

LUMBEE TRIBE OF NORTH CAROLINA

CLLO-2013-0321-01

DATE: March 21, 2013

"FISCAL YEAR 2012-2013 LUMBEE TRIBAL BUDGET ORDINANCE"

WHEREAS, The Lumbee Tribe of North Carolina, a recognized Indian Tribe of the State of North Carolina subject to the Constitution of the Lumbee Tribe of North Carolina and its inherent powers of self-government; and

WHEREAS, Article VII, Section 1 of the Constitution of the Lumbee Tribe of North Carolina delegates all legislative authority to the Tribal Council; and

WHEREAS, The Council has the authority to approve, adopt, and amend the annual fiscal year budget and budget process; and

WHEREAS, The Council is responsible for overseeing, reviewing, and approving actual expenditures and budget variances throughout the fiscal year, and

WHEREAS, The Council has the authority and fiduciary responsibility to ensure compliance with all program funding and allocations; and

THEREFORE, Be it enacted in accordance with the powers delegated to it, the Tribal Council of the Lumbee Tribe of North Carolina hereby adopts the attached "**Fiscal Year 2012-2013 Lumbee Tribal Budget Ordinance**" subject to the following provisions:

- (1) All changes/amendments shall be timely submitted by the Executive Branch for review and approval by the tribal council
- (2) Within 45 days of adoption of this budget, the Office of Finance shall fully implement the budgetary software to ensure compliance in financial reports

THEREFORE BE IT FURTHER ENACTED that all proposals for tribal funding shall be timely submitted to the tribal council and, if approved, adopted by tribal council resolution.

THEREFORE BE IT EVEN FURTHER ENACTED, that Section 1 of this budget ordinance shall be implemented and in compliance by the Executive Branch administration and department management.

SECTION 1: LIMITATIONS AND AMENDMENT PROCESS

1. Unless specifically provided in this budget no funds shall be expended for any additional staff positions (either fulltime or part-time, salaried or contracted, volunteer or non-volunteer).

2. The Public Affairs Manager shall adhere to the job description included in the Job Description Manual 2011 attached herewith. Any activity outside the scope of this job description shall result in a suspension of tribal funds for that position. For purposes of this provision, it shall be unlawful for the Public Affairs Manager to engage in activity that does not promote respect and cooperation among the various branches of tribal government or its officials.
3. For purpose of oversight of this budget and to ensure that housing policies is in compliance with federal law the tribal council hereby employs a housing coordinator to work under the general supervision of the tribal council.
4. The tribal council shall direct a wage study to be completed with the intent of implementing a wage salary plan for the Lumbee Tribe of North Carolina within one (1) year of enactment of this budget, and that all current salaries shall remain as is in this budget, except for these salary positions and shall be as follows:
 - Human Resource Position shall be part-time at the salary of \$26,590
 - Enrollment Tribal Clerk \$41,000
 - Elders Service Director \$40,000
 - Youth Service Director \$41,600
5. To ensure oversight of funds expended for consultants, contractors, and legal fees the Tribal Administrator or designee of the Executive Department shall submit a comprehensive written report on a monthly basis that informs the council of the amount of funds expended per consultant or contractor or attorney, and the services rendered.
6. All consultants, contractors, or attorneys engaged shall be in compliance with federal regulations, goals, and objectives of tribal programs and budget compliance.
7. All mortgages and rental collections, generation of delinquent notices are hereby deemed a financial responsibility of the tribe and is best managed through the Office of Finance.
8. In a format that shall provide financial reporting to the council, the Executive Branch shall accurately portray the expenditure of budget resources. The misclassification of cost intended to mislead and misdirect the council in how funds are expended is strictly prohibited. Upon discovery of the false identification or misallocation of expenditures the Council shall take appropriate action to ensure budget compliance and compliance with applicable laws, regulations promulgated by funding sources.
9. All funds included unrestricted funds, financial donations, or grants awarded subsequent to this budget ordinance shall be promptly reported to the Council who shall cause a budget to be enacted by ordinance for the expending of those funds.
10. The Executive Branch shall provide monthly reports on capital projects identified below to the Tribal Council in order for the Council to fulfill its oversight responsibilities:

District 1 Elders Site
District 8 Elders Site

District 9 Community Building
District 6, 7, and 8 Boys and Girls
District 5 Community Building
Construct/purchase of homes
District 10 and 13 transitional housing

11. All attachments to this ordinance are incorporated herein as a part of this ordinance and shall have the full effect of tribal law.
12. Nothing in this ordinance is intended to diminish the oversight responsibility and authority of the Tribal Council with respect to the proper expenditure of funds or safeguard of tribal assets.
13. Of the housing funds available to the tribe, the sum of \$ 2.7 million is appropriated to retire the tribe's remaining debt on the Lumbee Tribal Housing Complex (main office of the Lumbee Tribe of North Carolina). The finance officer shall coordinate with the Director of housing to ensure immediate compliance with this provision. The finance director in consultation with the director of housing shall report to the Tribal Council and the Tribal Chairman the amount of funds used under this section no later than 30 days after payment.
14. Monthly reports of all expenditures from the Housing Department including check number, name, purpose, and the amount shall be provided to the finance or housing committee, and shall include and not limited to, the following reports:
 - a) Change Orders in the Housing Department
 - b) Travel of Unofficial Persons
15. All Department Heads shall be exempted from comp-time.

SECTION 2: SEVERABILITY

If any section, subsection, paragraph, sentence, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and independent provision and such shall not affect the validity of the remaining portion thereof.

CERTIFICATION

THIS CLLO-2013-0321-01 "FISCAL YEAR 2012-2013 LUMBEE TRIBAL BUDGET ORDINANCE", ADOPTED AT A MEETING OF THE 21-MEMBER TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA WHERE 19 MEMBERS WERE PRESENT, CONSTITUTING A QUORUM, THIS THE 21ST DAY OF MARCH, 2013 BY A VOTE OF 14 FOR, 5 AGAINST, 0 ABSTENTION(S)




ATTEST: PEARLEAN REVELS
 Date

ATTEST: PEARLEAN REVELS
Speaker, Tribal Council of the Lumbee Tribe of North Carolina

Larmari Louise Mitchell April 16, 2013
ATTEST: LARMARI LOUISE MITCHELL Date

ATTEST: LARMARI LOUISE MITCHELL
Secretary, Tribal Council of the Lumbee Tribe of North Carolina

PAUL BROOKS Chairman, Lumbee Tribe of North Carolina	Date
---	------

POSTING

This CLLO-2013-0321-01 "FISCAL YEAR 2012-2013 LUMBEE TRIBAL BUDGET ORDINANCE", duly posted on this the ____ day of April, 2013.

Cynthia L. Hunt

ATTEST TO THE SIGNATURE OF THE TRIBAL COUNCIL SPEAKER AND TRIBAL COUNCIL SECRETARY

Cynthia L. Hunt, Tribal Clerk, Lumbee Tribe of North Carolina

April 16, 2013.

Date

Date _____

ROLL CALL VOTE RESULTS TO ADOPT

CLLO-2013-0321-01

“FISCAL YEAR 2012-2013 LUMBEE TRIBAL BUDGET ORDINANCE”

14 FOR, 5 AGAINST, 0 ABSTENTION(S)

District 1:	Evan Davenport	NO
District 2:	Terry Hunt	NO
	Larmari Louise Mitchell	YES
District 3:	Pearlean Revels	YES
	Lesaundri Hunt	YES
District 4:	Jonathan Locklear	YES
District 5:	Bobby Oxendine	YES
	Charles Bullard	YES
District 6:	Larry Anthony Chavis	YES
	McDuffie Cummings	YES
District 7:	Robert Chavis	YES
	Larry Campbell	NO
	Terry Campbell	NO
District 8:	Steve Sampson	EXCUSED
District 9:	Anita Hammonds Blanks	NO
District 10:	Terry Collins	YES
District 11:	Linda Revels	YES
District 12:	Danita Locklear	YES-TELECONFERENCE
	Walter Lowery	YES
District 13:	William Maiden	EXCUSED
District 14:	Homer Fields	YES

CLLO-2013-0321-01

[illegible]



LUMBEE TRIBE OF NORTH CAROLINA

Job Description

Job Title: Public Affairs Manager

Reports To: Tribal Administrator

General Description of Duties and Responsibilities:

The Public Affairs Manager will, in collaboration with the Public Affairs Staff, the Tribal Chairman and Tribal Council, promote, organize and plan activities and events that will establish and maintain stronger public and community relations within the Lumbee Tribe, through the use of different mediums of communication including the Internet.

Specific Duties and Responsibilities:

The Public Affairs Manager will:

1. Collaborate with the staff concerning public information postings for any tribally sponsored event or function.
2. Promote effective positive community relations within the Lumbee communities through activities, events, etc.
3. Develop promotional ideas for Tribal programs through the use of different mediums to create more awareness.
4. Represent the Lumbee Tribe in a positive manner at community events, functions, and other activities as needed.
5. Find productive ways to remain informed on current public relations issues within the Lumbee community to help increase the public confidence level in Tribal programs and the Tribal government.
6. Provide, along with the Public Relations staff, outreach support to Tribal programs.
7. Manage and direct the activities of the Tribal Webmaster and the Community Relations Specialist.
8. Participate in orientation, training and other personal and professional development as assigned.

9. Other duties and responsibilities as assigned.

Minimum Qualifications:

Bachelor's degree in Communications, Marketing, Public Relations, English or a related field and a minimum of 5 – 7 years working in Tribal, community, or social based programs. A thorough understanding of the Lumbee communities and strong interpersonal skills and relationships with Lumbee leaders are required.

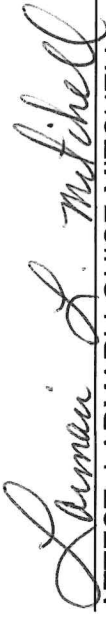


ATTEST: PEARLEAN REVELS

Speaker, Tribal Council of the Lumbee Tribe of North Carolina

July 23, 2013

Date



ATTEST: LARMARI LOUISE MITCHELL

Secretary, Tribal Council of the Lumbee Tribe of North Carolina

July 23, 2013

Date

CERTIFICATION OF VETO OVERRIDE

THIS VETO OVERRIDE OF “FISCAL YEAR 2012-2013 LUMBEE TRIBAL BUDGET ORDINANCE” TRIBAL ORDINANCE CLLO-2013-0321-01 WAS CERTIFIED AT A MEETING OF THE 21 SEATED MEMBER TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA WHERE 20 MEMBERS WERE PRESENT, CONSTITUTING A QUORUM, THIS 16TH DAY OF MAY, 2013 BY A VOTE OF 13 FOR, 7 AGAINST, 0 ABSTENTION(S).

**ROLL CALL VOTE RESULTS TO ADOPT
TRIBAL ORDINANCE CLLO-2013-0321-01,
“FISCAL YEAR 2012-2013 LUMBEE TRIBAL BUDGET ORDINANCE”
13 FOR, 7 AGAINST, 0 ABSTENTION(S)**

District 1:	Evan Davenport	NO
District 2:	Terry Hunt	NO
	Larmari Louise Mitchell	YES
District 3:	Pearlean Revels	YES
	Lesandri Hunt	NO
District 4:	Jonathan Locklear	EXCUSED
District 5:	Bobby Oxendine	YES
	Charles Bullard	YES
District 6:	Larry Anthony Chavis	YES
	McDuffie Cummings	YES
District 7:	Robert Chavis	YES
	Larry Campbell	NO
	Terry Campbell	NO
District 8:	Steve Sampson	YES
District 9:	Anita Hammonds Blanks	YES
District 10:	Terry Collins	YES
District 11:	Linda Revels	NO
District 12:	Danita Locklear	YES
	Walter Lowery	YES
District 13:	William Maiden	NO
District 14:	Homer Fields	YES

CERTIFICATION OF VETO OVERRIDE

THIS VETO OVERRIDE OF “FISCAL YEAR 2012-2013 BUDGET ORDINANCE” WAS CERTIFIED AT A MEETING OF THE 21 SEATED MEMBER TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA WHERE 21 MEMBERS WERE PRESENT , CONSTITUTING A QUORUM, THIS 18TH DAY OF JULY, 2013 BY A VOTE OF 16 FOR, 5 AGAINST, 0 ABSTENTION(S).

ROLL CALL VOTE RESULTS TO ADOPT “FISCAL YEAR 2012-2013 BUDGET ORDINANCE 16 FOR, 5 AGAINST, 0 ABSTENTION(S)

District 1:	Evan Davenport	NO	
District 2:	Terry Hunt	NO	
	Larmari Louise Mitchell	YES	
District 3:	Pearlean Revels	YES	
	Lesaundri Hunt	NO	
District 4:	Jonathan Locklear	NO	
District 5:	Bobby Oxendine	YES	
	Charles Bullard	YES	
District 6:	Larry Anthony Chavis	YES	
	McDuffie Cummings	YES	
District 7:	Robert Chavis	YES	
	Larry Campbell	YES-TELECONFERENCE	
	Terry Campbell	YES	
District 8:	Steve Sampson	YES-TELECONFERENCE	
District 9:	Anita Hammonds Blanks	YES	
District 10:	Terry Collins	YES	
District 11:	Linda Revels	NO	
District 12:	Danita Locklear	YES-TELECONFERENCE	
	Walter Lowery	YES	
District 13:	William Maiden	YES	
District 14:	Homer Fields	YES	

May 30, 2013

Pearlean Revels,
Speaker of the Tribal Council
Lumbee Tribe of North Carolina
Post Office Box 2709
Pembroke, North Carolina 28372

meeting date was
May 16, 2013
instead of May
16, 2013.

RE: Parliamentary Review of the Tribal Budget Ordinance Veto Override

Dear Madam Speaker:

On May 17, 2013, the Tribal Council of the Lumbee Tribe of North Carolina voted on a motion of Councilman McDuffie Cummings to override the Chairman's pocket veto of the Fiscal Year 2012-2013 budget ordinances. The resulting vote on the motion was 13 in favor of override and 7 in opposition to override. Following the vote, in the same meeting, I raised an objection to the announcement of passage of the measure. I have been asked by a council member to provide a written parliamentary review and opinion of the vote conducted during the May 17, 2013 Tribal Council meeting regarding the motion to override the Chairman's veto. Please accept the following as my review of the relevant facts, tribal law and my opinion on the matter.

My research has led me to the following:

- Tribal Constitution of the Lumbee Tribe of North Carolina, Article VII, Section 5
 - ...No proceedings shall take place in the absence of a quorum which shall constitute two-thirds (2/3) of the sitting council members and all decisions of the Tribal Council shall require an affirmative vote of the majority of present council members, except that a veto override shall require two-thirds (2/3) vote.
- Tribal Ordinance number 2002-0001, Section 1(1),
 - The adoption of an Ordinance by the Tribal Council shall require an affirmative vote of the majority of the council members present, except that an affirmative vote of two-thirds (2/3) of all sitting Tribal Council members shall be required to override a veto of a Tribal Ordinance by the Tribal Chairperson.
- Tribal Ordinance 2005-0003, Section 2(4),
 - No proceeding of the Tribal Council shall take place in the absence of a quorum which shall consist of two-thirds (2/3) of the sitting council members, and all decisions of the Tribal Council shall require an affirmative vote of the majority of the present council members. In determining what

number constitutes two-thirds (2/3) of the sitting Council members, the number will be rounded up to the nearest whole number.

- CLLO-2012-0419-01
 - Be it enacted by the Tribal Council of the Lumbee Tribe of North Carolina hereby repeals ordinances: CLLO-2005-0003 "General Ordinances governing the Duties of the Tribal Council Officers and Decorum of Council Meetings... as they duplicate action taken in Tribal Council Rules and Regulation... TCRR-2012-0216-02 "Standing Rules of Order and Regulations Governing the Content and Form of Ordinances and Resolutions." taken by the Tribal Council of the Lumbee Tribe of North Carolina
- TCRR-2011-1215-01, Section 2(4)
 - No proceeding of the Tribal Council shall take place in the absence of a quorum which shall consist of two-thirds (2/3) of the sitting council members, and all decisions of the Tribal Council shall require an affirmative vote of the majority of present council members. In determining what number constitutes two-thirds (2/3) of the sitting council members, the number will be rounded up to the nearest whole number.

This opinion is by no means intended to determine which law has been repealed and which law is effective and will govern in any court proceeding. The issue to be addressed is whether the vote conducted on May 17, 2013 was sufficient to override the Chairman's veto based on the totality of the tribal law on the issue. It is undisputed that the Tribal Council intended to pass several budget ordinances to comprise the budgetary guidelines through which Tribal Administrative staff should operate tribal programs. These ordinances were posted for thirty (30) days and failed to receive action by the Tribal Chairman. It is also undisputed that such inaction has been deemed a veto by the Chairman. On May 17, 2013, Councilman McDuffie Cummings motioned that the Tribal Council override the Chairman's veto. The motion received a proper second and discussion was held. The tribal council vote was conducted with the following members voting:

McDuffie Cummings – Yes	Louise Mitchell – Yes
Pearlean Revels – Yes	Steve Sampson – Yes
Larry Chavis – Yes	Danita Locklear – Yes
Terry Collins – Yes	Linda Revels – No
Terry Campbell – No	Terry Hunt – No
LeSaundri Hunt – No	Homer Fields – Yes
Larry Campbell – No	William Maiden – No
Charles Bullard – Yes	Walter Lowry – Yes
Anita Blanks – Yes	Bobby Oxendine – Yes

Evan Davenport – No

Robert Chavis - Yes

The voting totals were 13 in favor of overriding the veto and 7 in opposition to the veto. The vote was announced that the veto was overridden by 2/3 majority.

The Constitution provides that the Tribal Council may override a Chairman's veto by a 2/3 vote. The 2002 ordinance says a veto may be overridden by 2/3 majority of tribal council members present. To date, this ordinance has never been repealed. The 2005 ordinance does not differentiate between a veto override vote and other council votes. It says that all votes shall require a majority vote of members present. This ordinance was purportedly repealed in 2012 when the Tribal Council Rules and Regulations were adopted. The language in the Tribal Council Rules and Regulations is identical to the 2005 ordinance it purported replaced. The first issue to be addressed is whether the vote requires a two-thirds (2/3) majority. Since the Tribal Constitution is the highest law in the land, Tribal Council is not empowered to pass a tribal law that would contradict the Tribal Constitution.

The tribal law of record contradicts whether the two-thirds (2/3) majority is that of those sitting on the Tribal Council or those present at the meeting where the vote is to be considered. However, this question is not relevant based on the facts of this vote. There are twenty one (21) council members sitting on the Tribal Council. Of those twenty one (21) council members, twenty (20) were present at the May 17, 2013 meeting. The only member absent was Jonathan Locklear.

If we apply two-thirds (2/3) standard to those members seated on the Tribal Council, in order to pass a vote by a two-thirds (2/3) majority, the requisite affirmative vote would be fourteen (14). If we apply the two-thirds (2/3) standard to those present at the meeting where the motion is considered, in order to pass a vote by two-thirds (2/3) majority, the requisite affirmative vote would be thirteen and four-tenths (13.4). Since the Tribal Council does not allow fractional voting, a vote of exactly thirteen and four-tenths (13.4) can never be achieved. The Tribal Council addressed the potential for a fractional vote in both the 2005 ordinance and the later adopted Tribal Council Rules and Regulations. Both the ordinance and the regulation say that, "in determining what number constitutes two-thirds (2/3) of the sitting council members, the number will be rounded up to the nearest whole number."

Additionally, in 2011, the Lumbee Tribal Court heard Swett v. Burnette, Case Number 2011-0001. In this case at Finding of Fact number 9, the Court said:

On June 17, 2010, the Tribal Council passed Ordinance No. 2010-0517-01, "the Budget Approval and Monitoring Process Ordinance" ... The Tribal Chairman timely vetoed this ordinance and the Tribal Council thereafter timely voted to override. At the override vote, nineteen (19) Council

members were present. The override vote was twelve (12) in favor and six (6) against, with one (1) abstention. The Lumbee Constitution requires 2/3 favorable vote "of those present", see Article VII, Section 5. The testimony at the hearing of these proceedings suggested that all parties proceeded as if the veto was successfully overridden.

In this same matter the court rendered an opinion which said, in part,

Further, it is the considered opinion of this Court that the attempted veto override of this ordinance failed in that "two-thirds (2/3) of the members present" would have required thirteen (13) votes in favor rather than twelve (12) as nineteen (19) members were present. Thus the ordinance, or at least the amended portion of it, failed as it did not withstand the Tribal Chairman's veto. See Article VII, Section 5 of the Lumbee Constitution for the particular binding language.

In my position as Parliamentarian, it is my responsibility to ensure that tribal law, tribal rules and regulations and Robert's Rules of Order are adhered to in the conduct of tribal business at Tribal Council meetings. It is my opinion that based on the Lumbee Tribal Constitution, Tribal Law and prior Tribal Court rulings that, on the vote to override the veto of the Tribal Chairman related to the Fiscal Year 2012-2013 budget, the Tribal Council failed to achieve the two-thirds (2/3) majority of votes necessary to override the Chairman's veto. It is my opinion that the announcement that the motion passed was incorrect and the motion failed for lack of requisite number of affirmative votes. At this juncture, it is my opinion that the Budgets for Fiscal Year 2012-2013 were vetoed, were unsuccessfully overridden and the Tribe must continue to operate on the Fiscal Year 2011-2012 continuing resolution.

If you have any questions of concerns in this regard, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Terry Hunt".

Terry Hunt

CC: All Lumbee Tribal Council Members

