

TITLE XXXVI  
TRIBAL GOVERNMENT

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## CHAPTER 1. CODE OF CONDUCT FOR ELECTED OFFICIALS

### **§36-1-1 Authority**

Pursuant to the authority vested in the Mississippi Band of Choctaw Indians by its Revised Constitution and Bylaws and particularly by Article VIII, Section 1(c) of the Constitution, the Tribal Council of the Mississippi Band of Choctaw Indians hereby enacts this Code of Conduct for Elected Officials establishing rules and procedures for the conduct of all Tribal government and business operations and to establish general procedures to regulate conflict of interest and nepotism.

### **§36-1-2 Short Title**

This Code shall be known as the “Code of Conduct for Elected Officials.”

### **§36-1-3 Purpose**

- (1) Elected Officials are elected to represent and act on behalf of the Tribal membership and the Mississippi Band of Choctaw Indians with integrity and in a professional and dignified manner. The purpose of this Code is to maintain and protect this solemn obligation by outlining the ethical obligations of Elected Officials, to define the standards of conduct applicable to Elected Officials, and to set forth the consequences for violating these obligations.
- (2) While this Code is intended to describe appropriate standards of conduct, all Elected Officials are expected on their own to conduct themselves in a professional and dignified manner so as to not bring shame or embarrassment to themselves, the Tribal government, and Tribal members.
- (3) Nothing in this Title shall be construed to limit the jurisdiction or authority of the Tribal Chief and the Tribal Council under the Revised Constitution and Bylaws, other Tribal law or policy, or Federal law. Nothing in this Code shall be deemed or construed as a waiver or limitation of the sovereign immunity of the Tribe, its agencies, officers or employees.

### **§36-1-4 Policy**

It is the policy of the Tribe that Elected Officials shall maintain the highest standards of honesty, integrity, fairness, and impartiality in their conduct, and they shall avoid any actions that would adversely reflect on the Tribal government and Tribal members. Elected Officials shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Elected Officials shall not engage in behavior involving a conflict of interest, or acts that involve actual or apparent impropriety, as defined in this Code.

### **§36-1-5 Definitions**

The following definitions apply in this Code:

- (1) “Actual or Apparent Improprieties” shall mean those acts involving an actual impropriety (such as illegal acts) while serving on behalf of the Tribe; acts involving an abuse of power;

acts involving dishonest or reprehensible conduct; or acts that would do a disservice to the Tribe's reputation.

- (2) "Committee Procedures" shall mean the Tribal Council Committee Systems Procedure, as amended.
- (3) "Conflict of Interest" shall mean: i) action or conduct by an Elected Official that is in conflict with the Elected Official's obligation to take actions in the best interest of the Tribe and the Tribal membership; or ii) when the Elected Official, or his/her Immediate Family, has or may foreseeably develop a personal or financial interest that is adverse to the Tribe.
- (4) "Elected Official(s)" shall mean the Tribal Chief and all members of the Tribal Council, either elected to office or appointed to replace an elected office.
- (5) "Expense Policy" shall mean the Tribal Council Expense Allowance Policies, as amended.
- (6) "Immediate Family" shall mean husband, wife, domestic partner, child (including a step-child or adopted child), grandchild, brother, sister, mother, father, grandmother, grandfather, or any aunt, uncle, niece and nephew who is related to the Elected Official within the 3rd degree according to the Nolan Chart of Relationships and Degrees of Kindred. For purposes of this definition, "domestic partner" means an individual involved in a romantic relationship with the Elected Official and who lives together with the Elected Official and shares a common domestic life, but are not married.
- (7) "Personnel Policy" shall mean the MBCI Administrative Personnel Policy & Procedures, as amended.
- (8) "Tribal employee" shall mean any individual employed by the Mississippi Band of Choctaw Indians, whether a part of the Tribal Government, Tribal Business Enterprise, or any independent Tribal agency or regulatory body.

### **§36-1-6 Standards of Conduct**

The expectation for Elected Officials to adhere to professional and ethical conduct goes beyond what can be outlined in this Code. Notwithstanding that expectation, the following standards of conduct and prohibitions against conflict of interest situations apply to Elected Officials.

- (1) Elected Officials shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which they, or a member of his or her Immediate Family, have a direct personal or financial interest that could be affected by such action.
- (2) Elected Officials shall refuse any illegal offers, solicitations, payments, or other payment to induce business opportunities for themselves or their Immediate Family. Elected Officials must also refuse any offer that has the appearance of being an illegal or inappropriate offer, solicitation, payment, or remuneration.
- (3) Elected Officials shall attend all required meetings that have been properly called by the appropriate official. For Tribal Council members, one unexcused absence may constitute a violation of this Code and may subject that Tribal Council member to disciplinary procedures under Sections 8 and 9 of this Code. If a Tribal Council member is unable to attend a properly called meeting, that person should notify in advance the official who

called the meeting of his or her inability to attend the meeting to be properly excused. A “no call, no show” by a Tribal Council member for a properly called meeting is considered an unexcused absence. A “required meeting” under this subsection means a Regular Call or Special Call Tribal Council meeting or a Committee meeting to which a Tribal Council member is assigned.

- (4) Elected Officials shall perform their duties by making informed decisions in good faith and in a manner believed to be in the best interests of the Tribe.
- (5) Other than the authority to be exercised by the Tribal Council or Committee of the Tribal Council under the Tribe’s Personnel Policy, Tribal Council Members shall not use their status as elected officials to interfere with Executive Branch employee decisions. The term “interfere” does not apply to general inquiries that may be made by Tribal Council members to the appropriate Executive Branch official.
- (6) Elected Officials shall not engage in any personal investments that may be presented to them or that they become aware of as a result of their position in the Tribe.
- (7) Notwithstanding Indian preference laws and policies of the Tribe, Elected Officials and any Immediate Family member of an Elected Official (individually and through any business entity in which the Elected Official or his or her Immediate Family member has a financial or ownership interest) shall not contract or subcontract with or otherwise conduct business of any kind for goods or services with the Tribal Government or any entity of the Tribe. Any current contract, subcontract, or other business relationship prohibited under this subsection shall cease, terminate, and be considered by the Tribe to be void within ninety (90) calendar days after the effective date of this Code.

EXCEPTIONS:

- (a) The prohibition in this subsection shall not apply during the Choctaw Indian Fair, Nanih Waiya Day, the Thanksgiving Feast, the World Series of Stickball, Native American Sports Association events, and Native American Youth Organization events (the “Events”) under the following circumstances:
  - (i) when the Tribe, by contract or otherwise, pays for goods or services provided by any Elected Official or his or her Immediate Family member for and during the Events;
  - (ii) when the Tribe authorizes any Elected Official or his or her Immediate Family member who has been selected by the bid process to provide services or concessions for and during the Events, and;
  - (iii) when the Tribe hires on a temporary, short-term basis any Elected Official or his or her Immediate Family member for general labor services during the Events.
- (b) The prohibition in this subsection shall not apply when any Elected Official or his or her Immediate Family member is engaged in Cultural or Traditional Arts & Crafts activities which may include, but are not limited to, local festivals or community events that may feature Choctaw cultural traditions, customs, social practices, ceremonies, arts, crafts, music, dancing, Choctaw clothing, Choctaw

language, and traditional foods. For purposes of this subsection, the term “Traditional Arts & Crafts” shall mean the handcrafting of items or the participation in any activity that conveys cultural customs and beliefs that are practiced and produced by the Choctaw people which may include, but are not limited to, Choctaw clothing, Choctaw music, dance, jewelry, foodways, traditional games, hand crafted items, oral traditions, and other similar practices.

- (8) An Elected Official shall not accept on his or her behalf, or on behalf of their Immediate Family, individual gifts, money, or gratuities, which includes meals:
  - (a) From persons receiving benefits or services under any program financially assisted by the Federal Government or by the Tribal Government;
  - (b) From any person or agency, including lobbyists, performing services under contract, including subcontracts, with the Tribe, and;
  - (c) From persons who are otherwise in a position to benefit from the actions of any Elected Official.

Gifts, rewards, or favors with a value of \$25.00 or less are excluded from this prohibition. Nothing in this Section is intended to prohibit Elected Officials from meeting over meals paid for with Tribal funds in furtherance of Tribal business. This subsection shall not apply when any Elected Official, using his or her own personal funds, gives a gift of money or anything else of value to any other Elected Official or Officials during the month of December for the Christmas holiday.

- (9) Elected Officials shall not knowingly make public (including any social media platforms) any confidential information received in connection with one’s duties as an Elected Official, including but not limited to:
  - (a) Matters discussed during executive sessions of the Tribal Council or a committee of the Tribal Council;
  - (b) Matters protected as confidential under Tribal, Federal, or State law;
  - (c) Information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential.
- (10) Elected Officials shall refrain from outbursts, disruptive acts or argument, or generally failing to adhere to and abide by any rulings of the Tribal Chief, sitting as Chair, during any official Tribal Council meeting.
- (11) Elected Officials shall not act in violation of any Tribal law or policy including, without limitation, the Committee Procedures and the Expense Policy.

### **§36-1-7 Improper Conduct**

Improper conduct prohibited under this Code includes, but is not limited to, the following:

- (1) Abuse of power, such as using one’s position to coerce, threaten, intimidate, or improperly influence a Tribal member, Tribal employee, or vendor to provide personal, financial or

political benefit to oneself or Immediate Family, or someone they have business or financial ties to, or for any other purpose, or using one's official title in Tribal government to conduct personal business;

- (2) Unauthorized participation or involvement in any Tribally owned or operated enterprise operations, including, but not limited to, business, employment, and personnel actions or decisions;
- (3) Engaging or using threatening or intimidating actions, words, or behavior directed at any Tribal employee (including on any social media platform, texts, or emails) to coerce the employee to reveal work-related information to the Elected Official outside the appropriate methods of communication or to try to direct any Tribal employee not under the authority of the Elected Official to perform any function or respond to their demands;
- (4) Intoxication or under the influence of illegal drugs while conducting official Tribal business or on business trips paid for by Tribal funds (whether during or after working hours);
- (5) Misappropriation or misuse of Tribal funds or property;
- (6) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;
- (7) Committing perjury or fraud, including signing and submitting documents with false information;
- (8) Violating the Standards of Conduct or prohibitions against conflict of interest situations established in this Code or any of the other Tribal laws, ordinances, Codes, resolutions, rules, regulations or policies;
- (9) Use of any electronic device (whether Tribally-issued or not) to record any official meeting, conference, or seminar held on Tribal lands unless permission is granted from all those in attendance, or;
- (10) Any other act prohibited by Tribal, Federal or State law that has a direct impact on the ability of the Elected Official to carry out his or her official duties.

### **§36-1-8 Investigation and Hearing Procedures**

- (1) The Tribal Council Officers shall constitute the Hearing Panel (the "Panel") and shall be responsible for investigating and conducting hearings of any alleged violations by an Elected Official under this Code. The Tribal Council Officers shall consist of: the Vice-Chief, the Secretary-Treasurer, and the Committee System Coordinator. However, if any of the Tribal Council Officers is the subject of a complaint, that Officer shall be replaced with the Chairperson of the Judicial Affairs and Law & Order Committee, with the alternate being the Chairperson of the Congressional and Governmental Affairs Committee. The Vice-Chief (or any replacement for that position) shall serve as the Chair of the Panel. The Office of the Attorney General (the "Attorney General") will represent the Tribe and will present complaints to the Panel under the procedures outlined in this Section.

- (2) Any violation of this Code shall be described in a written complaint, including the name of the Elected Official, the names of any witness(es), date(s), time(s), and the section(s) of this Code that is alleged to have been violated. A claim in a complaint will not be valid and must be dismissed if the claim is based on an alleged violation that has occurred more than one hundred eighty (180) calendar days prior to the filing of the complaint. Complaints shall be processed in the following manner which afford the subject of the complaint all due process protections and that are based on alleged violations that occur or exist after enactment of this Code:
- (a) A written complaint shall be submitted to the Attorney General and the Panel by the Tribal Chief, any Council Member, Tribal Member, or Tribal employee who believes that an Elected Official has engaged in any action in violation of this Code. The complaint shall be signed under penalty of perjury and shall identify the Elected Official against whom a complaint is being made, and shall specify the conduct that is alleged to be in violation of this Code. If an allegation involves action that allegedly wronged a person, the person against whom the improper conduct allegedly occurred can only make the complaint. The Elected Official that is the subject of the complaint shall be provided with a copy of the written complaint.
  - (b) The Panel shall perform an initial review in executive session of the allegation and complaint. Such review shall take place and a determination under Subsection (2)(C) made within fifteen (15) business days after the complaint has been submitted. The purpose of the initial review shall be to determine whether the allegation(s) falls within the scope of this Code and whether, assuming the facts alleged are true, said facts would support a determination of being in violation of this Code. The Panel may seek the advice and counsel of the Tribal Council's attorney and the Attorney General. The Elected Official against whom the allegation is made shall not participate in the initial review.
  - (c) If the Panel, upon completion of the initial review, determines that the allegation falls within the scope of this Code and alleges facts which, if true might support a determination of being in violation of this Code, the Panel, by majority vote (vote can only be made out of executive session), may refer the allegation for investigation. However, if the Panel determines that the allegations do not fall within the scope of this Code, or the facts, even if true, do not support a determination of being in violation of this Code, the Panel, by majority vote, may dismiss the complaint and immediately notify the complainant and the Elected Official who is the subject of the complaint.
  - (d) Any investigation may be conducted by the Chair of the Panel or by an independent, outside investigator appointed by the Panel. Any findings of the investigator shall be reported to the Chair of the Panel so that a formal written report can be submitted by the Chair under Subsection 2(F).
  - (e) The Chair of the Panel or its investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Elected Official against whom an allegation is made, his/her legal counsel, the complainant, members of the Council, the Tribal Chief, and the Attorney General shall have the right to be present when sworn testimony is given. The Elected Official against whom an allegation is made shall have the right to



submit a written response to any allegations. Any such response shall be submitted to the Panel no later than five (5) business days prior to any hearing set under Subsection 2(H).

- (f) Any investigation performed under this Code shall be completed within twenty (20) business days of the determination by the Panel under Subsection (2)(C) by the issuance of a written report from the Chair of the Panel to the Panel and the Attorney General which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Elected Official. After the investigation, if the Chair of the Panel determines that the allegations are false or do not have any merit, the Chair shall immediately notify the Panel and the Panel, by majority vote, may dismiss the complaint and immediately notify the complainant and the Elected Official who is the subject of the complaint.
- (g) Upon receipt of the investigation report that does not recommend dismissal, the Panel shall: (i) Send notice, by certified mail, to the Elected Official accused of the violation and the complainant, and; (ii) Set a hearing date and time not less than ten (10) business days and not more than thirty (30) business days from the date of the notice. A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Elected Official's legal counsel, if any.
- (h) The Panel shall hold a hearing in a session open to the public and shall be recorded. The results of the investigation, if any, shall be presented to the Panel by the Attorney General. The Panel may hear from any witnesses presented by the complainant and the Elected Official who is the subject of the complaint. The Panel may seek the advice and counsel from the Tribal Council's attorney and the Attorney General. The Elected Official shall be given all opportunity to present a defense against any of the allegations. The Rules of Evidence applicable to civil matters provided in Title VI of the MBCI Code shall be applied in the hearing. The Elected Official member may use legal counsel of his/her choosing, except no attorney with Choctaw Legal Defense shall be used as defense counsel in any of these proceedings or for any appeal. At the conclusion of the hearing, the Panel shall review the evidence and consider a decision and sanction, if any.
- (i) The Panel shall issue a written decision within ten (10) business days after the hearing to determine whether a violation under this Code has occurred. Said decision shall be made by a majority vote. If the Panel decides that a violation has occurred, the Panel shall then decide the appropriate sanction, if any, to impose on the Elected Official who engaged in the conduct. All documents and filings, including the recording of the hearing, shall be maintained as a formal record of the proceedings that may be subject to review by the full Tribal Council under Section 10 of this Code.

### **§36-1-9 Sanctions**

The Panel may impose a sanction(s) against any Elected Official who is found to have engaged in improper conduct or other act deemed to be in violation of this Code. Such sanctions may include one or more of the following:

- (1) Issuance of a public Reprimand, which is defined as a public censure or condemnation and shall be publicized in the Tribal Community newspaper for two (2) consecutive publication periods and posted on the Tribal website and Facebook page for one (1) month with the name of the Elected Official, a full description of the violation (while maintaining the confidentiality of other individuals and information required by law to remain confidential), and the finding of the Panel;
- (2) A monetary fine of \$1000.00 per violation, which will be imposed only after review and affirmation of the Panel's decision by the full Tribal Council or until the time for seeking Council review has passed with no request for review by the Elected Official. Payment of the fine may be accomplished through deductions from the salary of the Elected Official and shall be deposited back to the Tribe's general revenue account. This Section is not intended to limit the Tribe's ability to impose additional civil or criminal liability against the Elected Officials, if warranted, and this Section does not restrict or limit the Committee System Coordinator from imposing any appropriate discipline against Tribal Council members;
- (3) A temporary suspension of the Elected Official's ability to receive reimbursements for any business-related travel under the Expense Policy or other applicable policy of MBCI;
- (4) Suspension without pay of a Tribal Council member's duties as Chairman of his or her committee for a determined period of time not to exceed two months per violation;
- (5) A temporary suspension of the Elected Official's use of his or her official expense allowance under the Expense Policy or other applicable policy of MBCI;
- (6) Suspension of using any Tribally-issued mobile phone, Ipad, or other equipment, or;
- (7) Any combination of the above sanctions depending on the severity of the violation(s). Tribal Administration, including but not limited to, the Office of Finance and Accounting, is authorized to enforce by applicable and appropriate means any of the above sanctions imposed by the Panel, but only after all appellate remedies under Section 10 have been exhausted by the Elected Official.

**§36-1-10 Tribal Council Review**

- (1) Any Elected Official who is found by the Panel to have violated this Code and against whom the Panel has imposed sanctions shall have the right to request a review of such determination to the full Tribal Council to be heard at the next Regular Call meeting as part of the meeting agenda, as long there is at least thirty (30) calendar days between the date of filing of the request for review and the date of the Regular Call meeting; otherwise, the review hearing may be held at the next Regular Call meeting. A Special Call meeting, however, may also be established for review of the Panel's decision. The Office of the Attorney General will represent the interests of the Tribe and will defend the Panel's decision, including any sanction(s) imposed, in any appeal.
- (2) The Tribal Council's review in such matters is limited to a determination of whether or not the action taken by the Panel was arbitrary and capricious or in violation of the Tribe's Constitution. The Tribal Council's decision will be in writing and based on a majority vote of the Council to affirm or reject the Panel's decision, including the sanctions to be

imposed. All Tribal Council members in attendance at the meeting may participate in the vote.

- (3) The request for review by the full Tribal Council must be filed with the Office of the Tribal Council by the Elected Official that is the subject of the Panel's decision within thirty (30) calendar days of the Panel's determination. Any untimely filing by the Elected Official under this Section shall result in the request being denied with no further review by the Tribal Council or any Court. No sanction imposed by the Panel may be enforced until the time limit to appeal has passed or until the conclusion of any review by the Tribal Council.
- (4) The Tribal Council shall conduct a review of the Panel's decision using the record established by the Panel. No additional testimony or evidence shall be presented to the Tribal Council. The Tribal Council shall issue a written decision within sixty (60) business days after the review meeting by the Tribal Council and shall be final.

## CHAPTER 2. TRIBAL EMPLOYMENT CODE

### **§36-2-1 Authority**

Pursuant to the authority vested in the Mississippi Band of Choctaw Indians by its Revised Constitution and Bylaws and particularly by Article VIII, Section 1(c) of the Constitution, the Tribal Council of the Mississippi Band of Choctaw Indians hereby enacts this Tribal Employment Code establishing rules affecting the qualifications of certain employees and to establish general procedures to regulate employee qualification.

### **§36-2-2 Short Title**

This Code shall be known as the “Tribal Employment Code.”

### **§36-2-3 Purpose**

- (1) Tribal employees are expected to serve the Tribal membership of the Mississippi Band of Choctaw Indians with honesty, integrity, and in a professional and dignified manner. The purpose of this Code is to maintain and protect this obligation by providing restrictions for hiring or rehiring an applicant who previously committed acts of theft against the Tribe.
- (2) All tribal employees are expected on their own to conduct themselves in a professional and dignified manner to not bring shame or embarrassment to themselves, the Tribal government, and Tribal members.
- (3) Nothing in this Title shall be construed to limit the jurisdiction or authority of the Tribal Chief and the Tribal Council under the Revised Constitution and Bylaws, other Tribal law or policy, or Federal law. Nothing in this Code shall be deemed or construed as a waiver or limitation of the sovereign immunity of the Tribe, its agencies, officers or employees.

### **§36-2-4 Intent**

The provisions of this Code are intended to apply in conjunction with the Tribe’s Administrative Personnel Policy & Procedures regarding the hiring or rehiring of an applicant. In the event of a conflict or inconsistency between the Administrative Personnel Policy & Procedures and this Code, this Code shall control.

### **§36-2-5 Definitions**

The following definitions apply in this Code:

- (1) “Any jurisdiction” shall refer to federal, tribal (of any tribe), state, or local government.
- (2) ”Applicant” shall mean any individual who applies to be an employee under any of the classifications provided in Part VIII of the Tribe’s Administrative Personnel Policy & Procedures and includes anyone who seeks to be a non-employee independent contractor, whether within the Tribal Government, Tribal Business Enterprise, or any independent Tribal agency or regulatory body.
- (3) “Convicted” or “Conviction” shall mean a final judgment from any jurisdiction determining guilt of an individual of a criminal charge or charges, whether or not that judgment is under

any pending appeal.

- (4) “Mississippi Band of Choctaw Indians” or the “Tribe” shall mean any office or department of the Tribal Government, any Tribal Business Enterprise, any independent Tribal agency, or a Tribal regulatory body.
- (5) “Theft offense” shall mean any offense involving the taking of personal property with the intent of depriving the owner of said property of the use of their property and shall include, but is not limited to, embezzlement, theft of property, theft of time, larceny, wire fraud, and any other related offense however designated. For purposes of this Code, a “theft offense” may be a felony or misdemeanor theft offense crime from any jurisdiction and may be a Class A, B, or C crime under Title III of the Tribal Code of the Mississippi Band of Choctaw Indians.

**§36-2-6 General Prohibition**

- (1) No applicant may be hired or rehired who has previously been convicted in any jurisdiction, or adjudicated by the Tribe’s Human Resources office, of any theft offense committed against the Mississippi Band of Choctaw Indians, whether that applicant seeks a position within the Tribal Government, Tribal Business Enterprise, or any independent Tribal agency or regulatory body of the Tribe; provided, however, that no applicant who has a pending court case, including any appeals, in any jurisdiction alleging a theft offense may be considered for hire until such court case is resolved. For purposes of this Chapter, an adjudication by the Tribe’s Human Resources office means a formal written determination that a former employee admitted to a theft offense against the Tribe, even if no formal criminal charges were filed.
- (2) Notwithstanding this general prohibition, an applicant may be eligible for hire or rehire under the following limitations:
  - A. The applicant is eligible for hire or rehire within the following years from the date of conviction, or from the date of the adjudication by the Tribe’s Human Resources office, and based on the amount of loss to the Tribe as determined by the conviction or Human Resources records:

<b>Amount of Loss</b>	<b>Years from Date of Conviction or Human Resources Adjudication</b>
Up to \$1,500	One Year
\$1,501 to \$3,000	Two Years
\$3,001 to \$5,000	Three Years
\$5,001 and over	Five Years

- B. For any applicant who has been convicted and sentenced to serve a period of imprisonment, the applicant is only eligible for hire or rehire from the date the applicant is released from imprisonment within the timeframe and amount of loss as described in subsection (2)A above.
  - C. Restitution for any loss must be paid back in full by the applicant prior to being eligible for hire or rehire. The responsibility for providing proof of full payment of the restitution belongs to the applicant.

- D. The applicant may not be considered for any position requiring financial authority or responsibility.
- E. Any applicant who is eligible for hire or rehire under this Section shall only be eligible for a salary in any position that does not exceed \$40,000.00 per year, and the applicant shall not be eligible for merit increases or cost of living adjustments. All other provisions of the Tribe's Administrative Personnel Policy and Procedures shall apply to such applicants.

**§36-2-7 Effective Date**

This Code shall become effective upon enactment by the Tribal Council and will apply only to applicants from the enactment date forward.

## **CHAPTER 3. TRIBAL EMBLEMS USE CODE**

### **§36-3-1 Citation; Authority and Purposes**

This chapter may be referred to as the “Tribal Emblems Use Code” and is enacted pursuant to Article VIII, Sections 1(c), (m), (p), and (q) of the Revised Constitution and Bylaws of MBCI. The purposes of this Chapter are to:

- (1) control all uses of the Tribal Emblems to ensure appropriate use of the same;
- (2) authorize MBCI tribal members to create and sell handcrafted depictions of the Tribal Emblems;
- (3) provide standards and procedures for the authorization of acceptable uses of the Tribal Emblems; and
- (4) provide for licensing of the Tribal Emblems in accordance with this Chapter to enable MBCI to share in the economic benefits derived from the commercial use of the Tribal Emblems.

### **§36-3-2 Definitions**

- (1) “Commercial Use” means use of a Tribal Emblem for any promotional or financial gain; provided, however, that this does not include any use for Official Government Business.
- (2) “Elected Official” Any person occupying a MBCI elective governmental office or position.
- (3) “Employee” means any Person employed, in any capacity, by the MBCI government.
- (4) “MBCI” means the Mississippi Band of Choctaw Indians, a federally-recognized Indian tribe.
- (5) “Official Government Business” means use of a Tribal Emblem by an Elected Official or Employee to the extent that use is within the scope of their official duties.
- (6) “Person” means any individual, partnership, limited liability company, business trust, association, or other entity.
- (7) “Tribal Chief” means the chief executive of MBCI whose powers and duties are described in Article IX of the Revised Constitution and Bylaws of MBCI.
- (8) “Tribal Emblem” means the official seal, logo, or flag of MBCI, used in any form (embossed, displayed, printed, physical representation, electronic representation, or any other reproduction) as described in the *Tribal Seal, Tribal Logo, and Tribal Flag Usage Guidelines* approved by Tribal Council, as the same may be amended from time to time.
- (9) “Tribal Council” means the legislative body of MBCI whose powers and duties are described in Article VIII of the Revised Constitution and Bylaws of MBCI.

### **§36-3-3 Authorized Use**

- (1) Official Government Business. The Tribal Emblems may be used for Official Government Business.
- (2) Personal Use by MBCI Tribal Members. MBCI grants to all MBCI Tribal Members a nonexclusive, limited, nontransferable, nonassignable, revocable license to create and sell handcrafted depictions of the Tribal Emblems.
- (3) Miscellaneous Uses. The Tribal Emblems may be used:
  - (a) for illustrative purposes by the news media if the reproduction by the news media is incidental to the publication or the broadcast;
  - (b) in proposals sent to MBCI in response to solicitations issued by MBCI; and
  - (c) for any noncommercial purpose that cannot reasonably be considered to serve as or suggest that:
    - (i) MBCI endorses a product or service; or
    - (ii) a Person, group of Persons, or an entity is part of or associated by law with MBCI, except as expressly authorized by MBCI.
- (4) License Requirement. Except for the authorized uses provided in this section, no Person is authorized to use, manufacture, sell, reproduce, copy, or colorably imitate, in any manner, a Tribal Emblem without a duly granted license under an agreement meeting the requirements of subsection 36-3-6 of this chapter.

#### **§36-3-4 Prohibited Uses**

The Tribal Emblems cannot be used:

- (1) in any manner that implies endorsement or alliance by MBCI of the product or service utilizing a Tribal Emblem, unless the use is Official Government Business, or is specifically permitted by a duly approved license;
- (2) by political parties, candidates for elective office, or in association with any political issue, unless the use is Official Government Business; and
- (3) for a characterization used in a political cartoon.

#### **§36-3-5 Requirements for Use and Reproduction of Seal and Name**

- (1) Consistency. A Tribal Emblem cannot be altered, manipulated, edited, or redesigned in any way, including but not limited to the proportions, colors, or elements of that Tribal Emblem. A Tribal Emblem as a whole may be reduced or enlarged, provided that it maintains its proportions, colors, and elements. No mark, insignia, letter, word, figure, design, picture, or drawing of any nature can be placed upon any part of a Tribal Emblem.



- (2) Quality. A Tribal Emblem cannot be used in any way that tarnishes, blurs, or dilutes that Tribal Emblem.
- (3) Exceptions. Subsections 36-3-5(1) and 36-3-5(2) of this chapter notwithstanding, a Tribal Emblem may be reproduced in black and white for Official Government Business or pursuant to a license that permits the reproduction of that Tribal Emblem in black and white for noncommercial purposes; provided, however, that to the fullest extent practicable, all uses of a Tribal Emblem must, to the fullest extent possible, be in color. All uses or variations of the Tribal Emblems must be consistent with the standards set forth in the *Tribal Seal, Tribal Logo, and Tribal Flag Usage Guidelines* approved by the Tribal Council, as the same may be amended from time to time.
- (4) Obtaining Copies. All copies, electronic or otherwise, of the Tribal Emblems for uses authorized in this chapter must be obtained from the Director of MBCI's Office of Public Information.

### **§36-3-6 License Application and Review**

- (1) Requests for License. All requests for a license to use a Tribal Emblem must be in writing, on a form supplied by MBCI, and addressed to the Tribal Chief.
- (2) License Application Fee. All requests for a license to use a Tribal Emblem regarding any use for which a license is required under section 36-3-3(4) of this chapter may require an application fee established by Tribal Council resolution.
- (3) Required Information. The license application must require, at a minimum, the following information from all license applicants:
  - (a) the applicant's name;
  - (b) the applicant's address;
  - (c) the applicant's telephone number;
  - (d) whether the proposed use is commercial or noncommercial in nature;
  - (e) a description of the applicant's business or the event at which the applicant is seeking to use a Tribal Emblem;
  - (f) a detailed description of the proposed use that identifies the manner, purpose, and place of use, the manner of distribution of the item, the manner in which the item is to be advertised or promoted, and the manner in which the Tribal Emblem would be displayed;
  - (g) the proposed duration of use of the Tribal Emblem;
  - (h) a reproduction sample of the item, or at a minimum, a photograph, or detailed sketch of the item demonstrating the proposed use of the Tribal Emblem; and

- (i) if the proposed use is commercial in nature, the applicant must provide the information concerning the factors set forth in subsection 36-3-6(a)(i) of this chapter, the proposed pricing of the item, and the proposed royalty payment.
- (4) Review of Application. The Tribal Chief will endeavor to review all completed license applications within twenty (20) days of their submission. In determining whether to grant or deny a request for a license, the Tribal Chief must consider the information provided by the applicant and apply the following standards:
- (a) whether the proposed use will enhance the image of MBCI;
  - (b) whether the dignity of MBCI through the proposed use of the Tribal Emblem may be compromised if a license is granted;
  - (c) whether the proposed use of the Tribal Emblem is consistent with the terms of this chapter; and
  - (d) if the proposed use is a commercial use, whether the proposed royalty payment is acceptable considering the factors set forth in subsection 36-3-6(6)(a)(i) of this chapter.
- (5) Decision Regarding License Application.
- (a) All decisions by the Tribal Chief concerning the granting of or denial of a license are final.
  - (b) A written letter of approval or denial from the Tribal Chief or their designee will be sent to the applicant via first-class mail within seven (7) business days of the decision to approve or deny the application.
  - (c) If the Tribal Chief approves the license application, the applicant will be granted a license, which must, at a minimum, conform to the following requirements:
    - (i) the license is limited, nonexclusive, and nontransferable;
    - (ii) the initial term of the license will be a period of not more than three (3) years, commencing on the day the license agreement is executed. No license or license agreement may grant perpetual use rights. No use of a Tribal Emblem by the licensee may occur except during the term of the license agreement;
    - (iii) the license agreement must contain a provision for a royalty payment consistent with subsection 36-3-6(6) of this chapter;
    - (iv) the licensee must provide, prior to commencing production, a production sample to the Director of MBCI's Office of Public Information, who has the right to object to the use within fifteen (15) business days of receiving the sample if the sample does not conform with this chapter, the description provided in the licensee's license application, or the terms of the license agreement;

- (v) if the Director of MBCI's Office of Public Information objects to the proposed use pursuant to subsection 36-3-6(5)(c)(iv) of this chapter, the licensee may not proceed with the proposed use until a sample is made to conform with this chapter, the description provided in the licensee's license application, and the terms of the license agreement, as explained by the Director of MBCI's Office of Public Information in writing. After receiving the written explanation from the Director of MBCI's Office of Public Information regarding the nonconforming use, the licensee must provide a conforming sample to the Director of MBCI's Office of Public Information and cannot proceed with production without written approval from the Director of MBCI's Office of Public Information;
- (vi) the licensee must submit to Director of MBCI's Office of Public Information a copy of each distinct advertisement or promotional material containing a Tribal Emblem. The Director of MBCI's Office of Public Information has the right to object to the use within fifteen (15) business days of receiving the sample if the sample does not conform with this chapter, the description provided in the licensee's license application, or the terms of the license agreement;
- (vii) if the use is a commercial use, MBCI has the right to inspect production and financial records relating to the commercial use of the Tribal Emblem;
- (viii) the license agreement must include all required guidelines and limitations regarding the advertising or promotion of the item;
- (ix) unless expressly provided in the license agreement, a Tribal Emblem may not be used in any manner or otherwise associated with any advertising or promotion that may reasonably be considered to serve as or suggest that MBCI endorses the product or service, and the licensee must explicitly and prominently state that the product, service, or event is not sponsored or endorsed by MBCI;
- (x) the item may indicate that it is an officially licensed product or service of MBCI;
- (xi) the grant of the license is contingent upon the licensee's continued compliance with this chapter throughout the term of the agreement;
- (xii) MBCI may terminate the license agreement, if it determines that the licensee provided any materially false or misleading information in the license application; and
- (xiii) the licensee acknowledges MBCI's sole and exclusive ownership of all Tribal Emblems and cannot take any action inconsistent with such ownership. The licensee cannot, during the term of the license agreement, or thereafter, challenge or in any way infringe upon the rights of MBCI in any of the Tribal Emblems.

- (6) Royalty Payment. When a licensee is making commercial use of a Tribal Emblem, the license agreement must contain a royalty payment to MBCI, consistent with the criteria set forth below; provided, however, that if the licensee is a governmental instrumentality of MBCI proposing to use a Tribal Emblem for commercial purposes, MBCI may, in its sole discretion, waive the requirement for a royalty payment. There will be no royalty payment if the intended use of the Tribal Emblem is for noncommercial purposes.
- (a) Factors to Consider in Establishing the Royalty Payment. When establishing the royalty payment, the Tribal Chief must consider the following factors:
- (i) the nature of the product or service;
  - (ii) the market in which the product or service will be sold;
  - (iii) the market presence of the licensee;
  - (iv) the licensee's plans and commitments to the product or service;
  - (v) the licensee's experience with this type of product or service;
  - (vi) the projected volume of sales;
  - (vii) the current average profit margin in the industry regarding the sale of similar items, if available;
  - (viii) the current average royalty rate in the industry regarding the sale of similar items, if available; and
  - (ix) whether the licensee is a MBCI Tribal Member or an entity that is majority-owned by an MBCI Tribal Member.
- (b) Due Date. The royalty payment may be either an upfront royalty payment, a quarterly royalty payment, or both. For royalty payments that are not due upfront, the due date of the royalty payment will be thirty (30) days following the end of each quarter during the term of the license agreement.

### **§36-3-7 Violations and Penalties**

- (1) Criminal Violations. Any Indian Person who knowingly and intentionally violates this chapter is guilty of a Class C offense as defined in Title III, Chapter 1, Section 3 of the Choctaw Tribal Code. Each day during which such violations continue constitutes a separate violation of this chapter.
- (2) Civil Violations. Any Person who knowingly and intentionally violates this chapter is liable for a civil fine not to exceed \$5,000. Each day during which such violation continues constitutes a separate violation of this chapter. The amount of any such civil fine may be recovered in a civil action in the Tribal Court. All civil fines accruing under this chapter are cumulative, and a suit for the recovery of one fine will not bar or affect the recovery of another fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

- (3) Property Seizure. All property bearing reproductions of a Tribal Emblem in violation of this chapter and all funds derived from the sale of such property are subject to seizure by order of the Tribal Court.

**§36-3-8 Severability**

If any provision of this chapter or its application to any Person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable