

DRAFT
**REVISED NORTHERN CHEYENNE LAW &
ORDER CODE**

TITLE 20
HEARING CODE

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TABLE OF CONTENTS

Chapter 1	GENERAL SECTION
	20-1-1 General Statement
	20-1-2 Scope of Tribal Council Review
	20-1-3 Definitions
	20-1-4 Amendments and Severability
	20-1-5 Limitation of Actions
	20-1-6 No Waiver of Binding Affect
Chapter 2	FILING AND INITIAL REVIEW
	20-2-1 Filing of Petition
	20-2-2 Initial of Review of Petition
	20-2-3 Petitions Involving a Tribal Entity
Chapter 3	HEARING PROCEDURES
	20-3-1 Presiding Officer
	20-3-2 Omitted
	20-3-3 Swearing of Witnesses
	20-3-4 Hearing Procedure
	20-3-5 Tribal Council's Decision
Chapter 4	EVIDENCE
	20-4-1
Chapter 5	RECORD OF HEARING
	20-5-1

**NORTHERN CHEYENNE TRIBAL COUNCIL
HEARING PROCEDURE ORDINANCE**

Chapter 1. GENERAL SECTION

20-1-1 General Statement.

The Northern Cheyenne Tribal and Tribal entities are generally protected by the doctrine of sovereign immunity. This doctrine prohibits courts from exercising jurisdiction over the Tribe or any Tribal entity unless the Tribe expressly and unequivocally waives the Tribe's or a Tribal entity's immunity from suit. The Tribal Council has expressly waived immunity from suit in some instances. Courts of competent jurisdiction can entertain jurisdiction over the Tribe involving such waivers.

The Tribal Council recognizes that there are times when the Tribal Council is required or asked to decide certain matters that a court cannot entertain due to lack of jurisdiction. In order for the Tribal Council to entertain such matters, a hearing before the Tribal Council may be necessary. The Tribal Council believes that firm policies and procedures should be promulgated and adopted governing hearings before the Tribal Council. It is so this end that the Tribal Council adopts this Ordinance. This Ordinance shall govern all hearings before the Tribal Council. "This Ordinance shall govern all hearings before the Tribal Council, other than hearings and other proceedings "Removal Hearing and Proceedings") under Article VII, Section 1-3 of the Tribe's Amended Constitution and Bylaws. Removal Hearings and Proceedings are expressly excluded from this Hearings Ordinance."

20-1-2 Scope of Tribal Council Review.

The Tribal Council shall only hear those matters it is empowered to hear pursuant to its Constitution, Ordinance, or Resolution. In its discretion, the Tribal Council may also hear any case involving the Tribe that has been denied review by the Northern Cheyenne Court or any other court due to the doctrine of sovereign immunity. Under no circumstances will the Tribal Council review any case that is subject to the jurisdiction of the Tribal Court or any other court. Furthermore, this Ordinance shall not be construed to compel the Tribal Council to review a case that the Tribal Court has refused to decide due to lack of jurisdiction.

Notwithstanding any other provision of this Ordinance or any other Tribal law, the Tribal Council shall not hear any personnel, employment or procurement-related claims, including (without limitation) claims alleging wrongful discharge, other termination, suspension, other discipline, or procurement decisions, including (without limitation) claims for back compensation, benefits or other damages. All such claims shall be brought and decided in the manner and in accordance with procedures for the assertion and disposition of such claims set forth in applicable written Tribal manuals or policies, as the case may be, and thereafter by exercise of any rights to further appeal which may be set forth therein.

20-1-3 Definitions.

(a) As used in this Ordinance, the following definitions apply:

1. "Tribal Council" shall mean the Northern Cheyenne Tribal Council.
2. "Petitioner" shall mean any person or entity that files a petition or complaint before the Tribal Council.
3. "Respondent" shall mean any person or entity that is required to respond to this petition.

20-1-4 Amendments and Severability.

This Ordinance may be altered, amended or added to from time to time. Such alterations, additions, or amendments shall be binding and of full force and effect as of the date of adoption by the Tribal Council. Furthermore, in the event that any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision. The provisions of this Ordinance are severable.

20-1-5 Limitation of Actions.

No petition seeking relief from an act or omission that occurred over one year prior to the date of the filing of the petition shall be heard by Tribal Council.

20-1-6 No Waiver of Binding Affect.

This Ordinance shall not be construed to waive the sovereign immunity of the Northern Cheyenne Tribe or any of its entities, boards, committees or employees. Any relief provided a petitioner pursuant to a hearing held under this Ordinance shall not be binding upon the Tribal Council regarding any future petitions.

Chapter 2. FILING AND INITIAL REVIEW

20-2-1 Filing of Petition.

(a) A petition for hearing or complaint to the Tribal Council must be filed with the Northern Cheyenne Tribal Secretary. The petition must be typewritten or legibly printed. When the petition is illegible, the Secretary may refuse to accept the petition. A petition must be sworn to by the petitioner and set forth:

1. The name, address, and telephone number of the petitioner or the petitioner's legal representative.
2. The grounds of the petition;

3. The issues raised by the petition;
4. Whether the petitioner seeks to hold an evidentiary or review hearing before the Council. Full evidentiary hearings should be held on complaints against a councilman or officer of the Tribe. Review hearings may be held when the Council is asked to review the decision of a Tribal Board or Committee.
5. The relief the petitioner is seeking;
6. A list of the persons that may be affected by the petition; and
7. A statement certifying that any person or entity that may be affected by the petition has been served a copy of the petition.

(b) The Secretary shall note the date the petition was filed, assign it a petition number, and immediately forward the Petition to the Tribal President's office. The Petition shall be deemed filed with the Tribal Council on the date it is received by the Secretary.

20-2-2 Initial of Review of Petition.

Upon receipt of a petition, the Secretary will decide whether the petition is one that may generally be entertained by the Tribal Council. The Secretary shall notify the petitioner and all other interested parties in writing as to whether the petitioner is one that may be entertained by the Tribal Council. If so, the Secretary shall forward the petition to the Tribal President for distribution to the Tribal Council. The petitioner shall be given written notification of the Tribal Council's decision to hear the petition within (30) days of the filing of the petition. This notification shall be sent to all interested parties and shall set forth the date the hearing shall be held. Petitions shall be set for hearing in the order in which the petitions are filed. However, the Tribal Council reserves the right to accelerate cases of particular significance.

20-2-3 Petitions Involving a Tribal Entity.

The Tribal President may require a representative of the Tribe or a Tribal entity to file a response to the petition or to furnish such information as the Presiding Officer determines to be necessary prior to the Tribal Council hearing or final determination of the case.

Chapter 3. HEARING PROCEDURE

20-3-1 Presiding Officer.

The President or his designate shall act as the Presiding Officer over any hearing. The Presiding Officer is charged with performing all duties and functions necessary to determining the matter. The Presiding Officer is empowered with the authority to dismiss a petition when the

petitioner has failed to prosecute the petition or failed to comply with an order issued by the Presiding Officer.

20-3-3 Swearing of Witnesses.

(a) All testimony in any proceedings before the Tribal Council shall be given under oath administered by the Presiding Officer in substantially the following form:

“Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God.”

20-3-4 Hearing Procedure.

(a) The procedure concerning evidentiary hearings shall be as follows:

1. Docket call by the Presiding Officer;
2. Opening argument by the Petitioner unless waived.
3. Opening argument by the Respondent unless waived.
4. Presentation of evidence by Petitioner. Respondent shall be allowed to cross-examine Petitioner’s witness with re-direct by Respondent and re-cross by Petitioner until there are no more questions for witnesses. The Tribal Council and Presiding Officer shall be given an opportunity to ask the witnesses any questions prior to their dismissal.

5. Presentation of evidence by Respondent. Petitioner shall be allowed to cross-examine Respondent’s witnesses with re-direct by Petitioner and re-cross by Petitioner until there are no more questions for witnesses. The Tribal Council and Presiding Officer shall be given an opportunity to ask the witnesses any questions prior to their dismissal.

6. Rebuttal evidence by Petitioner.

7. Rebuttal evidence by Respondent.

8. Closing argument by Petitioner.

9. Closing argument by Respondent.

10. Reply to Respondent’s closing argument by Petitioner.

(b) Procedure concerning review hearings shall be:

1. Argument by Petitioner.

2. Argument by Respondent.

3. Reply by Petitioner.

The Tribal Council may ask questions any time during the arguments.

20-3-5 Tribal Council's Decision.

The Tribal Council as a whole will decide the issues raised by a petition. A quorum must be present to conduct a hearing. Only those Tribal Council members present at all time during the hearing may vote on the decision concerning the petition. The Presiding Officer is not entitled to vote on the decision unless the Presiding Officer is the President or a council member and then such person will only be allowed to vote in the case of a tie. The Tribal Council's decision shall be made in writing and published within 45 days of the hearing. The Tribal Council's decision concerning any and all issues raised by the petition shall be final and not subject to appeal.

Chapter 4. EVIDENCE

20-4-1 Evidence.

- (a) The Tribal Council may consider all evidence presented at the hearing as long as it is relevant to the issue presented at the hearing.
- (b) Members of the Tribal Council may utilize their personal experience, technical competence and specialized knowledge in the evaluation of the evidence presented at a hearing.
- (c) Carbon copies, photographic copies, and copies made by duplicating machines may be admitted into evidence or substituted in evidence in place of original documents.
- (d) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the Presiding Officer.
- (e) The Presiding Officer shall decide all evidentiary issues.

Chapter 5. RECORD OF HEARING

20-5-1 Recording of the Hearing.

Hearings shall be recorded by electronic means and transcripts of such recordings shall be made at the expense of the party requesting the transcript. The Secretary is only required to keep a record of the Hearing for five (5) years.

Legislative History:

1. Adopting Ordinance DOI-002(99) adopted November 6, 1998, Approved by BIA December 7, 1998;

2. Amending Ordinance DOI-002(2008) adopted December 28, 2007; Approved by BIA January 9, 2008,:

Adding to 1-1-1: "This Ordinance shall govern all hearings before the Tribal Council, other than hearings and other proceedings "Removal Hearing and Proceedings") under Article VII, Section 1-3 of the Tribe's Amended Constitution and Bylaws. Removal Hearings and Proceedings are expressly excluded from this Hearings Ordinance.";

Striking 4th sentence of 1-3-5: "Regarding removal hearings, a two-thirds vote of the Council is necessary to remove any Council member or officer."

3. Amending Ordinance DOI -014 adopted March 16, 2010, Approved by BIA March 24, 2010; Adding sentence to 1-1-2: "Notwithstanding any other provision of this Ordinance or any other Tribal law, the Tribal Council shall not hear any personnel, employment or procurement-related claims, including (without limitation) claims alleging wrongful discharge, other termination, suspension, other discipline, or procurement decisions, including (without limitation) claims for back compensation, benefits or other damages. All such claims shall be brought and decided in the manner and in accordance with procedures for the assertion and disposition of such claims set forth in applicable written Tribal manuals or policies, as the case may be, and thereafter by exercise of any rights to further appeal which may be set forth therein."