

## Chapter 16C - GAMING REVENUE ALLOCATION PLAN

## Sec. 16C-1. - Statement of policy.

- (a) This chapter is enacted in order to promote the general welfare of the Eastern Band of Cherokee Indians and its members, to provide for fair and equitable distribution to eligible enrolled members from Class II and Class III gaming activities conducted by and on behalf of the Eastern Band of Cherokee Indians; and
- (b) In order to have consistent terms and definitions throughout Tribal law as recently recommended by the National Indian Gaming Commission, the Tribe has decided to use the term "distributable net revenue," as defined in Section 16C-2 below, to establish the net gaming revenues that must be distributed to the Tribe by all Tribal gaming operations and then further distributed by the Tribe in accordance with this revenue allocation plan; and
- (c) In order to provide for long-term investment of distributable net revenue derived from Tribal gaming activities, to be invested in a manner which will provide for the general welfare of the Tribe over a period of time longer than is presently provided in the Tribe's Gaming Compact with the State of North Carolina; and
- (d) In order to provide for an allocation of specified amounts to the Tribe's general fund, to be used in the current operating budget of the Tribe in each fiscal year; and
- (e) To provide funding for retirement of debt associated with Tribal gaming facilities, schools, and other facilities, the development of housing and infrastructure of the Tribe, and for the other purposes supporting the general welfare of the Tribe and its members as set forth in this chapter.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 369, 12-15-2022)

## Sec. 16C-1.1. - Authority.

The Tribe is authorized to establish laws, regulations and policies to provide general welfare assistance to eligible Tribal members for services, activities and needs including medical expenses, housing, utility and transportation expenses, energy assistance, health and wellness activity expenses, social services expenses, cultural, spiritual and educational expenses, and other related expenses. It is the Tribe's intent that the assistance provided pursuant to these laws, regulations and policies may be provided in the form of distributions under a General Welfare Exclusion (GWE) Program in compliance with requirements imposed by the U.S. Internal Revenue Service so that such distributions are excluded from gross income for federal income tax purposes.

( Ord. No. 369, 12-15-2022)

Sec. 16C-1.2. - GWE policies to be approved by Tribal Council.

The Tribe's General Welfare Exclusion Program shall be governed by written policies that shall be reviewed and approved by Tribal Council before they shall be effective. Subsequent amendments to the polices shall also be subject to Tribal Council approval.

( Ord. No. 369, 12-15-2022)

Sec. 16C-2. - Definitions.

For purposes of this chapter:

*Act* shall mean the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. 2701 et seq.

*BIA* shall mean the Bureau of Indian Affairs, or the official of such agency with the duty or assigned authority to act in behalf of the agency.

*Capital improvement program (CIP)* shall mean the program established to provide funding for ongoing capital improvements of Tribal operations and programs.

*Cherokee Central Schools Assistance Fund* shall mean that fund established to provide funding to implement the Cherokee Central Schools Strategic Plan and the Facility Master Plan.

*Cherokee Central School Board* shall mean those officials elected to carry out the policies and procedures for the Cherokee Central School System.

*Debt service sinking fund* shall mean the fund established for the purposes set forth in Section 16C-14.

*Distributable net revenue* shall mean all revenue distributed to the Tribe by a gaming operation, which shall be calculated as follows: gross revenue of the gaming operation less (1) prizes and operating expenses, (2) payments owed to a management contractor, (3) debt service payments (including without limitation principal, interest, and related fees, costs, and expenses), and (4) contributions to duly authorized capital/expansion reserve funds. Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the Tribal Gaming Commission.

*Eligibility for disbursement* shall apply to any person who is enrolled as of September 30, 1997, March 31, 1998, and each subsequent disbursement date thereafter with the Tribe, provided that person is enrolled no less than 60 days preceding a scheduled disbursement and meets all requirements of this chapter.

*Endowment and Investment Funds* shall mean the trust funds established pursuant to this chapter to administer funds allocated for investment and appreciation for the long-term benefit of the Tribe and its members.

*External investments* shall mean investments that may be made by the Minors Trust Fund, Debt Service Sinking Fund and the Endowment and Investment Funds which must be made under the Prudent Investor Rule, in accordance with the investments permitted to be made by such funds in this chapter, as amended or supplemented from time to time.

*Equivalent degree* shall mean a high school diploma, GED, degree from a vocational or technical college, or other appropriate educational institution as determined by the Tribe.

*General Welfare Exclusion Program* shall mean the laws and policies written or adopted by the Tribe to provide a mechanism for providing benefits, which may include financial distributions, to eligible Tribal members so that the benefits are excluded from federal income taxation by the U.S. Internal Revenue Service.

*Higher education* shall mean college, graduate, or professional school. Higher education shall not mean secondary school.

*Higher education funding program* shall mean those funds established to provide funds to benefit enrolled members who attend institutions of higher education.

*Housing Fund* shall mean the fund created for the purpose of providing funds to assist in housing development as permitted to be made by this chapter, as amended or supplemented from time to time.

*Interim Distribution Fund* shall mean a fund into which 50 percent of distributable net revenue is deposited monthly by Tribal Management and from which funds are distributed as per capita payments to competent adult members on a semi-annual basis and into the Minors Trust Fund semi-annually for minor and other legally incompetent members. This Fund shall be invested only in U.S. Treasury bills, other U.S. Government obligations or collateralized bank certificates of deposits. Only one type of instrument shall be used during the accrual period and the type of investment used will be determined by interest rate predictions within the accrual period. The obligations shall have a maturity date of no later than November 15 and May 15. The instrument used during each period shall be approved by the Investment Committee and the Tribal Budget and Finance Office by September 1 and March 1.

*Internal investments* shall mean investments that are made by allocation or distribution of funds through the Tribal budget process.

*Manager* shall mean that person or institution retained by the Tribe to manage and oversee the investments of the Minors Trust Fund.

*Members* shall mean those persons who are duly recognized as enrolled members of the Eastern Band of Cherokee Indians by the Tribe.

*Minor* shall mean a member who has not yet reached the age of 18 years.

*Minor Trust Fund* shall mean a fund created by the Tribe pursuant to Section 16C-6 to receive a portion of the distributable net revenue for and on behalf of enrolled minor and incompetent members of the Tribe.

*Revenue allocation plan* shall mean this Chapter 16C of the Cherokee Code.

*State* shall mean the State of North Carolina.

*Tribal Council* shall mean the legislative body of the Eastern Band of Cherokee Indians.

*Tribal Court* shall mean the Cherokee Court established pursuant to Article 7 of the Cherokee Code.

*Tribal Entity* shall mean only Qualla Housing Authority, Cherokee Boys Club, the Tribal Casino Gaming Enterprise, the Tribal Bingo Enterprise, the Cherokee Indian Hospital Authority, Cherokee Cablevision, Kituwah LLC, and the Eastern Band of Cherokee Indians Community Development Corporation (Sequoyah Fund).

*Tribal management* shall mean the Executive Committee and the Tribal Finance Officer, who shall be jointly responsible for verifying the calculation of distributable net revenue on a monthly basis for purposes of this chapter and for making monthly deposits of such distributable net revenue into the appropriate accounts or funds under this chapter.

*Tribal shares* is defined as: Total Shares = 12 months/12 shares of the competent adult + 12 months/12 shares minors + x months per deceased members (as defined in section 16C-5(b))/12 shares).

*Tribe* shall mean the Eastern Band of Cherokee Indians. It does not mean individual members of the Tribe.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 245, 8-5-2016; Ord. No. 20, 2-14-2018; Ord. No. 369, 12-15-2022; Ord. No. 550, 6-9-2023)

#### Sec. 16C-3. - Allocations and applications of distributable net revenues.

In order to provide for the general welfare of the Tribe and its members, the Tribal Council shall review the income and expenses of Tribal gaming operations each year and after due consideration of the need to fund Tribal government operations and programs, shall determine the overall needs of the Tribe and its members as well as the need to promote Tribal economic development and shall then adopt a budget which will include the amount provided for allocation of available gaming funds. This budget shall include a determination of what amount shall be provided for Tribal purposes pursuant to the Indian Gaming Regulatory Act (Act). The budget shall first provide for distribution of 50 percent of distributable net revenue to Tribal members under this chapter. The remaining 50 percent of distributable net revenue shall be allocated for distribution to support Tribal government operations, enterprises or programs; provide for general welfare of the Tribe and its members; promote Tribal economic development; donate to charitable organizations; or fund operations of local government agencies; all as the Tribal Council may deem necessary or appropriate, subject to the provisions of the various funds established in this chapter.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009)

Sec. 16C-4. - Membership and eligibility.

- (a) *Membership requirements.* Those members, including minors and other legal incompetents, who are recognized by the Tribe as duly enrolled, and who do not fall within the specific exemptions listed in paragraph (b) below, shall be eligible for semi-annual distributions in the Minors Trust Fund and/or per capita payments, or if appropriate, in the form of general welfare distributions.
- (b) *Ineligible members.* The following are not eligible to receive distributions:
- (1) A former member of the Eastern Band of Cherokee Indians who has been formally and officially disenrolled by the Eastern Band of Cherokee Indians. Any person, who has been disenrolled by the Eastern Band of Cherokee Indians based on false or misleading representations in the enrollment application process, or on the knowing acceptance of financial benefits of membership in any other Indian Tribe, shall be liable in Tribal Court for repayment of all funds received from the Eastern Band of Cherokee Indians.
  - (2) A member of the Eastern Band of Cherokee Indians who has been convicted of theft, embezzlement, or any other crime involving unlawful taking of money or property from any gaming operation of the Eastern Band of Cherokee Indians shall be subject to a civil penalty to be established by the Cherokee Gaming Commission under its hearing procedures set forth in Article VI of the Tribal Gaming Ordinance. That civil penalty shall not be less than 100 percent, or more than 200 percent, of the amount determined by the Gaming Commission to have been taken by the member. The amount of the civil penalty shall be collected by garnishment from each per capita check or general welfare distribution as a debt to the Tribe until the amount is paid in full. The member shall not receive any per capita payment or general welfare distribution until the full amount of the penalty has been collected.
  - (3) An enrolled member of the Eastern Band who for religious or other reasons has voluntarily signed a waiver of his or her per capita distribution or general welfare distribution shall not be eligible to receive any per capita payment or general welfare distribution during the period such a waiver remains on file with the Tribal Enrollment Office or the Budget and Finance Office. Such a waiver may be revoked, but the revocation shall only be effective as to future per capita payments or general welfare distributions distributed 60 days or more after written revocation of the waiver is received by the Tribal Enrollment Office.
- (c) *Applications, written determination of eligibility.* Applications for a finding of eligibility may be made at any time and shall be submitted in such form and manner as the Enrollment Office may reasonably require. In order to provide for the orderly review and consideration, applications submitted within less than 60 days of a scheduled distribution date shall not be eligible for distribution until the next scheduled distribution. Only names of the newly enrolled members for

the current year shall be published in the Cherokee One Feather no later than 15 days following the aforementioned dates. Any applicant found not to be eligible shall be provided with a written determination of the basis for the denial by the Enrollment Office.

- (d) *Appeal of findings.* Any person who believes that the Enrollment Office has made an erroneous determination regarding their own membership may appeal that finding in accordance with the Tribal Enrollment Ordinance, Chapter 49 of this Code. The Enrollment Officer shall offer such evidence and testimony as may be appropriate to justify the finding of ineligibility.
- (e) *Time limit for claiming distribution or requesting reissuance of a distributed per capita check or general welfare distribution.*
- (1) A member who is eligible for, but did not receive, any distribution made before December 31, 1998, shall file a written request with the Finance Office on or before December 31, 1999.
  - (2) Except as otherwise provided in this Section, a member who is eligible for, but does not receive, a per capita distribution or general welfare distribution, or who received the same but for any reason required the per capita check or general welfare distribution to be re-issued must make a written request to the Budget and Finance Office within 60 days of the distribution. The date of distribution is the date on which the Budget and Finance Office makes its bulk mailing of per capita checks to members of the Tribe, or the date of the general welfare distribution.
  - (3) In circumstances where a deceased member is eligible for but does not receive a per capita distribution or general welfare distribution, the authorized representative of the deceased member's estate must make a written request to the Budget and Finance Office for the distribution within one year of the deceased member's death. Undisbursed general welfare distributions shall be treated as per capita distributions for purposes of this subsection. This subsection does not apply to funds held for the benefit of a minor or incompetent enrolled member in the Minors Trust Fund (see § 16C-6(e)).
  - (4) Upon failure to make a request in writing within the time provided in this Section, the member's entitlement to the missed distribution shall expire. Any unclaimed funds held in reserve for such claims shall be distributed to all eligible members at the next per capita distribution.
  - (5) Infant per capita payments missed. The 60 day time limit expressed in this Subsection does not apply to certain persons who were enrolled as members of the Tribe as infants but who were legally adopted as infants. These persons may make a claim for missed per capita distributions only. To claim missed per capita distributions, these persons must submit a resolution to Tribal Council requesting a hearing on the matter and must:
    - (A) Have been enrolled as a member while an infant.
    - (B) Be living and eligible to receive per capita distributions;

- (C) Provide the same personal information to the Tribe that is required of all other recipients of per capita distributions;
- (D) Prove that they were adopted as infants;
- (E) Prove that they have lived their entire lives until they made the claim in a place sufficiently removed from the Qualla Boundary to preclude their contact with or knowledge of the Tribe; and
- (F) Prove that they were unaware of their membership in the Tribe, of their eligibility to receive distributions, and the time limit for claiming them.

If an adopted member satisfies these requirements to Council's satisfaction at the hearing, the Tribal Council may declare the person eligible to receive per capita distributions and may direct payment to that person. In these cases, the person may receive their share of distributions made since the person attained 18 years of age. However, the person shall not receive more than \$50,000.00 in unclaimed distributions. The Tribe shall not pay any more than the principal amount determined by the Tribe to be due and is not liable to pay interest or any other enhancements to the principal amount.

- (f) *Member must provide accurate information.* Distributions are made based on the official Tribal membership roll provided by the Enrollment Office to the Budget and Finance Office. Each enrolled member is responsible for providing to the Enrollment Office complete and accurate personal information including, but not limited to, name, mailing address and social security number, in a writing they have prepared. The member must keep that information current. The Tribe is not liable for a member's failure to provide the information in the manner required.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 952, 10-8-07; Ord. No. 402, 8-25-2008; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 400, 10-12-2010; Ord. No. 369, 12-15-2022)

Sec. 16C-5. - Distribution to members.

- (a) *Semi-annual distribution.* Per capita payments, or if appropriate, general welfare distributions, shall be made two times each year to all competent adult members eligible for the distribution as set forth in Section 16C-4. Likewise, an appropriate share shall be set aside twice each year in the Minors Trust Fund on behalf of minor and incompetent members.
- (b) *Distribution for deceased members.* Eligible members as defined under Section 16C-4 who have passed away prior to the date of any scheduled disbursement shall be eligible to receive a pro rata share of the proposed per capita disbursement for each and every month during the calculation period that they were alive. The Tribal Finance Office shall disburse any and all funds of the deceased Tribal member to the authorized, or court appointed, administrator for the deceased's estate.
- (c)

*Distribution to handicapped members.* Eligible minors who have a severe handicap or terminal illness may request early distribution of per capita payments, or if appropriate, general welfare distributions, through their parent or guardian in accordance with Section 16C-6(c)(3).

(d) *Garnishment.* Except as specifically set forth in this section, the per capita disbursements to which each Tribal member is entitled, and general welfare distributions, are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity except as provided in this section. Per capita payments and general welfare distributions may be garnished only as follows:

- (1) *Garnishment for child support.* A parent, guardian, court-appointed trustee, or other individual or entity, who has provided for the support of any minor Tribal member, may request the court-ordered garnishment of any responsible enrolled member's per capita distribution and general welfare distributions for the support of the minor child. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.
- (2) *Garnishment for debts owed to the Eastern Band of Cherokee Indians.* The Tribe including the Cherokee Court and Cherokee Supreme Court, or other Tribal entity as defined in this Chapter, may administratively garnish a member's per capita payment and general welfare distributions to reimburse the Tribe or the Tribal entity for any outstanding fees, costs, rent, judgments, user fees, or other charges owed to the Tribe or the Tribal entity. This subsection shall not apply to fees, costs, rent, judgments, user fees, or other charges owed to individual Tribal members except for deceased Tribal member's estates collecting money judgments, or for criminal restitution ordered in a criminal sentence, which garnishment for such collection shall be allowed. Such a garnishment shall only be effective if it is ordered in compliance with subparagraph (d)(3), below.
- (3) *Procedure.* Garnishment orders may only be entered if the following minimum due process requirements have been met:
  - (A) Garnishment of per capita and/or general welfare distributions is only permitted to enforce a valid, final, and enforceable court order or judgment entered after the defendant was personally served with a summons and complaint, and given an opportunity to be heard in compliance with the law of the jurisdiction granting the judgment.
  - (B) The defendant must be given notice of the request for garnishment, either in the complaint originally served on the defendant or by a motion served on the defendant by first class mail at least ten days prior to hearing on the garnishment motion.
  - (C) A list of garnishments must be received by the Tribal finance office no less than 30 days before a scheduled disbursement.



- (D) The garnished funds shall be deposited with the Tribal Court for disbursement in accordance with the court order after the time for legal review under subparagraph (d)(4) has passed.
- (E) After these procedures have been followed once, the garnishment order shall remain in effect for subsequent distributions until the debt is paid in full.
- (4) *Legal review.* Funds garnished pursuant to Tribal court order shall be held by the Tribal finance office for a period often working days after the disbursement. Upon a request within those ten days by a member whose disbursement has been garnished, the office of the attorney general will review the court records to ensure there was compliance with the procedures set forth in this section. Upon discovery of a failure to comply with these procedures, the office of the attorney general will notify the court and the funds shall be held by the court in escrow until the Tribal member can be given notice and an opportunity to be heard.
- (e) *Voluntary assignment.* This subsection shall apply only to debts owed to the Tribe or to a Tribal entity listed in Section 16C-2. A member who owes an obligation to the Tribe or a Tribal entity may enter into a voluntary assignment agreement for all or part of the amount of a scheduled disbursement, subject to the following limitations:
- (1) The Office of the Attorney General shall develop a voluntary assignment agreement form. Voluntary assignments shall not be enforced unless they are completed on the proper form, notarized, and filed with the Tribal Finance Office at least 60 days prior to a scheduled per capita disbursement.
  - (2) A fee of \$35.00 per voluntary assignment will be charged to the member requesting the assignment to defer the costs of administering the assignment by the Tribal Finance Office.
  - (3) A voluntary assignment may cover past and/or future obligations owed by the member to the Tribe or Tribal Entity. A single assignment may obligate multiple distributions, such as to ensure repayment on a monthly basis of a Tribally guaranteed home mortgage loan, however a separate fee shall be administered for each per capita distribution.
  - (4) Voluntary assignments, unless they expressly state otherwise, convey to the Tribe all present and future right, title and interest in per capita distributions; they shall remain in effect and are irrevocable until the debt for which the assignment is made is paid in full.
  - (5) A Tribal member who receives a Tribal guarantee of a loan to purchase, refinance, construct or improve a home under a loan guarantee program approved by the Tribal Council may assign his or her per capita in advance to the Tribal division, program or entity charged with administering the guarantee program, or have his/her per capita or general welfare distributions garnished by the Tribe or Tribal Entity under subsection (d), for repayment of the debt owed to the Tribe or the lender, maker, holder, successor or assign of the mortgage.

- (f) *Priorities.* In the event there are multiple garnishments or assignments against a member, priority for disbursement of funds shall be as follows:
- (1) Garnishment under subsection (d) for child support;
  - (2) Garnishment under subsection (d) for debts to the Tribe or a Tribal Entity; and
  - (3) Assignments under subsection (e) for debts to the Tribe or a Tribal Entity.

Within each category above, priority shall be determined by the date of the garnishment order or the grant of the assignment.

- (g) *Limitation on garnishment.* Except as specifically set forth in subsections (d) and (e) of this section, the disbursements to which each Tribal member is entitled are absolutely exempt from creditors and shall not be garnished, attached, or paid to any other person or entity, including the Tribal Court. Any resolution, ordinance, or code provision which states or implies otherwise is hereby rescinded and shall have no further force or effect.
- (h) *Timing for per capita distributions.* Distribution to members shall be made within 75 days of the following:
- March 31 and September 30 of each year.

Any scheduled per capita disbursements made in accordance with this Chapter shall be made within 75 days of the above referenced dates. Per capita distributions shall occur only on regular business days. The Finance Office shall calculate and disburse per capita to eligible members no later than 75 days following the first disbursement closure date and again at the close of the fiscal year. In calculating disbursement, the Finance Office shall use financial data provided by the TBE and TCGE operations for the first semi-annual disbursement and the second semi-annual disbursement, which shall be reconciled to a certified audit. Tribal Management shall make appropriate allocations and transfers and insure that per capita distributions are made no later than 75 days after the end of the first disbursement closure date and again at the end of the fiscal year.

- (i) *Certified roll of eligible members.* The Tribal Enrollment Office shall deliver to Tribal Management a current certified roll of all members eligible under this Chapter, and in accordance with the Tribal Enrollment Ordinance, as of March 31 and a second certified roll as of September 30 of each disbursement year. Said certification shall be submitted to the Finance Office no later than 15 days following the aforementioned dates. Only names of the newly enrolled members for the current year shall be published in the Cherokee One Feather no later than 15 days following the aforementioned dates.
- (j) *Percentage of distributable net revenue.* The percentage of the distributable net revenue available for distribution to each competent adult member under this Chapter shall be determined by applying the following formula: An amount shall be added which is the sum of Total Shares. Total Shares is defined as:  $\text{Total Shares} = 12 \text{ months} / 12 \text{ shares of the competent}$

adult + 12 months/12 shares minors + x months per deceased members (as defined in Section 16C-5(b))/12 shares. Total shares shall then be divided into 50 percent of distributable net revenue to equal the distribution per share. The distribution per share shall be multiplied by the total shares distributable to competent adult members, minors, and deceased members which shall equal no more than the Minors Trust Fund and/or per capita distribution which is required pursuant to this Chapter. Anyone not on the certified roll for the semi-annual distribution shall have no right to any past Minors Trust Fund and/or per capita distributions. This requirement shall become effective on the date of ratification of the ordinance from which this Article derives.

- (k) *Balance of funds.* The balance of the funds after calculation of the amount to be distributed to competent adult members as set forth in Section 16C-5 shall be transferred to the fund for the benefit of enrolled minor and incompetent adult members, to be allocated as set forth in Section 16C-6.
- (l) *Improper assignments and garnishments.* No per capita assignment or garnishment, except for child support or debts to the Tribe, should have been accepted by the Cherokee Court of Indian Offenses after the ratification of Ordinance No. 528 (1999) on April 14, 1999. The court improperly accepted assignments and garnishments after that date, and those assignments and garnishments are void and unenforceable by operation of law. Because members of the Tribe and the public have relied in good faith on the court's improper action, however, the Tribal Council has determined that those improper assignments and garnishments will be partially honored on a one-time basis using the following procedure:
- (1) The remedy provided in this subsection shall apply only to garnishments ordered by the court after April 14, 1999, and filed with the court on or before November 29, 1999. Valid garnishments or assignments of per capita ordered by the court before April 14, 1999 shall remain enforceable until paid in full. No garnishment or assignment of per capita filed after November 29, 1999 shall be valid or enforceable in any way, unless it is for child support or a debt to the Tribal government or a Tribal Entity.
  - (2) Garnishments for child support or Tribal debts, and other garnishments ordered prior to April 14, 1999, shall be released to the court after the ten-day legal review period provided in subsection (d)(4) of this section. The Tribal finance office shall freeze all other funds subject to court garnishments or assignments pending hearing.
  - (3) The garnishments or assignments subject to a hearing under this subsection shall be paid only in the amount of the principal loan or debt, plus interest at a rate of 24 percent per annum (two percent per month) from the date of the loan through November 30, 1999.
  - (4) The Tribal Court shall conduct a hearing on each garnishment or assignment. The clerk of court shall give the debtor and creditor notice by personal service or mail at least 30 days prior to the hearing. The hearing shall be held before a judge or magistrate whose name does

not appear on the original garnishment order.

- (5) At the hearing, the creditor shall have the burden of proving, by clear and convincing evidence, the principal amount of the loan or debt on which the garnishment or assignment was based. The debtor shall have the right to raise defenses at the hearing. If the creditor fails to meet that burden of proof, then the judge or magistrate shall enter an order that the creditor receive nothing.
- (6) At the conclusion of each hearing, the judge or magistrate shall enter an order, signed in person by that judge or magistrate, stating:
  - (A) The principal amount of the loan or debt, if proven; and
  - (B) The amount of interest accrued at two percent per month from the date of the loan through November 30, 1999.In no event shall the amount ordered by the court exceed the amount of the original assignment or garnishment order.
- (7) Upon receipt of the order described in subparagraph (1)(6) from the court, the finance office shall release the funds so ordered to the clerk of court for distribution to the creditor. Any balance remaining, after hearings and orders on all garnishments allegedly executed by a Tribal member, shall be released to the Tribal member.
- (8) Orders entered pursuant to this section shall remain in effect until the allowed amount is paid in full.
- (9) This subsection shall not affect the validity of garnishments for child support or Tribal debts, the validity of garnishments ordered by the court before April 14, 1999, or the validity of voluntary assignments properly filed with the finance office under former subsection (e). All such garnishments and assignments have priority over the orders entered under this subsection.
- (10) This subsection is not intended to affect the contractual rights of any creditor. It is intended to provide a partial remedy for creditors whose garnishments or assignments are otherwise void and unenforceable by operation of law. For any alleged claim that remains unsatisfied after the hearing, the creditor may file a separate civil action against the debtor in the Tribal Court and pursue the judgment collection procedures provided by Chapter 25, which do not include garnishment or assignment of per capita.
- (11) The clerk of court shall prepare a budget amendment providing for the return of all filing fees charged to creditors for garnishments or assignments ordered after April 14, 1999 and covered by the hearing procedures of this subsection. Upon approval of that budget, the clerk shall return all such filing fees to the respective creditors. Debtors shall not be required to pay those filing fees.

- (12) The Tribal Court is directed to post the following notice in a prominent location easily visible to the public in the clerk's office at all times:

NO VOLUNTARY ASSIGNMENTS OR GARNISHMENTS OF PER CAPITA PAYMENTS WILL BE ACCEPTED BY THIS COURT. PER CAPITA PAYMENTS CAN ONLY BE GARNISHED AFTER A JUDGMENT IS ENTERED BY THIS COURT FOR CHILD SUPPORT OR DEBTS OWED TO THE EASTERN BAND OF CHEROKEE INDIANS OR ITS ENTERPRISES.

- (13) Nothing in this Chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians, or its officers, agents, or employees acting in their official capacities. To the extent that any other Tribal law may be interpreted as such a waiver of sovereign immunity for any claim or action related to distribution of per capita payments, it is hereby rescinded.
- (m) In connection with a loan transaction or an agreement to repay a debt, the Tribe or a Tribal Entity may create a secured interest in an enrolled member's present and future per capita distributions by having the enrolled member execute a security agreement and financing statement, which may be combined into a single document. The financing statement or combined document is deemed to be properly filed and the security interest perfected when the statement or combined document is maintained in the files of the Budget and Finance Office or the Tribal program or Tribal Entity obtaining the security interest, and the per capita distribution is possessed by the Tribe. A per capita distribution is possessed by the Tribe from the time the funds are received by the Tribe until they have been distributed by check or electronic transfer to the enrolled member.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 534, 11-4-2008; Ord. No. 873, 9-18-2009; Ord. No. 118, 5-19-2010; Ord. No. 479, 5-1-2013; Ord. No. 245, 8-5-2016; Ord. No. 20, 2-14-2018; Ord. No. 369, 12-15-2022)

#### Sec. 16C-6. - Minors and other legal incompetents.

The interests of minor and legally incompetent members otherwise entitled to receive per capita payments, or if appropriate, general welfare distributions, shall be protected as follows:

(a) *Trust Fund for enrolled minor and incompetent members.*

- (1) Within 60 days after approval of this section by the Secretary of Interior, the Tribe shall establish a legal trust (hereinafter "the Minors Trust Fund") for the benefit of all minor members and legally incompetent members who shall be eligible for per capita payments, or if appropriate, general welfare distributions.
- (2) Members of the Investment Committee shall serve as the Trustees of the Minors Trust Fund, provided that there shall be no fewer than three Trustees. The Trustees shall select an institutional Manager and such other advisors as they deem necessary, with suitable

expertise and discretion to administer the Minors Trust Fund and invest its assets. The Minors Trust Fund shall be invested in a reasonable and prudent manner so as to protect the principal and seek a reasonable return.

- (3) The Minors Trust Fund shall be established as a "grantor" trust, under which the Tribe is the grantor and owner of the trust for the benefit of its enrolled minor and incompetent members.
- (4) The Minors Trust Fund shall comply with all applicable internal Revenue Code provisions and Internal Revenue Service (IRS) regulations, revenue procedures, revenue rulings, or other guidance in force from time to time, to ensure that amounts contributed to and held in the fund shall not be taxable to the individual enrolled member until they are actually distributed, or made available for distribution pursuant to this section, to the individual enrolled member. The necessary provisions to achieve these goals shall be included in the trust documents.
- (5) *Contingent Provisions.* To the extent that applicable law and IRS guidance allows the following trust provisions to be included without triggering adverse tax consequences to the individual trust beneficiaries ( e.g., taxation prior to actual distribution of the trust funds), the following shall be included in, or later added by amendment to, the trust documents. To the extent that the tax consequences of including these provisions is unclear or uncertain under applicable law or IRS guidance, the Trustees of the Minors Trust Fund are authorized to request an IRS private letter ruling and to act in accordance with any IRS guidance received pursuant to such a request.
  - (A) There shall be three staggered distributions from the minor's trust fund to eligible members reaching the age of majority as follows:
    - 1) The first distribution shall be in an amount which is the lesser of \$25,000.00 or one-fourth the amount of the total amount held in trust for the eligible member, and shall be made upon meeting the following eligibility criteria:
      - a. Prior to receiving the first distribution, an enrolled member who reaches the age of 18 years must submit the following documentation: (1) the original or a certified copy of their high school diploma or GED; (2) if the member has been home schooled, a writing from the state agency in the state in which the member was home schooled indicating that the member has successfully passed the state-wide test accepted by the state for such students. The enrolled member must submit the documentation to the Trustees prior to receiving any funds from the Minors Trust Fund. If the Tribe determines that the diploma, GED or other writing is questionable, the Tribe may require other proof. Proof of completion of a course of studies from a correspondence

school is not acceptable; a student or graduate of a correspondence school must also prove that they have successfully passed the same or a similar state-wide test as required in this subsection of home school graduates. Effective April 1, 2011, any minor member will be required to complete the online Manage Your EBCI Money Course and include his/her Certificate of Completion to be entitled to receive any monies. Any minor member, who fails to submit the appropriate information as described above shall not be entitled to any monies held on their behalf in the Minors Trust Fund until the minor member has provided evidence of attaining such a degree and Certificate of Completion for the online Manage Your EBCI Money Course; or

- b. The minor member reaches the age of 21 years, whichever occurs first. Minor members with learning disabilities or other disabilities may present a certificate of attendance showing that the student has attended a full 12 years of school and that certificate shall be deemed to be an equivalent degree for purposes of this section.
- 2) The second distribution shall be in an amount which is the lesser of \$25,000.00 or one-fourth the amount of the total amount remaining after the first distribution held in trust for the eligible member, and shall be made when the member reaches the age of 21 years. If the first distribution occurs under 16C-6(a)(5)a.1)(b) above, then the eligible member shall be distributed both amounts of the first and second disbursements, at the same time, totaling the lesser of \$50,000.00 or one-half the total of the total amount held in trust for the eligible member.
- 3) The third distribution shall be in an amount totaling the entire remaining amount held in trust for the eligible member and shall be made when the eligible member reaches the age of 25 years.

(b) *Advance distributions for education.*

- (1) It is the policy of the Tribe to provide the best possible education for enrolled members. It is the Tribe's specific goal in establishing the Minors Trust Fund to help each student fund a college education. It is recognized that some members may encounter extraordinary educational problems preventing them from being able to attend or benefit from college. In those situations, a beneficiary may request an advance distribution to fund other urgent educational needs that cannot be funded by other sources.
- (2) In general, an advance distribution for educational purposes shall be requested only for attendance at a secondary school, college, graduate or professional school. However, incompetent and minor members with learning or other disabilities shall be eligible to request a distribution for special training or education in academic or non-academic

programs or schools for disabled or handicapped students. For purposes of this section, "secondary school" shall mean a private school or boarding school that is a member of the National Association of Independent Schools.

- (3) In order to request an advance distribution from the Minors Trust Fund for educational purposes, a written request must be submitted by the parent or legal guardian, or in the case of a member who has attained age 18 without graduating from high school, by the member, to the Trustees. The funds requested may not exceed the cost of tuition, program fees, miscellaneous fees, room, board, books and equipment.
  - (4) Any advance distribution for education shall be disbursed jointly to the parent/legal guardian (or member, age 18—24) and the school, program or other institution providing the educational services.
  - (5) If such a request is granted, the amount disbursed shall not exceed the proportional share of the Minors Trust Fund allocated to the requesting beneficiary at the time of the request. The Tribe may require that the amount disbursed be paid directly from the Tribe to the educational institution or vendor and/or that a receipt be provided from the educational institution or vendor after payment.
- (c) *Advance distributions to minors and incompetents for health care.*
- (1) It is the policy of the Tribe to make funds in the Minors Trust Fund available for the benefit of beneficiary's unmet health care needs. In the event of unmet health care needs, a beneficiary may request an advance distribution of their share of the trust to fund actions and services that fulfill urgent medical needs, but only when such needs cannot be met from other available personal, Tribal or other public sources.
  - (2) In order to request an advance distribution for unmet health needs, a written request must be submitted by the parent or legal guardian (or member, age 18—24) to the Trustees. The request must include sufficient, current written information about the specific treatment or unmet health need for which the advance distribution will be used. Whether the documentation is sufficient and current shall be determined by the Trustees. The funds requested may not exceed the cost of necessary medical or dental treatment that cannot be met from other available personal, Tribal or other public sources.
  - (3) In addition, a parent or legal guardian may request early disbursement of trust funds for a severely handicapped or terminally ill minor who is not likely to reach the age of 18 years. Such a request must be supported by specific documentation by both educational and medical personnel to support the representation of either the severity of the handicap or the terminal illness.
  - (4)



Any advance distributions for health care will be disbursed jointly to the member's parent/legal guardian or member (age 18—24) and the hospital or other health care institution providing the specific medical services.

- (5) If such a request is granted, the amount disbursed shall not exceed the proportional share of the Minors Trust Fund allocated to the requesting beneficiary at the time of the request. The Tribe may require that the amount disbursed be paid directly from the Tribe to the health care provider or vendor and/or that a receipt be provided from the health care provider or vendor after payment.

(d) *Advance distributions for housing*

- (1) It is the policy of the Tribe to make funds in the Minors Trust Fund available for the benefit of minors fund beneficiaries for unmet housing needs. In the event of unmet housing needs, a minor beneficiary may request an advance distribution of their share of the trust to fund the purchase of housing, but only when such needs cannot be reasonably met from other available personal, Tribal or public sources.
- (2) In order to request an advance distribution for unmet housing needs, a beneficiary must submit a written request to the Trustees. A written request must include sufficient, current information and documentation of housing needs and housing costs.
- (3) In order to be eligible for an advance distribution for housing, beneficiaries must satisfy all the following criteria:
  - (A) must be a beneficiary of the Minors Trust Fund with an account balance;
  - (B) must be between the ages of 18—24;
  - (C) housing purchase must be the beneficiary's primary residence;
  - (D) must demonstrate proof of income;
  - (E) must have land held in the name of the beneficiary or for a mobile home purchase, beneficiary must have land held in their name OR a minimum of a ten-year lease.
- (4) If such a request is granted, the amount disbursed shall not exceed 98 percent of the home's purchase price and 80 percent of the beneficiaries account balance at the time of the request. Payment shall be made directly to the seller, home-builder, or financing institution. The distributed amount shall be "grossed-up" to account for the amount a tax withheld by the Tribe for remittance to the Internal Revenue Service.

(e) *Decision process for advance distributions.*

- (1) Any advance distribution for educational, health, or housing needs shall be made only in the Trustees' sole discretion. If an advance distribution is made, the beneficiary's account is thereby reduced by the amount of the advance distribution.
- (2)

The Trustees are authorized to establish a screening committee of health and educational professionals to review and make recommendations regarding advance distribution requests. The committee is authorized to create policies and procedures by which to discharge its responsibilities. The policies and procedures must be approved by the Trustees before implementation. The ultimate decision to distribute funds, however, shall remain in the sole discretion of the Trustees.

(3) The Trustees shall develop and approve internal policies and procedures governing distributions to beneficiaries from the Minors Trust Fund.

(f) *Distributions for deceased persons.*

(1) Any person for whose benefit funds are held in the Minors Trust Fund who passes away shall have any funds held for their benefit disbursed in the following order of priority:

(A) If the deceased person has a surviving spouse and/or child(ren), then the funds shall be divided and distributed equally to all such persons.

(B) If the deceased person has no surviving spouse or children, then the funds shall be divided and distributed equally to the person's surviving parent(s) or a relative(s) who served as a guardian(s), if any.

(C) If the deceased person has no surviving spouse, children, parents or a relative(s) who served as a guardian(s), then the funds shall be divided and distributed equally to the person's surviving sibling(s), if any.

(D) If no spouse, children, parents, a relative(s) who served as a guardian(s), or siblings survive the deceased person, then the deceased person's share shall revert to the Grantor (the Tribe).

(E) In no event shall the funds of a deceased person be distributed to the person's estate.

(2) A recipient of funds disbursed pursuant to subsection (e)(1) above does not have to be an enrolled member.

(3) A potential recipient identified in subsection (e)(1) does not have to submit a claim or a request for a disbursement. The death of the minor member is the event which shall cause the Tribe to disburse the money. However, before the Tribe may make a disbursement, a potential recipient must provide to the Tribe information including, but not limited to, their name, address, age, relationship to the deceased, and social security number, so that the Tribe may conduct a proper disbursement. The Tribe shall make the disbursement only after it is satisfied that it has made reasonable efforts to properly identify the recipients and it has received necessary information from identified recipients.

(4) If there are multiple recipients, the Tribe shall disburse the money in equal shares to them.

(5)

If a recipient is a minor, his or her share shall be disbursed to the parent(s) or a relative(s) who served as a legal guardian(s), who the Tribe has determined provides the primary care for the minor recipient and is legally responsible for him or her.

- (6) The EBCI Investment Committee, as Trustees of the Minors and legal incompetents fund, shall review and determine the proper recipient(s) of funds held for a deceased person in coordination with the Office of the Attorney General.
- (g) *Disbursements prior to attaining 18 years of age.* Except as provided in subsections (b) or (c) or (e) of this section, no disbursements from the Minors Trust Fund shall occur until the minor has at least obtained the age of 18 years. No court order evidencing emancipation prior to attaining majority shall be accepted or acted upon to authorize a disbursement from the Minors Trust Fund.
- (h) *Voluntary disenrollment.* No distributions whatsoever from the Trust Fund shall be made to any minor or, in the alternative to any guardian or parent of a minor or legally incompetent member, when that minor, or that minor's guardian or parent voluntarily chooses to renounce and abandon their enrollment with the Tribe. Any monies held for the minor prior to disenrollment shall be distributed equally among the other beneficiaries of the Trust Fund.
- (i) *Timing of disbursements.* For purposes of this Chapter, disbursements made from the Minors Trust Fund shall only occur at the end of each calendar quarter. The Tribe shall withhold 25 percent from each distribution to be distributed from each individual's trust account when it makes a disbursement to ensure proper payment of mandatory federal income taxes.
- (j) *Effective date.* This amended section shall be effective upon the date it is approved by the Secretary of the Interior. Upon approval, all funds held in the Minors Reserve Fund established under prior law for enrolled minors and incompetents shall be transferred to the Minors Trust Fund.
- (k) *No implied waiver.* Nothing in this section or in the related trust documents shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians for purpose of any access by creditors to assets in the Minors Trust Fund.
- (l) *Alternative provision.* To the extent that applicable IRS guidance does not allow implementation of subsection (a)(5)(A), above, on a tax deferred basis, then the Trustees shall implement that subsection by establishing a taxable trust account or accounts to hold such funds as are remaining after payment of taxes until the enrolled member provides evidence of a high school diploma or equivalent degree or attains the age of 21 years.
- (m) *Special supplement.* Beginning in fiscal year 2004 and each year thereafter, the Tribe shall set aside from non-Reserve and non-Trust Fund monies, and in a separate budget line item, an amount not to exceed \$250,000.00. This amount shall be calculated to make up for reasonably foreseeable losses in the Minors Trust Fund principal caused by investment

volatility. The set-aside monies shall be used only as follows: any person entitled to a distribution from the Minors Trust Fund who would, at the time of distribution, receive less than their full share of Minors Trust Fund principal due to losses to principal since fiscal year 2002 caused by market volatility, will be paid an amount from the set-aside funds sufficient to make up for the loss of principal. Any person who received a Reserve Fund distribution in fiscal year 2003 but who did not receive their full share of principal shall be paid the difference retroactively.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 401, 9-18-2010; Ord. No. 38, 6-2-2016; Ord. No. 334, 1-24-2019; Ord. No. 485, 4-2-2019; Ord. No. 369, 12-15-2022)

#### Sec. 16C-7. - Taxation.

All per capita payments made to individual members are subject to federal taxation, and members receiving per capita payments shall be subject to the withholding of appropriate amounts for such tax payment in the manner and to the extent provided by applicable law.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 369, 12-15-2022)

#### Sec. 16C-8. - Technical amendments.

Technical amendments to this Chapter are herewith authorized whenever and wherever necessary in order to comply with language and terms established or required by the U.S. Tax Code that would affect the intent and purpose of this Chapter in order to preserve and limit taxation of per capita distributions until such distributions are received by the individual members or by their parent or legal guardian, and to preserve the application of the General Welfare Exclusion to general welfare distributions. The Tribal Council herewith approves and confirms technical language amendments proposed by tax counsel in connection with the establishment of the various funds set forth in this Chapter, together with subsequent proposed technical amendments from tax counsel for the Tribe or the funds resulting from changes to the U.S. Tax Code, federal tax regulations, court decisions or interpretations thereof.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 369, 12-15-2022)

#### Sec. 16C-9. - Revenue allocation percentages.

(A) Effective October 1, 2015, distributable net revenue shall be distributed to fund per capita distributions, Tribal government operations, and the general welfare funds established under this Chapter as follows:

(1) For Harrah's Cherokee Casino Resort:

(a) to provide for the general welfare of the Tribe and its members, including (1) payments made for social welfare, medical assistance, education, housing or other similar needs intended to qualify for the General Welfare Exclusion; and (2) Per Capita Distributions (§§ 16C-5, 16C-6 .....50.00%

(b) Endowment Fund No. 2

(c) Debt Service Sinking Fund (§ 16C-14)

(d) Capital Improvement Program (§ 16C-17)

A portion not to exceed 45.5% of Harrah's Cherokee Casino Resort gaming net revenues as determined in a needs-based budget approach shall be allocated to the following Programs as approved by the Tribal Council in the adoption of the annual budget:

(e) Tribal General Fund;

(f) Housing Fund (§ 16C-15);

(g) Higher Education Fund (§ 16C-16);

(h) Cherokee Central Schools Assistance Fund (§ 16C-18);

(i) Kituwah Language Immersion (§ 16C-21).

(2) For Harrah's Cherokee Valley River Casino:

(a) to provide for the general welfare of the Tribe and its members, including (1) payments made for social welfare, medical assistance, education, housing or other similar needs intended to qualify for the General Welfare Exclusion; and (2) Per Capita Distributions (§§ 16C-5, 16C-6 .....50.00%

A portion not to exceed 45.5% of Harrah's Cherokee Valley River Casino earning net revenues as determined in a needs-based budget approach shall be allocated to the following programs as approved by the Tribal Council in the adoption of the annual budget:

(b) Tribal General Fund;

(c) Health Program Supplemental Fund/PHHS;

(d) Police and Corrections Fund (§ 16C-20).

(B) In accordance with 130B-13(b) effective October 1, 2016, the Cherokee Indian Hospital Authority shall be funded at a percentage of 4.5% of net distributable gaming revenues from Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino. This value shall be calculated as a static percentage of net distributable revenues and not a static monetary or budgetary value.

(C) During the annual budget process, the Finance Office will determine the gaming revenue to be budgeted for the fiscal year and this amount shall be the Baseline Gaming Revenue Amount by property. At all times, 50 percent of the gaming revenues received will be divided and deposited into the general welfare fund listed above. For all funds other than the general welfare fund and

the funding of the Cherokee Indian Hospital Authority, if the Gaming Revenue from any Tribal Gaming Operation received from the fiscal year exceeds the Baseline Gaming Revenue Amount that excess shall be distributed as follows:

- (1) Higher Education Endowment Fund .....5%
  - (2) Endowment Fund No. 2 .....40%
  - (3) Debt Service Sinking Fund .....40%
  - (4) Cherokee Sovereign Wealth Fund .....10%
  - (5) Cherokee Central Schools Reserve Account .....5%
- (D) A fund balance of at least ten percent and not to exceed 50 percent of the annual Tribal budget shall be maintained in the General Fund to ensure cash flow continuity. Any balance in excess of that amount at the end of each fiscal year shall be distributed to the Endowment and Investment Funds. There are no fund balance limitations for the other governmental operations and general welfare funds established in this Chapter.
- (E) In the event that the gaming revenue available creates a budget shortfall or a rebalancing of Tribal priorities in the budget is needed, the Finance Office will balance the budget utilizing available resources in accordance with limits identified in 16C-9(c).

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 952, 10-8-2007; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 400, 10-12-2010; Ord. No. 84, 3-23-2012; Ord. No. 33, 12-16-2013; Ord. No. 167, 7-8-2014; Ord. No. 44, 12-15-2015; Ord. No. 487, 3-16-2017; Ord. No. 620, 8-9-2017; Ord. No. 485, 4-2-2019; Ord. No. 190, 9-17-2020; Ord. No. 369, 12-15-2022; Ord. No. 550, 6-9-2023)

#### Sec. 16C-10. - Cherokee Endowment and Investment Funds.

- (a) The Tribal Council shall create and fund separate Endowment and Investment Funds with distributable net revenue as set forth in Section 16C-9. The purpose of these Funds shall be to provide a long-term investment and capital appreciation vehicle for the Tribe.
- (b) The first Endowment and Investment Fund ("Endowment Fund No. 1") shall be maintained for the long-term success of the Tribe with a soft floor of 170 million dollars. If at any time there is a breach of the soft floor, the Investment Committee will monitor investment performance for a period not to exceed two quarters. If the soft floor should be breached for a period of two consecutive quarters the Investment Committee shall consider an adjustment to the asset allocation in order to restore an acceptable funding level within a time period deemed appropriate. Earnings of the Endowment Fund No. 1 shall be added to the principal of the Endowment Fund No. 1. The goal for the first Endowment and Investment Fund shall be to accumulate and grow capital for the long-term economic growth and security of the Tribe and its members grown to a funding level of two times the operational budget of the Tribe.
- (c)

The first and second Endowment and Investment Funds shall be used only for the purposes expressed in Section 16C-11. They shall not be used as supplements to the General Fund. The Principal Chief and Tribal Council shall review the requirements for the second Endowment and Investment Fund every two years to evaluate the need for, and adequacy of, that fund.

(Ord. No. 888, 10-13-2005; Ord. No. 120, 5-17-2006; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 566, 3-13-2009; Ord. No. 873, 9-18-2009; Ord. No. 84, 3-23-2012; Ord. No. 276, 2-17-2015; Ord. No. 594, 7-17-2015; Ord. No. 44, 12-15-2015; Ord. No. 400, 12-20-2018; Ord. No. 395, 5-20-2021; Ord. No. 550, 6-9-2023)

Sec. 16C-11. - Investment of Endowment and Investment Funds.

- (a) Except as restricted in Sec. 16C-10, money deposited in the Endowment and Investment Funds shall be invested in a balanced investment portfolio seeking long-term gain and capital appreciation, with investments not subject to investment limitations of GASB.
- (1) The first Endowment and Investment Fund shall be maintained with a soft floor of 170 million dollars, which shall be maintained for the long-term success of the Tribe and grown to a level of two times the operational budget of the Tribe.
- (2) The second Endowment and Investment Fund may also be used to purchase additional lands for the Tribe; to acquire or make loans or investments in new or ongoing business enterprises for the Tribe; to acquire or make loans or investments in additional business enterprises and/or to supplement or loan funds to existing Tribal business enterprises; to fund, or provide a Tribal match for funds obtained from other sources for, major infrastructure projects; and to pay off existing indebtedness of the Tribe or Tribal enterprises, but such funds shall be limited to External Investments as defined in this Chapter. Any additional land purchases or any loans made to ongoing business enterprises, or loans made to additional business enterprises shall be approved by Tribal Council.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 566, 3-13-2009; Ord. No. 873, 9-18-2009; Ord. No. 84, 3-23-2012; Ord. No. 276, 2-17-2015; Ord. No. 395, 5-20-2021; Ord. No. 550, 6-9-2023)

Sec. 16C-12. - Limitations on investment of Endowment and Investment Funds.

No more than 15 percent of the Funds may be invested in any single stock, bond, instrument, entity, company, or fund unless otherwise endorsed by the Investment Committee and approved by the Tribal Council.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 566, 3-13-2009; Ord. No. 873, 9-18-2009; Ord. No. 84, 3-23-2012)

### Sec. 16C-13. - Management of Endowment and Investment Funds.

The Investment Committee shall manage the investment of the principal and earnings of the Endowment and Investment Funds and shall work with not less than three institutional managers to establish a balanced portfolio for the Funds.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 566, 3-13-2009; Ord. No. 873, 9-18-2009)

### Sec. 16C-14. - Debt Service Sinking Fund.

The Tribal Council shall create and fund a separate Debt Service Sinking Fund with distributable net revenue as set forth in section 16C-9. The original purpose of this Fund was to provide a long-term investment vehicle for the Tribe to retire the long-term debt. Funds in the Debt Service Sinking Fund may be used to secure, minimize, reduce, and/or retire other Tribal debts, projects as prioritized by resolution of the Tribal Council. The investment goal for the Fund shall be to accumulate and grow capital for the retirement of the Tribe's debts.

- (1) *Investment of Debt Service Sinking Fund.* Money deposited in this Fund shall be invested in a balanced investment portfolio seeking long-term gain and capital appreciation, with investments not subject to investment limitations of GASB.
- (2) *Limitations on investment of Debt Service Sinking Fund.* No more than 15 percent of the Fund may be invested in any single stock, bond, instrument, entity, company, or fund unless otherwise endorsed by the Investment Committee and approved by the Tribal Council.
- (3) The Investment Committee shall manage the investment of the principal and earnings of the Debt Service Sinking Fund and shall work with not less than three institutional managers to establish a balanced portfolio for the Fund.
- (4) The Debt Service Sinking Fund shall be maintained with a soft floor of 25 million dollars. If at any time this soft floor is breached no additional commitments or disbursements from the fund shall be made. Upon breach of the soft floor the Investment Committee shall consider adjusting the asset allocation, approved by Tribal Council, in order to restore an appropriate funding level within a time period deemed reasonable.
- (5) Values in excess of the 25 million dollar soft floor shall be evaluated on an annual basis by the Tribal Department of Finance and paid against Tribal debts, if such debt exists, or used to offset or fund significant Tribal projects or purchases that would otherwise require external financing.



(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 566, 3-13-2009; Ord. No. 873, 9-18-2009; Ord. No. 84, 3-23-2012; Ord. No. 164, 5-10-2016; Ord. No. 395, 5-20-2021; Ord. No. 550, 6-9-2023)

#### Sec. 16C-15. - Housing Fund.

(a) The Tribal Council shall create and fund a separate Housing Fund with distributable net revenue as set forth in section 16C-9. The purposes of this Fund shall be:

- (1) To provide special mortgage lending including down payment assistance; interest rate reduction assistance and mortgage loans;
- (2) To provide long term lease/purchase options for Tribally controlled housing;
- (3) To provide funding to assist Tribal members in obtaining adequate housing infrastructure;
- (4) To provide surveying services;
- (5) To provide road construction into new housing and redevelopment areas;
- (6) To provide utilities and site improvement construction into new housing areas;
- (7) To alleviate the backlog, if any, in the Home Improvement Program (HIP);
- (8) Reserved;
- (9) To provide housing rehabilitation and weatherization services;
- (10) To service existing revolving loans; rehabilitation loans and down payment assistance loans;
- (11) To pay administrative, operational and management expenses related to the programs established under this section; and
- (12) For such other housing-related functions as may be established by Tribal Council resolution.

(b) The Principal Chief and Tribal Council shall:

- (1) Develop a long-term strategic housing plan, updated annually, establishing priorities for expenditure and other relevant details; and
- (2) Create and approve an annual budget addressing how the available funds will be expended consistent with that strategic plan.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009)

#### Sec. 16C-16. - Higher Education Fund.

The Tribal Council shall create and fund a separate Higher Education Funding Program with distributable net revenue as set forth in section 16C-9. The purpose of this Program shall be to provide funding to assist enrolled members with their higher education needs. The Higher Education Funding Program may be used to fund the Summer College Internship Program and special preparatory classes that assist applicants in gaining entrance to college, graduate or professional school. The Higher Education Funding Program shall not fund secondary school expenses or extra-curricular activities.

The Higher Education Endowment Fund shall be funded by excess revenues from gaming distribution designated in Section 16C-9(C). The Higher Education Committee, in conjunction with the EBCI Investment Committee, shall establish the criteria for distributions, investment management and administration of the Higher Education Endowment Fund through a comprehensive investment policy statement approved by the Tribal Council. The EBCI Investment Committee shall be responsible for the investment management and performance of the Higher Education Endowment Fund, providing regular reports to the Higher Education Committee and Tribal Council.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 167, 7-8-2014; Ord. No. 44, 12-15-2015; Ord. No. 485, 4-2-2019)

#### Sec. 16C-17. - Capital Improvement Program (CIP).

The Tribal Council shall create and fund a separate Capital Improvement Program with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to provide for ongoing capital improvement of Tribal operations and programs.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009)

#### Sec. 16C-18. - Cherokee Central School Assistance Fund.

The Tribal Council shall create and fund a Cherokee Central School Assistance Fund with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to implement the Cherokee Central Schools Strategic Plan and Facility Master Plan. These plans shall address academic, facilities operations and maintenance, and capital needs. The Cherokee Central Schools shall on an annual basis submit their overall budget outlining major revenue sources and expenditures, and provide justification to support the annual gaming allocation the Tribe annually, by May 31. This Fund shall be administered by the Cherokee Central School Administration under the budget approved by the Cherokee Central School Board. In each fiscal year the Cherokee Central Schools will seek to fund a percentage of the distributable net revenue that is distributed to the Cherokee Central School to a Cherokee Central School Endowment Fund, if funds are available. The Cherokee Central School Board shall establish the criteria for distributions from the Cherokee Central Schools Endowment Fund.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 400, 10-12-2010)

#### Sec. 16C-19. - Health Program Supplemental Fund.

(a) The Tribal Council shall create and fund a Health Program Supplemental Fund with distributable net revenue as set forth in section 16C-9. The purposes of this fund shall be:

(1) To purchase Medicare Part B insurance for eligible enrolled members;

- (2) To assist enrolled members needing Priority 1 medical procedures not otherwise covered by the contract health services program at Cherokee Indian Hospital;
  - (3) To supplement funding for a wound care center to serve enrolled members;
  - (4) To supplement necessary dental services for enrolled members who are children;
  - (5) To purchase pharmaceuticals for enrolled members pursuant to guidelines to be established by the Health Board and Tribal Council as described below;
  - (6) To supplement funding shortfalls at the Cherokee Indian Hospital;
  - (7) To supplement funding for Tsali Care nursing home;
  - (8) To supplement funding for Women's Wellness Center;
  - (9) To pay administrative expenses related to the programs established under this section; and
  - (10) For such other health-related purposes as the Tribal Council may determine by resolution.
- (b) With respect to distributable net revenue allocated through this fund, the Tribal health programs, in consultation with the Tribal health board, shall conduct needs assessments and develop plans for eligibility and other requirements for such programs, subject to final approval by the Tribal Council. Based on those plans, funds will be allocated to the various programs through the annual budget approval process. The Eastern Band shall be payer of last resort for all programs established to purchase medical services, and shall not be responsible for coverage except to the extent that funds are specifically appropriated by the Tribal Council.
- (c) Distributable net revenue allocated through this fund shall be distributed to the Cherokee Indian Hospital Authority for services to enrolled members of the Tribe and for CIHA capital needs. This funding is provided in lieu of the authority to bill the Tribal health insurance program for direct services provided by CIHA. The Cherokee Indian Hospital Authority shall on an annual basis submit their overall budget outlining major revenue sources and expenditures, and provide justification to support the annual gaming allocation to the Tribe. The CIHA Governing Board shall allocate that funding for the purposes specified in this subsection through its operational and capital budgeting process.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 400, 10-12-2010)

#### Sec. 16C-20. - Police and Corrections Fund.

The Tribal Council shall create and fund a Police and Corrections Fund with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to provide funding for personnel, training, equipment and other services and resources that serve the Tribe's goals of investigating, arresting, prosecuting and enhancing corrections efforts for violations of the Tribe's laws.

(Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009; Ord. No. 400, 10-12-2010)

Sec. 16C-21. - Kituwah Language Immersion Fund.

The Tribal Council shall create and fund a Kituwah Language Immersion Fund with distributable net revenue as set forth in section 16C-9. The purpose of this Fund shall be to provide funding for personnel, training, equipment and other services and resources that serve to maintain and enhance the Tribe's Cherokee Language Immersion Program.

(Ord. No. 400, 10-12-2010)

Sec. 16C-22. - Amendments.

Except for technical amendments provided in section 16C-8, this chapter may be amended by action of the Tribal Council in a meeting at which a quorum is present by a majority vote of the Council membership.

(Ord. No. 888, 10-13-2005; Ord. No. 457, 9-12-2006; Ord. No. 481, 10-3-2008; Ord. No. 873, 9-18-2009)

Sec. 16C-23. - Reserved.

**Editor's note**— Ord. No. 487, adopted March 16, 2017, amended the Code by repealing former § 16C-23 in its entirety. Former § 16C-23 pertained to the Cherokee Indian Hospital Authority Reserve Account, and derived from Ord. No. 33, adopted December 16, 2013.

Sec. 16C-24. - Cherokee Central Schools Reserve Account.

The Tribal Council hereby establishes the Cherokee Central Schools Reserve Account for use by the Cherokee Central Schools to fund operations and capital improvements. This account shall be funded by excess revenues from gaming distribution designated for the Cherokee Central Schools in Section 16C-9. The Cherokee Central Schools Reserve Account shall be invested under the supervision and authority of the Tribal Investment Committee. The Tribal Investment Committee shall report quarterly to the Cherokee School Board on the status and performance of these funds.

(Ord. No. 33, 12-16-2013; Ord. No. 487, 3-16-2017)

**Editor's note**— Ord. No. 33, ratified December 16, 2013, amended the Code by adding a new § 16C-23. In order to prevent duplication of section numbers, the editor has redesignated the provisions as 16C-24.

Sec. 16C-25. - Reserved.

**Editor's note**— Ord. No. 550, adopted June 9, 2023, repealed § 16C-25, which pertained to Business and Economic Development Fund and derived from Ord. No. 44, adopted Dec. 15, 2015.

Sec. 16C-26. - Reserved.

**Editor's note—** Ord. No. 550, adopted June 9, 2023, repealed § 16C-26, which pertained to Technology Enhancement Fund and derived from Ord. No. 44, adopted Dec. 15, 2015.

Sec. 16C-30. - Cherokee Sovereign Wealth Fund.

- (a) The Investment Committee has decided to diversify the investment portfolio of the Eastern Band of Cherokee Indians to include a Sovereign Wealth Fund and believes it to be in the best interest of the Tribe for the benefit of the Tribe and its members. The purpose of the fund shall be investment in alternative investment strategies, direct investment, co-investment, and private equity strategies.
- (b) The Investment Committee shall organize Cherokee Sovereign Wealth Fund, LLC to oversee the management and performance of the Cherokee Sovereign Wealth Fund. The Investment Committee shall be the Manager of the LLC. Organization, management, and regulation shall be in accordance with Chapter 55B of the Cherokee Code and this Section.

(Ord. No. 335, 11-1-2018; Ord. No. 552, Exh. A, 6-27-2019)