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**RESOLUTION
OF THE
GENERAL COUNCIL OF THE
CATAWBA INDIAN NATION**

November 5, 2022

Resolution Number: 20221105B

Resolution Adopting the Governance Ordinance

WHEREAS, the Catawba Indian Nation (the "Nation") was restored to its Federal Status on October 23, 1993 (Public Law 103-116) and organized under its Constitution and By-Laws, adopted August 30, 1975, as may be amended from time to time; and

WHEREAS, the General Council is the governing body of the Nation under Article III, Section 1 of the Nation's Constitution with the power "to pass and enforce ordinances" pursuant to Article IV, Section 1(d); and

WHEREAS, Article III, Section 4 of the Constitution mandates that the General Council "shall meet on the first Saturday of January and the first Saturday of July of each year" to conduct necessary business of the Nation; and

WHEREAS, the Nation has developed the attached Governance Ordinance to create a Governance Court, define the rights of citizens in this Court, establish requirements for judges, establish the process to file Governance Petitions, and provide instructions for how Catawba law should be interpreted, what actions the Court can take in a case, and whether a Court record should be confidential or available to the public.

NOW, THEREFORE BE IT RESOLVED, that the General Council hereby adopts the attached Governance Ordinance.

Whereas, this motion was made by:

DEE DEE GILLIS

The Motion was seconded by:

BRIAN HARRIS

Votes, Yes: 79

Votes, No: 7

Abstentions: 2

46 Certified by Chief William Harris and Secretary/Treasurer Roderick Beck on behalf of the
47 General Council:

48 William Harris

49
50 Roderick Beck

51 On this date of:

52 November 5, 2022

CATAWBA INDIAN NATION

GOVERNANCE ORDINANCE

PREAMBLE

As a traditionally Tribal democracy, every adult citizen of the Catawba Indian Nation has the right to participate in the creation and adoption of Catawba Tribal law. The most important component of the Catawba Nation's inherent sovereignty is the ability to make its own laws and to be governed by them. The Catawba Nation Governance Court, as established by the General Council, is responsible for interpreting, applying, and enforcing Catawba Tribal law as it applies to the officials and agencies of the Nation. Through the exercise of its power of self-government to establish laws and to adjudicate matters through its own Governance Court, the Catawba Nation reinforces its culture and values and protects its sovereignty. Nonetheless, laws cannot be understood, followed, and applied unless they are made known. For there to be trust in the Tribal government and the Governance Court, there must be transparency and accountability. This openness, however, must be balanced against the need to protect our most vulnerable Tribal community members, especially our children. This law is adopted by the Catawba Nation General Council to set forth the guidelines for making publicly available all tribal laws and certain legally significant Governance Court decisions and opinions.

ARTICLE 1 – GENERAL PROVISIONS

Section 1.01 Short Title

This Ordinance shall be referred to as the "Governance Ordinance."

Section 1.02 Purpose

- (a) The purpose of this Ordinance is to enact provisions of law that establish the Catawba Nation Governance Court and define procedures for enforcing existing and future laws and administrative rules pertaining to governance (as defined in Section 1.12) in that Court.
- (b) This Ordinance shall be applied to facilitate the efficient and fair resolution of disputes within the scope of the Ordinance. To that end, disposition of matters on procedural or technical grounds, particularly in matters where a party is not represented by counsel, are disfavored. The Court should grant leave to correct procedural or technical defects in submissions to the Court where the interest of justice requires, but nothing in this Section shall be construed to prevent the Court from imposing sanctions, including dismissal of an action, for default, or for flagrant, willing, or repeated violation of procedural and technical rules.

Section 1.03 Authority

This Ordinance is enacted pursuant to authority provided by Article IV, Section 1(d)-(f) of the Catawba Indian Nation Constitution, as adopted on August 30, 1975.

Section 1.04 Applicability and Jurisdiction

- (a) This Ordinance applies to and governs all agency actions, appealable agency actions, and contested cases, except where the procedure governing a particular agency's actions, appeals, and contested cases is governed by other laws of the Tribe.
- (b) Unless a law of the Tribe expressly exempts an agency from the provisions of this Ordinance, where a specific law of the Tribe provides a different procedure for the conduct of an agency's actions, appeals, and contested cases, the provisions of this Ordinance shall supplement such specific law of the Tribe where not otherwise inconsistent with that specific law.
- (c) The Governance Court shall have jurisdiction of all suits wherein the Respondent is an administrative agency of the Catawba Nation as defined in Section 1.06(a).
- (d) Any person who is not a citizen of the Catawba Nation shall be deemed as having consented to the jurisdiction of the Governance Court by filing a Petition for Review under this Ordinance.

Section 1.05 Sovereign Immunity

As a federally recognized sovereign Tribal government, the Catawba Nation has sovereign immunity (applying, without limitation, to the Nation, its departments, agencies, other subsidiary entities, officials, and employees) against all forms of lawsuit and legal process, except to the extent that the Nation expressly waives such immunity or it is expressly abrogated by federal law.

For the limited purpose of permitting actions under this Ordinance to be commenced, litigated, and resolved, the Catawba Nation enacts a limited waiver of its sovereign immunity on the following terms:

- (a) Catawba Nation citizens may bring actions for declaratory or prospective injunctive relief, as provided in this Ordinance, against the Nation or its agencies;
- (b) This limited waiver of sovereign immunity does not permit actions for monetary damages or awards of costs or fees against the Nation, its departments, officials, or employees except where otherwise authorized by ordinance, but shall not preclude actions for injunctive relief that may require the Nation or one of its departments to spend government funds to comply with such injunctions;
- (c) Nothing in this Ordinance shall be otherwise be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Catawba Indian Nation or any of its agencies, departments, enterprises, agents, or the General Council of the Catawba Indian Nation except as otherwise permitted by law.

Section 1.06 Definitions

In this Ordinance, unless otherwise stated:

- (a) "Administrative agency" or "agency" means every agency, board, commission, department, entity, panel, or office authorized by the General Council or Executive Committee to exercise rule-making powers that affect the rights of citizens or to adjudicate contested cases, whether created by constitutional provision or legislative enactment.

- (b) Administrative agency or agency does not include the Catawba Nation Judicial Branch and it does not include purely advisory groups.
- (c) “Administrative decision” or “Decision” means any decision, order, or determination of an administrative agency that is rendered in a contested matter before the agency that affects the legal rights, duties, or privileges of persons and terminates the proceeding before the administrative agency. In all cases in which a statute or rule of the administrative agency requires or permits an application for a rehearing or other method of administrative review, and an application for rehearing or review is made, no administrative decision of such agency is final as to the party applying for the rehearing or review until the rehearing or review is denied or the decision on rehearing or review is rendered. Administrative decision or decision does not include either:
 - i. Rules, standards, or statements of policy general application issued by an administrative agency to implement, interpret, or make specific the legislation enforced or administered by it unless the rule, standard, or statement of policy is involved in a proceeding before the agency and its applicability or validity is in issue in the proceeding.
 - ii. Rules concerning the internal management of the agency and not affecting private rights or interest.
- (d) “Constitution” means the Constitution of the Catawba Indian Nation adopted by the qualified voters of the Catawba Indian Nation on August 30, 1975.
- (e) “Council” means the General Council of the Catawba Indian Nation as established and empowered under the Constitution.
- (f) “Court” means the Governance Court of the Catawba Indian Nation.
- (g) “Clerks of Courts” means the Clerk of the Catawba Nation Governance Court and Catawba Nation Appellate Court and shall include a Court Administrator if employed by the Nation.
- (h) “Criminal background investigation” includes all state and federal felony convictions.
- (i) “Day” unless otherwise specified means a calendar day.
- (j) “Elected officer” or “Officer” means a person who holds office either by appointment or election as the Chief, Assistant Chief, Secretary Treasurer, or Committee Member of the Nation’s Executive Committee, or as a representative or alternate of the General Council.
- (k) “Felony” means a criminal offense that is punishable by more than one year in custody whether a term of incarceration is imposed or not, or a criminal offense within a tribal jurisdiction that would be punishable by more than one year in custody if prosecuted in a state or federal jurisdiction. A felony conviction includes a guilty verdict or a plea of guilty or no contest to a felony. A felony does not include a juvenile offense unless the offense is prosecuted within an adult criminal justice system.
- (l) “Nation” means the Catawba Indian Nation.

Section 1.07 Computation of Time

In computing any period of time prescribed or allowed by this Ordinance, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or a holiday recognized

by the Nation in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Tribally-recognized holiday.

Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail as authorized by a court rule, five (5) calendar days shall be added to the prescribed period.

Section 1.08 Rules Have Same Force as Law

Each rule adopted in accordance with this Ordinance to implement or interpret a Tribal law authorizing rulemaking has the force of law, but any rule not so adopted is invalid.

Section 1.09 Right of Review

A person suffering aggrieved or adversely affected by any final agency action shall be entitled to judicial review of the final agency action.

Section 1.10 Exhaustion of Other Remedies

Before seeking a hearing before the Governance Court, the party seeking a hearing must have exhausted all other available administrative remedies established by the Tribal ordinance or by the Tribal department through written policies, except in those instances where exhaustion would result in undue delay or irreparable harm to either party.

Section 1.11 Rules of construction

In the construction of this Ordinance, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the ordinance:

- (a) Gender; singular and plural. Every term in this Ordinance and in any ordinance using the masculine or feminine gender may extend and be applied to the other gender as well, and every term importing the singular number only may extend and be applied to several persons or things as well as to one person or thing, and every term importing a plural number may extend and be applied to one person or thing, provided that these rules of construction shall not be applied to any provision which shall contain any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.
- (b) Person. The term “person” extends and applies to natural persons, firms, corporations, associations, partnerships, or bodies corporate or politic and all entities of any kind capable of being sued unless plainly inapplicable.
- (c) Acts by agents. When a provision requires an act to be done which may by law as well be done by any agent as by the principal, such provision shall be construed to include all such acts when done by an authorized agent.
- (d) Tense. Words used in the present tense include the future.

Section 1.12 Conflicting provisions.

If the provisions of the different sections or articles of this Ordinance conflict with or contravene each other, the provisions of each section or article shall prevail as to all matters and questions arising out of the subject matter of such section or article.

Section 1.13 Representation by Counsel

- (a) All parties to any action under this Ordinance may be represented by legal counsel.
- (b) Counsel representing a party in a matter under this Ordinance must be licensed to practice law in a state and authorized by the Court to appear in such matters.
- (c) The Court may establish rules and standards for authorizing counsel to represent parties in matters under this Ordinance. Such rules may provide for limited scope representation.

ARTICLE II- CREATION OF THE CATAWBA GOVERNANCE COURT

Section 2.01 Creation of the Catawba Governance Court

There is hereby created the Catawba Indian Nation Governance Court which shall have jurisdiction as provided by Section 1.04 or other applicable Tribal law.

- (a) Notwithstanding the immunity from suit conveyed upon political subdivisions created pursuant to this Ordinance; the provisions of this Ordinance, other Tribal laws and ordinances, or Tribal enactments pursuant to this Ordinance, may be enforced against any political subdivision or other entity created under this Ordinance and its employees or officers; by an action in law or equity in the Catawba Indian Nation Governance Court, when brought by a constitutional quorum of the Catawba Indian Nation General Council.

Section 2.02 Composition of Catawba Indian Nation Governance Court

The Governance Court shall be a part of the unified Catawba Nation Judicial System, operated in the manner of the Catawba Nation Judicial System.

- (a) It is the intention of the Catawba Nation General Council to describe the full structure of the Catawba Nation Judicial System, including manner whereby the Chief Judge of the Catawba Nation Judicial System is selected, in subsequent ordinances.
- (b) The Governance Court shall consist of a Chief Judge and two (2) Associate Judges, appointed by the Chief Judge and subject to confirmation by the General Council under Sec. 2.03(f). Until such time as the General Council enacts the ordinances described in Section 2.02(a), the following procedures shall apply to the composition of the Governance Court:
 - (a) There is established a Judicial Selection Committee which shall consist of seven (7) members elected by the General Council at a regular or special meeting of the General Council. The Judicial Selection Committee shall nominate for appointment all associate judges for the Catawba Nation Governance Court from a list of qualified candidates as prepared by the Catawba Nation’s Human Resource Department and shall set the compensation for such judges. The Judicial Selection Committee shall interview applicants after review of each applicant’s resume to

determine suitability for the Catawba Nation Governance Court. The Judicial Selection Committee shall designate a Chairperson, who shall collect Committee records and notify the General Council of the nomination at the next Regular or Special meeting of the General Council. The General Council may confirm the nominee during such meeting.

Section 2.03 Qualifications of Associate Judges

- (a) All judges shall be of good moral character, and never convicted of a felony, crime of moral turpitude, serious crime within the jurisdiction of any tribe, crime against a tribe, or misdemeanor within one (1) year of appointment, with the exception of minor traffic violations.
- (b) No judge shall be qualified to preside in any case where he or she has any direct personal interest, or where there is reasonable basis to the belief that he or she is unduly prejudiced for or against any of the parties in the action. Nor shall any Appellate Court Justice be qualified to act in any case where any relative by marriage or blood in the first (1st) or second (2nd) degree is a party unless all parties to the action waive this provision.
- (c) All judges shall protect and preserve the high standards of the Tribal judiciary and shall abide by the American Bar Association Model Ordinance of Judicial Conduct.
- (d) At least one Associate Judge on the Governance Court shall at a minimum hold a Doctor of Jurisprudence from an accredited law school in the United States, and have five (5) years' experience as a practicing attorney with experience in Federal Indian Law, or have served for at least two (2) years as a trial or appellate court judge for an American Indian Tribe.
- (e) No individual shall serve as judge while serving as a member of the Executive Committee, Election Committee, or as a tribal law enforcement officer. The duties of any judge who is nominated for election to the Tribal Council shall be transferred to other judges of the court pending the election. If the judge shall be elected to the Tribal Council, his term of judge shall terminate at 12:01 midnight the day prior to the commencement of his term on the Tribal Council
- (f) All Associate Judges shall be selected by the Chief Judge of the Catawba Nation Court and shall be brought to the General Council for approval at the next General Council meeting that meets the quorum requirement. Appointments of Associate Judges shall be appointed for a term of four (4) years.

Section 2.04 Temporary Hearing Officer

In the event of disqualification or unavoidable absence of the Chief Judge and the Associate Judges, the Chief Judge may appoint a judge pro tempore to hear the judicial review. Such appointment shall expire upon the issuance of a final order or decisions in the contested case unless an Appellate Court remands the case to the judge pro tempore for further findings or conclusions. The appointment of a judge pro tempore shall be made upon the same qualifications as the Associate Judges.

Section 2.05 Recusal of Justices

- (a) A judge shall recuse himself from sitting on the Governance Court in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following instances:
 - (1) Where the judge has a personal bias or prejudice concerning a party or a party's representative,
 - (2) Where the judge has personal knowledge of the dispute or the facts involved in the proceeding,
 - (3) Where the judge is a witness concerning the dispute or facts involved in the proceeding,
 - (4) Where the judge or a member of the judge's immediate family:
 - (i) Has more than an insignificant interest in the outcome of the dispute,
 - (ii) Is a party to the proceeding or representing a party to the proceeding, or
 - (iii) Is likely to be a material witness in the proceeding.
- (b) A judge may voluntarily recuse himself from sitting on any Governance Court in any proceeding when the judge, in his own discretion, believes that:
 - (1) He cannot act fairly or without bias, or
 - (2) There would be an appearance that he could not act fairly or without bias.
- (c) Nothing in this Section shall preclude a judge from participating in any dispute, proceeding, or decision by the Governance Court solely because the dispute:
 - (1) Generally affects citizens of the Tribe or a class of citizens of the Tribe, or
 - (2) Affects an agency, department, or enterprise of the Tribe; insurer of the Tribe or an agency, department, or enterprise of the Tribe; or a person or entity in a contractual relationship with an agency, department, or enterprise of the Tribe.
- (d) For purposes of this Section, "immediate family" means brother, sister, son, daughter, mother, father, grandparent, grandchild, husband, wife, step-brother, step-sister, step-child, half-brother or half-sister; or brother, sister, son, daughter, mother, father, grandparent, or grandchild by adoption.

Section 2.06 Change of Judge as of Right

- (a) In any action before the Governance Court, each party may request one change of judge as of right.
- (b) A party wishing to exercise the right to a change of judge shall file a written "Notice of Change of Judge" containing the following information:
 - (1) The name of the judge to be changed,
 - (2) That the filing is timely under Article IV of this Ordinance, and

- (3) That the party has not previously been granted a change of judge as a matter of right in the case.
- (c) The notice for a change of judge will be assigned to the Chief Judge or the Chief Judge's designee.
- (d) When a notice for change of judge is filed, the judge named in the notice shall not take any further action until the change of judge is decided. If the judge presiding over the notice for change of judge determines that the party is not entitled to a change of judge, then the judge named in the notice shall proceed with the case. If the notice is granted, the Chief Judge or designee shall assign another judge to proceed with the case.

Section 2.07 Effect on Constitutional Rights and Other Laws; Compliance; Effect of Subsequent Legislation

Nothing in this Ordinance shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to all persons and parties.

ARTICLE III - GOVERNANCE COURT ADMINISTRATION

Section 3.01 Time and Place of Meeting

The time and place of meeting of the Governance Court shall be established by order of the Chief Judge on a case-by-case basis.

Section 3.02 Decisions of the Governance Court

The Governance Court shall render decisions in writing. The decision shall cite the legal basis for the determination, as well as clearly outline the reasons in support of the decision.

Section 3.03 Record of the Governance Court

(a) The Governance Court shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any hearing or proceeding, the names of the judges who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case. Unless specifically excepted by this Ordinance or Rule of Court, all decisions and opinions of the Governance Court shall be published in a format that shall be available to the public at the Governance Court.

(b) In the event that a Petition for Judicial Review is taken from a confidential matter as defined in any other Tribal ordinance or this Ordinance, the record shall remain confidential and shall not be open to public inspection. Any written opinion in a confidential matter shall have the names of the parties and any other identifying private information redacted and replaced with an initial or similar placeholder, prior to publication, and shall be available for public inspection in redacted form.

Section 3.04 Procedural Rules/Policies

The Court may adopt procedural rules or policies such as deadlines, hearing procedures, and commenting criteria to assist in implementation of the provisions of this Ordinance. To the extent that either the General Council and Executive Committee through ordinance or resolution has enacted procedures for adjudications which specifically address hearing procedures and other such matters in a manner more detailed than that of this Ordinance, those procedures control to the extent that such rules or policies do not conflict with the provisions of this Ordinance.

Section 3.05 Expedited Judicial Review

Actions brought pursuant to this Ordinance shall be given preference over all other actions before the Court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that such actions shall be speedily heard and determined within the time specified by ordinance..

ARTICLE IV - PETITIONS FOR REVIEW

Section 4.01 Governance Court Powers

- (a) The Governance Court may:
- (1) With or without bond, unless required by the authority of which the administrative decision was entered, and before or after the answer, stay the decision in whole or in part pending final disposition of the case, after notice to the agency and for good cause shown.
 - (2) Affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the Governance Court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion.
 - (3) Make any order that it deems proper for the amendment, completion, or filing of the record of the proceedings of the administrative agency.
 - (4) Allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or other cause.
 - (5) Dismiss parties.
 - (6) Modify, affirm, reverse, modify, and remand the action in whole or in part.
 - (7) Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
 - (8) When a hearing has been held by the agency, remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just.
 - (9) In the case of affirmation or partial affirmation of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, upon which execution may issue.
- (b) The Governance Court shall make findings of fact and state conclusions of law.
- (c) The Governance Court shall affirm the final agency action unless after reviewing the record and supplementing evidence presented at any evidentiary hearing, the Governance Court concludes that the final agency action is:
- (1) Beyond the authority delegated to the agency,

- (2) Contrary to law,
- (3) Not supported by substantial evidence in the record in the Governance Court when that record is viewed as a whole,
- (4) Based upon a procedure or decision-making process prohibited by the laws of the Tribe or not in accordance with the laws of the Tribe, or
- (5) Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

Section 4.02 Petition for Judicial Review

Unless otherwise precluded by Tribal law or policy, any party to a hearing may petition for the Governance Court's review of a Tribal department order for which there is no other adequate remedy by filing a written Petition for Judicial Review with the Governance Court within thirty (30) days after such final order is issued. A written Petition for Judicial Review must provide the Governance Court with sufficient information and argument to show why the order should be changed or reversed.

(a) At a minimum, a Petition for Judicial Review must:

- (a) State that the document is a Petition for Judicial Review,
- (b) List the name, address, and telephone number of the petitioner,
- (c) Identify the order or portion of an order for which review is sought,
- (d) Short and plain statement of the claim showing that the petitioner is entitled to relief, including:
 1. State the reason for review, including issues of fact, law, regulation, or identify the authority for the Governance Court to modify or set aside the order;
 2. Identify the specific substantive or procedural errors of law or fact in the order and the remedy sought.

Section 4.03 Oath and Summons

- (a) The petitioner or counsel for petitioner shall verify the petition by oath or affirmation, and the petitioner or counsel shall sign it.
- (b) When the petition or amended petition is filed, the Clerk shall stamp the original with the day and hour on which it was filed, initial the original, and issue a summons. The Clerk shall provide the petitioner with a stamped copy of the petition and a stamped copy of the summons.
- (c) The summons shall:
 - (1) Be signed by the Clerk,
 - (2) Contain the name of the Governance Court,
 - (3) Contain the name of the case and case number,
 - (4) Be directed to the respondent,
 - (5) State the time within which the respondent must file an answer, and
 - (6) Notify the respondent that he/she will be in default if no answer is filed.

Section 4.04 Voluntary Dismissal of Petition

- (a) At any time before the petition is served on the respondent, the petitioner may voluntarily withdraw the petition by the filing of a notice of voluntary withdrawal.

- (b) Upon receipt of the notice of voluntary withdrawal, the Governance Court may enter the dismissal of the petition without prejudice.
- (c) Alternatively, upon receipt of the notice and at the request of the petitioner, the Governance Court may dismiss the petition with prejudice after consulting with the petitioner.

Section 4.05 Jury Trials

Jury trials are not available for judicial review of final administrative decisions. The presiding judge shall resolve all questions of fact and law.

Section 4.06 Appearance of Respondent and Answer

Within twenty (20) days after service of the summons and petition, the respondent shall answer or respond to the petition.

- (a) The respondent shall file an answer to the petition or, in the alternative, a motion to dismiss or other responsive pleading
- (b) The answer, motion, or responsive pleading may be made orally in open Court or in writing. The Governance Court has discretion to require that an oral answer, motion to dismiss or other responsive pleading be put into writing and filed with the Governance Court.
- (c) The content of the answer should ordinarily:
 - (1) Admit or deny every allegation in the petition,
 - (2) Contain a short and plain statement of all defenses, and
 - (3) Contain a demand for relief including relief in the alternative or of different types.
- (d) A statement that the respondent does not know whether the allegation is true shall be considered a denial.
- (e) Allegations in a petition are admitted when they are not denied in the answer.
- (f) A motion to dismiss may be based on the following grounds:
 - (1) The petition is untimely,
 - (2) The petition seeks review of an agency action that is not final, or otherwise not subject to review under the provisions of this Ordinance; or
 - (3) The petition does not comply with Sec. 4.02.

Section 4.07 Motions and Other Papers

- (a) A written motion or notice shall be filed to make an application for an order, unless made orally during a hearing or trial. The motion shall specify the action that the applicant is requesting from the Governance Court and the reasons for the action.
- (b) A copy of any written motion or notice shall be served upon the other party.
- (c) Any response to a written motion or notice shall be filed no later than ten (10) calendar days after service.

Section 4.08 Form of Pleadings, Motions and Other Papers; Corrections of Mistakes in Pleadings

- (a) Every pleading, motion, or other paper must contain:

- (1) A caption setting forth the name, address, and phone number of the party or their counsel if any, the name of the Community Court, the title of the action, the file number if known, and title of the pleading or document; and
 - (2) The name, date, and signature of the party or their counsel if any at the end followed by a certificate of service.
- (b) Pleadings, motions, and other papers should be on white paper measuring 8 1/2 inches wide by 11 inches long where possible. Text should be clearly and legibly handwritten or typed in black ink, double-spaced, and on one side of the paper only. Documents greater than one page in length should be numbered.
- (c) The Governance Court shall interpret all pleadings, motions, or other papers in order to do substantial justice. Where possible, the Governance Court shall consider defects, ambiguities, or technical imperfections (concerns) of pleadings, motions, and other papers as follows:
- (1) Minor concerns shall be interpreted in favor of deciding the issue.
 - (2) Major concerns, especially in the case of self-represented individuals, shall be given an opportunity for correction.
 - (3) Dismissals and default judgments, based on major and minor concerns, should be avoided.

Section 4.09 Default Notice

- (a) The Governance Court shall enter a default notice against a party who has failed or refused to defend by filing an answer, motion to dismiss, request for an extension of time, or other responsive pleading.
- (b) The Governance Court may enter the default notice up to thirty (30) calendar days after a party has failed or refused to defend within the time periods provided by this Ordinance, or against a party who, given notice of a hearing date, fails to appear at such hearing.
- (c) The default notice shall state that:
 - (1) An action has been filed against the party and urgent attention is required, and
 - (2) The party has not attended or has refused to attend a hearing or to defend by filing an answer, motion to dismiss, request for extension of time, or other responsive pleading; and
 - (3) If the party does not defend itself within thirty (30) calendar days, the Governance Court may enter a default judgment against the party; and
 - (4) The party is warned that a default judgment may have serious, adverse, and irreversible consequences; and
 - (5) The party must file a written answer, motion to dismiss, or other responsive pleading but it is too late to request an extension of time or to make an oral answer.
- (d) The Governance Court shall serve upon all parties a copy of the default notice as provided in this Ordinance.
- (e) The default notice is effective once it has been served.
- (f) The default notice shall become null and void if an answer, motion to dismiss, or other responsive pleading is filed with the Governance Court within thirty (30) calendar days before the default notice becomes effective.

- (g) The entry and service of a default notice is required before a default judgment may be entered.

Section 4.10 Default Judgment

- (a) Thirty (30) calendar days after the default notice becomes effective, a party in whose favor the default notice has been entered may motion for entry of a default judgment against the defaulting party. The motion shall be accompanied by an affidavit of the amount due plus any supporting documentation of the claim.
- (b) The motion and affidavit shall be served on all parties.

Section 4.11 Failure to Appear

- (a) The Governance Court may enter a default notice and default judgment against any party failing to appear in person or through counsel, if any, at pre-trial or failure of a party to appear in person at trial as provided in Sec. 3.9 and 3.10. A party and counsel, if any, may file a notice to waive an in-person appearance at any other proceeding.
- (b) The Governance Court may dismiss, upon its own motion or the motion of a party, any petition for failure to prosecute. A dismissal under subsection "(b)" above is without prejudice.

Section 4.12 Parties

In an action to review a final decision of an administrative agency, the agency and all persons, other than the plaintiff, who are parties of record in the proceedings, shall be made respondents.

Section 4.13 Record on Review

- (a) The petition shall contain a statement of the findings and decisions, or part thereof sought to be reviewed, and shall clearly specify the grounds upon which review is sought.
- (b) Except as otherwise provided, the respondent shall file an answer.
- (c) If the cause is remanded to the administrative agency and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all the parties, shall constitute the record on review.

Section 4.14 Scope of Review

- (a) An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty (30) days after filing an answer to a petition, the Governance Court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required.
- (b) Exhibits and testimony may be admitted that were not offered during the administrative hearing, and objections that a party failed to make to evidence offered at the administrative hearing may also be considered.
- (c) For review of final administrative decisions, the trial shall be de novo if trial de novo is demanded in the petition or answer of the respondent, a hearing was not held by the agency,

or the proceedings were not stenographically reported or mechanically recorded so that a transcript is unavailable.

Section 4.15 Request for Stay

- (a) The Governance Court may consider a written request to stay implementation of the order pending the outcome of judicial review. The party requesting the stay shall send a copy of the request to any other party to the proceeding. Such request must:
 - (1) Provide a description of the specific project(s), activity(s), or action(s) to be stopped; and
 - (2) Include specific reasons why the stay should be granted in sufficient detail to permit the Governance Court to evaluate and rule upon the stay request.
- (b) The Governance Court may stay implementation of an order upon a showing of:
 - (1) Irreparable injury to the petitioner, and
 - (2) A colorable claim of error in the order.
- (c) Within fourteen (14) days of receipt of the request, the Governance Court shall issue a written decision on a stay to the party requesting the stay and any other petitioners or intervenors involved in the judicial review proceeding. The decision shall state:
 - (1) If the stay is granted, the specific activity(s) to be stopped, duration of the stay, and reasons for granting the stay; or
 - (2) If the stay is denied, in whole or in part, the reasons for the denial.
- (d) Should the Governance Court grant the stay, the Governance Court may require the prevailing party to post a bond, the amount of which shall be established at the Governance Court's discretion.

Section 4.16 Submission of Evidence

At least three (3) days prior to the hearing, each party must submit to the Court and serve on the other party such relevant evidence in support of their position as necessary to assist the judge in reaching his or her decision and which the party plans to rely on for any purpose other than rebuttal. The presiding judge may allow parties to offer evidence at the hearing upon a finding of good cause for not submitting the evidence before the hearing. In such event, the judge should continue the hearing, if the interest of justice requires, to allow the other party to assess and respond to the new evidence. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

Section 4.17 Hearings

- (a) The Catawba Indian Nation Governance Court may adopt its own rules for hearings provided that they conform with due process and applicable Tribal or federal law.
- (b) The Judge presiding at the hearing may:
 - (1) Administer oaths and affirmations,
 - (2) Upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas authorized by law and when requested by a party;

- (3) Rule on offers of proof and admission of evidence,
 - (4) Take depositions or have depositions taken when the ends of justice would be served,
 - (5) Regulate the course of the hearing,
 - (6) Hold conferences for the settlement or simplification of issues by consent of the parties,
 - (7) Dispose of procedural requests or similar matters,
 - (8) Directly question the parties to a hearing, and
 - (9) Take other action consistent with this Ordinance and the inherent authority of the judge to manage proceedings in the Court.
- (c) Unless otherwise provided by Tribal law, the party challenging an agency action has the burden of proof.
 - (d) Subject to Sec. 4.16, the parties may present any additional oral or documentary evidence, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The parties may also submit rebuttal evidence, and conduct cross-examination where the judge determines such actions will produce evidence material to the resolution of the case.
 - (e) The judge shall issue a written opinion and order within thirty (30) days after the hearing, except that upon a determination by the judge that a case raises complex or novel issues of law, the judge may extend the time for issuing a decision by up to ninety (90) additional days. The order shall:
 - (1) Be based solely on those issues properly raised to the judge and on all evidence submitted by the parties that is supported by substantial evidence, and
 - (2) Be in writing and include the findings and conclusions of law of the judge and the reason or basis for such conclusions on all material issues of fact, law, or discretion as presented by the parties, and the appropriate rule, order, sanction, relief, or denial thereof.

Section 4.18 Ex Parte Contacts and Conflict of Interests

- (a) No person who is a party to an adjudication shall make, or knowingly cause to be made, an ex parte communication relevant to the merits of the proceeding to which they are a party to, to any judge, or any person in a Tribal department who is or may reasonably be expected to be involved in the decision-making process of the proceedings.
- (b) No Judge or person in a Tribal department who is, or may reasonably be expected to be, involved in the decision-making process of the proceedings, shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding.
- (c) A judge or person in the Tribal department who is or may reasonably be expected to be involved in the decision-making process of the proceedings who receives or who makes or knowingly causes to be made a communication prohibited by this Subsection shall place on the record of the proceedings a statement of the substance of any ex parte communication on a fact in issue made to the judge during the pendency of the proceeding. The judge shall notify all parties of such communication and of their right to rebut the substance of the ex parte communications on the record.

- (d) Upon a violation of this Subsection by a party and absent good cause shown to the contrary, the judge may dismiss, deny, disregard, or make other appropriate determinations in relation to such party's claim.
- (e) Any judge who has an actual or potential personal, financial, or propriety interest in the outcome of a hearing must disclose such interests and, if unable to act in a non-biased manner, must recuse him or herself from the hearing.

ARTICLE V—SEVERABILITY

If any provision of this Ordinance or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant article or part of this Ordinance shall not be affected thereby and shall remain in full force and effect.

ARTICLE VI—AMENDMENT

This Governance Ordinance shall only be amended by the General Council pursuant to the Constitution of the Nation.

ARTICLE VII—EFFECTIVE DATE

This Governance Ordinance shall become effective on the date of its approval by the General Council.