.

Clause 2. Ratification. The Tribal official named in an Article of Impeachment shall not be involved in, nor interfere with the process of ratification of that specific Article.

Section 4. Hearings. Tribal Council will hold public hearings on whether to convict the individual named in the ratified Articles of Impeachment. The ratified Articles are not a limiting factor in what the Tribal Council may consider.

Clause 1. Rights of the Accused. Persons named in ratified Articles shall have the right to defend themselves with their own attorney, present evidence, call witnesses, subpoena persons or things pursuant to the Cherokee code, and perform cross-examinations.

Clause 2. Prosecution. The Audit and Ethics Committee shall hire an attorney to prosecute the case. If during the prosecution more charges are discovered, the Articles of Impeachment may be amended.

Clause 3. Tribal Council. A quorum of Tribal Council shall convene to listen to the entire case without prejudice before rendering a verdict convicting or acquitting a defendant.

Clause 4. Duties of the Presiding Jurist. The Chief Justice of the Cherokee Supreme Court or his/her designee, shall preside over the hearings, rule on evidentiary and procedural objections, possess the power of contempt, and ensure the proceedings are carried out in an ordered and unbiased manner. The Chief Justice shall not participate in the deliberations for impeachment.

Section 5. Judgment. Less any Council Representative who may stand accused, Tribal Council may perform their deliberations in a closed session but shall be in an open session to cast votes.

Clause 1. Conviction. To sustain a conviction, the prosecution shall prove an Article of Impeachment by clear, cogent, and convincing evidence. A two-thirds (2/3) supermajority unweighted vote of the Tribal Council quorum present must be reached to convict the accused. If convicted, the official shall be immediately removed from office. The vacancy created shall be filled according to applicable provisions of this Constitution.

a. Appeal. An official convicted by Tribal Council and thereafter removed from office following impeachment cannot seek judicial review of such conviction. Tribal Council has sole authority to convict an elected official following impeachment.

Clause 2. Acquittal. If a supermajority vote is not reached on an Article, the official shall be acquitted of that Article.

Section 6. Penalties. A judgment of conviction causing an official to be removed by impeachment rendered by the Tribal Council shall include a disqualification from holding future elected or appointed office or employment in any capacity by the Eastern Band of Cherokee Indians or its entities; and forfeiture of retirement benefits gained during his/her time in office. Additional penalties may include denial of certain rights, benefits, or privileges as a citizen of the Eastern Band of Cherokee Indians.

Clause 1. Reversal of Removal and Penalties. All judgments and penalties determined by Tribal Council regarding impeachment are final and are not subject to review by any other branch of Tribal government.

Clause 2. Double Jeopardy. A judgment to remove by impeachment shall be final but jeopardy shall not attach so that an impeached official may be bound over for prosecution, trial, conviction and sentencing in a court of law.

Clause 3. Restitution. The Eastern Band of Cherokee Indians may initiate a civil action in the Judicial Branch to seek restitution of any funds misappropriated or wrongfully acquired by an individual removed by impeachment.

Article X – Voter Recall

Section 1. Initiation. A notice of intent to initiate a recall petition must be registered with the Board of Elections to initiate a recall. The Board of Elections shall then indicate the number of votes cast in the previous General Election for the specific office in question and shall then prescribe the number of signatures required and a petition commencement date.

Clause 1. Number Required. The Board of Elections shall set the prescribed number of signatures at forty-five (45) percent of the votes cast during the prior election.

Section 2. Signature Collection. The petition must be signed by registered voters from within the Township(s) of recall and verified by the Board of Elections. Any petition to be valid must be submitted to the Board of Elections within thirty (30) days of the petition commencement date. If the petition is not timely submitted, the signatures obtained are invalidated.

Section 3. Referendum. If the petition for recall meets or exceeds the above requirements, then a Referendum for Recall shall be instituted by the Board of Elections.

Section 4. Special Election. The Board of Elections shall give notice to the affected voters of the purpose, time and location of the special election to be held within ninety (90) days from the date of the Board's official acceptance of the validated petition.

Clause 1. Locking Voter Registration. While the Referendum for Recall is in process, no new voters shall be allowed to register within the district of recall.

Section 5. Recall. An affirmative vote of sixty-seven (67) percent or more of the votes cast in the most recent General Election shall be required to remove an elected official from office. When the balloting has been completed and declared official, if the votes for recall meet or exceed the threshold, then the elected official that was the subject of recall shall be removed from office immediately creating a vacancy. Any vacancy so created shall be filled pursuant to the appropriate provision of this Constitution.

Section 6. Penalties. Any persons removed from office by recall shall not be disqualified from holding office in the future or employment in any governmental capacity by the Eastern Band of Cherokee Indians.

Article XI – Civil Rights

The Indian Civil Rights Act shall provide protection to citizens of the Eastern Band of Cherokee Indians.

The citizens of the Eastern Band of Cherokee Indians, in exercising the powers of self-government shall further be protected as follows:

1. **Basic Freedoms.** The Tribe shall not make or enforce any law which infringes upon religious beliefs or prohibits the free exercise thereof, nor any law which establishes any religion or prefers one over any other, make or enforce any law prohibiting the freedom of speech or of the press, or the right of the people to peaceably assemble, and to petition for redress of grievances;
2. **Firearms.** The Tribe shall not pass any law infringing upon the right of the people to own and use firearms inconsistent with the Second Amendment to the United States Constitution;
3. **Personal Protection.** The Tribe shall not pass any bill of attainder or ex post facto law;
4. **Search & Seizure.** The Tribe shall not violate the right of the people to be secure in the privacy of their persons, houses, media, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, signed by a Judge, and particularly describing the place, person, house, media, vehicle, or effects to be searched, the object and scope of such search, and the person or thing to be seized, and to have these rights explained at the time of service;
5. **Criminal Trials.** The Tribe shall not compel any person in any criminal case to be a witness against him or herself, nor subject any person for the same offense to be twice put in jeopardy, nor deny to any such person the right to a speedy and public trial, and due process of law.
The Tribe shall ensure that any person accused of an offense be informed of the nature and cause of the accusation, be confronted with the witnesses against him or her, have compulsory process for obtaining witnesses in his or her favor, and have the assistance of counsel for his or her defense, whose fees may be reimbursed by the defendant as provided by law if convicted, and to have these rights explained at the time of arrest or accusation;
6. **Jury Trial.** The Tribe shall not deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the Eastern Band of the Cherokee Indians;
7. **Bail and Punishment.** The Tribe shall not require excessive bail, impose excessive fines, nor inflict cruel and unusual punishments;
8. **Equal Protection.** The Tribe shall not deny to any person the equal protection of its laws or deprive any person of life, liberty, personal property or a possessory interest in real property without due process of law;
9. **Voting.** The Tribe shall not deny the right to vote to any citizen of the Tribe who has attained the age of eighteen (18) years or older;

- 10. Education.** The Tribe shall establish, provide for, and perpetuate an educational system that promotes, at a minimum the preservation of the Cherokee language and culture;
- 11. Reserved Powers.** Powers not granted to the Tribal government shall be reserved to the People.

Article XII – Public Land

The Legislative Branch of the Eastern Band of Cherokee Indians shall be empowered to adopt laws and regulations for the management and control of all property, either real or personal, belonging to the Tribe, and no person shall be entitled to own a possessory holding in any lands belonging to the Eastern Band of Cherokee Indians, unless such person shall be a citizen of the Tribe.

Section 1. Land in Trust. All lands owned by the Tribe and held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians, shall remain trust property in perpetuity. Nothing in this section shall prevent the Tribe from entering into a ‘like-kind’ exchange of trust property for other realty.

Section 2. Eminent Domain. When deemed necessary by Tribal Council, lands held by the Eastern Band of Cherokee Indians for which a possessory holding has been assigned, may be condemned only for public purposes for the benefit of the Tribe. This power of eminent domain may be exercised only after each person who has a property interest in the subject of condemnation has received proper notice, due process, and just compensation for their property interest. The Eastern Band of Cherokee Indians will not use the power of eminent domain except for public utilities, improvements or infrastructure.

Article XIII – Sovereign Immunity

Section 1. Sovereignty. The Eastern Band of Cherokee Indians is a sovereign nation with all rights and privileges attendant thereto. The Eastern Band of Cherokee Indians shall be conclusively immune from any cause whatsoever as an established sovereign unless the Legislative Branch, the United States Congress, or the United States Supreme Court expressly provides otherwise.

Section 2. Limited Waiver. The Eastern Band of Cherokee Indians expressly waives the Tribe's sovereign immunity for claims brought in the Cherokee Court system seeking injunctive or declaratory relief concerning any rights guaranteed by this Constitution, or any act of the United States Congress, or pronouncement of the United States Supreme Court.

Article XIV – Savings Clause and Transitional Provisions

Section 1. Savings Clause. All actions of the Eastern Band of Cherokee Indians adopted before the effective date of this Constitution shall continue in full force and effect to the extent that they are consistent with this Constitution.

Section 2. Transitional Provisions. The current members of the Tribal Council, the Principal Chief and Vice-Chief, and the Judges and Justices of the Cherokee Court system serving at the time of the adoption of this Constitution shall continue to serve in their respective offices for the duration of their present term at which time the applicable provisions of this Constitution shall control.

Section 3. Term Limit Exemption for Incumbents. The limitations placed on the terms of service by this Constitution shall not be calculated based on prior service for any incumbent holding office at the time of adoption.

Article XV – Amendments

This Constitution may be amended by a simple majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election called for that purpose by Tribal Council provided that at least thirty percent (30%) of those registered to vote shall vote in such election, but no amendment shall become effective until the results are certified by the Election Board.

Article XVI – Adoption

Section 1. Adoption. This Constitution shall become the supreme law of the Eastern Band of Cherokee Indians when adopted by a majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election and shall become effective after certification by the Election Board.

Section 2. Supreme Law of the Tribe. Upon adoption, this Constitution shall repeal and supersede the Charter and Governing Document of the Eastern Band of the Cherokee Indians as well as any law or precedent dependent thereon which is inconsistent with this Constitution.