

CATAWBA INDIAN NATION
TRANSPARENCY ORDINANCE

**ARTICLE 1 –
GENERAL PROVISIONS**

Section 1.01 Short Title

This Catawba Indian Nation Transparency Ordinance shall be known and cited as the "Transparency Ordinance."

Section 1.02 Authority

This Transparency Ordinance is enacted by the General Council of the Catawba Indian Nation (hereinafter referred to as "the Catawba Nation" or "the Nation") pursuant to the powers vested to it under Article III, Section 1 and Article IV of the Nation's Constitution and By-Laws, ratified August 30, 1975, as may be amended from time to time.

Section 1.03 Effective Date and Amendment

This Transparency Ordinance shall become effective on the date of its approval by the General Council of the Catawba Nation. This Ordinance shall only be amended by the General Council.

Section 1.04 Purpose

The purposes of this Transparency Ordinance are to:

- a. Ensure that Executive Committee meetings are open to Tribal citizens,
- b. Establish formal procedures to request documents of the Nation for inspection,
- c. Provide for the enforcement of processing document requests, and
- d. Promote transparency, accountability, and self-determination within the Catawba Nation.

Section 1.05 Policy

It is the policy of the Nation that Catawba citizens generally have an interest in accessing documents of the Nation and viewing Executive Committee meetings that affect them. It is also the policy of the Nation that "General Council and Executive Committee Records are property of the General Council and not of any member or officer," pursuant to Executive Committee Resolution Number 20200709A.

Section 1.06 Scope

This Transparency Ordinance applies to meetings and documents of the Nation, whereas providing access to such meetings and documents *does not*:

- a. Compromise any reasonable confidentiality expectations of citizens,
- b. Compromise any reasonable confidentiality expectations of the Nation,
- c. Interfere with the operations of the Nation,
- d. Jeopardize the confidential activities of the Nation, or
- e. Otherwise contradict or challenge any applicable Tribal, federal, or state law.

Section 1.07 Inconsistent Law

Any prior legislation or other laws of the Nation that are inconsistent with the purposes and procedures established by this Transparency Ordinance are hereby repealed to the extent of any such inconsistency; *provided that* nothing in this Transparency Ordinance shall be interpreted as modifying, replacing, or repealing any inconsistent transparency provisions contained in any contracts, agreements, or compacts entered into by the Nation prior to the effective date of this Transparency Ordinance.

Section 1.08 Sovereign Immunity

The Catawba Nation, by adoption of this Ordinance, does not waive, either in a limited manner or otherwise, its sovereign immunity in any respect. There shall be no liability on the part of the Nation, its subsidiaries, departments, affiliates, officers, agents, or employees acting within the scope of their authority, for any damages which may occur as a result of reliance upon or actions taken pursuant to this Ordinance.

Section 1.09 Severability

If any provision of this Transparency 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.

Section 1.10 Definitions

Unless clearly indicated otherwise, the following words and phrases as used in this Ordinance shall mean the following:

- a. “Available Nation Documents” shall mean written records which can be disclosed to citizens of the Catawba Nation.

- b. "Catawba Nation" or "Nation" shall mean the Catawba Indian Nation Government, its General Council, Executive Committee, divisions, departments, and businesses of the Catawba Nation, including the Catawba Nation Gaming Commission.
- c. "Citizen" shall mean an enrolled citizen of the Catawba Nation as defined in the Constitution of the Catawba Nation.
- d. "Document Request Form" shall mean the Nation document that must be completed by individuals requesting documents.
- e. "Executive Committee" shall mean the Chief, Assistant Chief, Secretary-Treasurer, and the two Committee members (also referred to as elected officials of the Nation), elected to perform duties as defined in the Constitution of the Catawba Nation.
- f. "Executive Committee Meetings" shall mean meetings held by the Executive Committee in which action is taken by a vote of the Committee.
- g. "Executive Session" shall mean closed meetings of the Executive Committee or other board, committee, or commission of the Nation, intended to discuss confidential matters, including proposed or confidential projects or negotiations, matters of litigation, advice from an attorney that is protected by attorney-client privilege or attorney work product privilege, matters in which the Nation is legally obligated to maintain privacy, or other matters that would be protected as a Protected Nation Document when memorialized as listed in Section 4.01.
- h. "General Council" shall mean the governing body of the Catawba Nation, made up of all qualified voters of the Catawba Nation, as defined by the Constitution of the Catawba Nation.
- i. "Meeting Minutes" or "Minutes" shall mean the Secretary-Treasurer's accurate record of all matters transacted at General Council meetings and Executive Committee meetings.
- j. "Nation Documents" or "Documents" shall mean written records of the Catawba Nation, its General Council, Executive Committee, divisions, departments, businesses, boards, committees, and commissions of the Nation.
- k. "Non-Citizen" shall mean any person who is not an enrolled citizen of the Catawba Nation as defined in Article II of the Constitution of the Catawba Nation.
- l. "Principal Office" shall mean the office that the Catawba Nation's Government operates from, such as the building known as the Longhouse.
- m. "Protected Nation Documents" or "Protected Documents" shall mean written records which are not subject to disclosure because of confidentiality as provided for by applicable

Tribal, federal, or state law and/or policy. Protected Nation Documents may include any documented minutes of Closed Meetings and Executive Sessions.

- n. “Requester” shall mean the individual requesting documents from the Catawba Nation.
- o. “Secretarial Notes” shall mean the written documentation taken by the Secretary of the Executive Committee during meetings of the Executive Committee. This documentation is then used to finalize the meeting minutes of the Executive Committee.
- p. “Secretary-Treasurer of the Executive Committee” and “Secretary” shall mean the person elected to the Secretary-Treasurer position created and duties defined in the Catawba Nation Constitution.

ARTICLE 2 – PROCEDURES FOR REQUESTING DOCUMENTS

Section 2.01 Standing

- a. Citizens shall possess the right to inspect available Nation documents as outlined in Section 3.03, documents that have been released by the Nation to the general public, documents that have been published on the Nation’s website, and documents that are not protected Nation documents as outlined in Article 4.01.
- b. Non-citizens have a limited interest in accessing documents of the Nation and therefore, their access to inspecting Nation documents may be restricted pursuant to this Ordinance. The Executive Committee may grant a non-citizen access to Nation documents on a case-by-case basis upon the showing of a clear and convincing need for the non-citizen to access the Nation document.

Section 2.02 Document Request Form

- a. A request for documents of the Nation (“request”) shall be made in writing by completing a Document Request Form (“Form”). The request shall be sent to the attention of the Secretary-Treasurer of the Executive Committee (hereinafter referred to as “the Secretary”) via mail, e-mail, or hand-delivery to the Nation’s principal office.
- b. Requests shall include the Nation enrollment number of the requester, if applicable, the signature of the requester, date of the request, the reason for the request, need for the document(s) requested, and the urgency of the request, if applicable.

Section 2.03 Determination Process

- a. After receiving the request, the Secretary shall determine the nature of the request, who made the request, the documents requested, and the need outlined by the requester.

- b. If a request is made by a citizen for an available Nation document as outlined in Article 3, the Secretary shall grant the request within the period specified in this Section.
- c. If a request is made for a document that is not an available Nation document, is a document that is a protected Nation document, or is a request made by a non-citizen, the Secretary shall consult with the Nation's Legal Department to conduct a review of the document to determine whether the request may be granted and the document released, either in its entirety or partially, or whether the request should be denied.
- d. The Secretary shall grant or deny requests via mail, e-mail, or hand-delivery, within five (5) business days, unless the Secretary finds good cause for a longer period within their discretion, which shall be conveyed to the requester within the five-day timeline.

Section 2.04 Determination Answer

- a. If a request is granted, the Secretary must include the following in the response to the requester:
 - 1. The time and place where the requester may access the documents,
 - 2. The permissible mode the requester may use in accessing the documents,
 - 3. Any required costs the requester may be subjected to in accessing documents or having copies of documents made available and/or sent to them, and
 - 4. Any restrictions imposed on the requester in accessing the documents, or any partial denials in the request to access the documents.
- b. If a request is denied, partially or in its entirety, the Secretary must include the following in the response to the requester:
 - 1. The reasons for the denial and
 - 2. Notification of the requester's right to appeal the denial.

Section 2.05 Accessing Documents

- a. Timing. If a request is granted, the Secretary shall give the requester access to the requested documents or give the requester a date when the documents will be available, within five (5) business days of notifying the requester of the determination.
- b. Modes. If a request is granted, the requester will be allowed to inspect the requested document in a Nation building during business hours. The Secretary may allow other modes of accessing requested Nation documents or impose any appropriate conditions on access to Nation documents, including but not limited to restrictions on use, copying, or distribution of such documents.

Section 2.06 Appeals

- a. If the Secretary denied the request of a citizen, the citizen may appeal the decision to the Tribal Court within 10 business days of the determination. If no appeal is made during this period, the Secretary's determination is final. In the event the Tribal Court has not yet been established, the citizen may appeal the decision to the General Council at its next meeting.
- b. If the Secretary denied the request of a non-citizen, the non-citizen may appeal the decision to the Tribal Court within 10 business days of the determination. If no appeal is made within this period, the Secretary's determination is final. In the event the Tribal Court has not yet been established, the non-citizen may appeal the decision to the Executive Committee within 10 business days.
- c. An appeal shall include a copy of the original request, a statement of the reason why the withheld document should be made available, and why the denial of the document was in error.

Section 2.07 Costs

The Executive Committee shall have discretionary authority to impose reasonable fees for the copying and/or mailing of Nation documents, if requested and approved, particularly for those that are voluminous.

- a. Timing. Any fees charged under this Ordinance shall be paid no later than 30 days from the date the requested documents are made available to the requester (*not* the day the requester accesses the requested documents).
- b. Modes. The requester may submit their payment of fees via cash, credit card, or certified check.

ARTICLE 3 – AVAILABLE NATION DOCUMENTS

Section 3.01 Right to Access Records

The Nation, upon a request by a citizen that is written in accordance with the requirements in this Ordinance, shall promptly make available for inspection available Nation documents. Available Nation documents may also be posted to the Nation's Citizen Portal.

Section 3.02 Reserving Authority of Secretary

The Secretary, in consultation with the Nation's Legal Department, holds the right to review requests, made by citizens and non-citizens, and determine whether granting access to documents respects the interest of the Nation.

Section 3.03 Available Nation Documents

The following documents are available to citizens of the Nation:

- a. Agendas of the General Council,
- b. Minutes of the General Council,
- c. Resolutions of the General Council,
- d. Agendas of the Executive Committee, except Executive Session agenda items,
- e. Official Minutes of the Executive Committee, except minutes from Executive Session,
- f. Memos of the Executive Committee, except Executive Session memos,
- g. Resolutions of the Executive Committee, except Executive Session resolutions,
- h. Completed financial audits of the Nation and its entities, and
- i. Any Executive Committee reports that take place outside of Executive Sessions of Executive Committee meetings.

ARTICLE 4 – PROTECTED NATION DOCUMENTS

Section 4.01 Protected Records

The Nation recognizes situations where its interest in maintaining privacy in sensitive documents outweighs an individual's right to access Nation documents. Any documents, records, or information where non-disclosure would protect a significant public interest of the Nation, as determined by the Secretary in consultation with the Nation's Legal Department, shall be considered protected. The following documents shall be exempt from disclosure:

- a. Records Protected by Law. Requests for information specifically protected from disclosure by Tribal, federal, or state laws, including common law privileges of confidentiality, shall not be granted.
- b. Sensitive Information. Requests for any personal identifiable information from personnel, citizenship, and/or medical records, shall not be granted, unless the disclosure is consented to in writing by the individual subject of the information. These records may include, but are not limited to:
 1. Medical records or information,

2. Enrollment records or information,
 3. Housing records or information,
 4. Financial records or information, and
 5. Personnel records or information.
- c. Law Enforcement Records and Information. Requests for records of the Nation's Department of Public Safety, Security, prosecution, and/or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity shall not be granted if disclosure of these records would:
1. Constitute an unwarranted invasion of privacy,
 2. Interfere with the law enforcement proceedings,
 3. Deprive a person of the right to a fair trial,
 4. Disclose the identity of a confidential source,
 5. Disclose information provided only by a confidential source,
 6. Disclose the law enforcement investigative techniques or procedures, or
 7. Endanger the life or physical safety of law enforcement personnel.
- d. Contract Documents. Any proposed contracts, or ongoing negotiations for proposed contracts, and/or any employment-related contracts shall not be granted. Requests for documents related to any contracts containing a confidentiality or nondisclosure provision may not be granted.
- e. Documents of Nation Businesses. Requests for any documents containing trade secrets, commercial information, or financial information that would be deemed privileged in litigation or would endanger the economic viability or competitive position of the Nation business if disclosed, shall not be granted.
- f. Documents of the Government. Requests for documents for which disclosure would jeopardize the operation of the Nation's Government or a Tribal entity owned in whole or in part by the Nation, shall not be granted.
- g. Privileged Information. Requests for documents or information protected by legal privilege, such as attorney-client privilege or the attorney work-product doctrine, shall not be granted.

- h. Court Documents. Requests for documents or records of the Tribal Court that would otherwise not be disclosed to the public shall not be granted.
- i. Confidential Meeting Minutes. Requests for meeting minutes of Executive Sessions of Nation boards, committees, commissions, and other Nation entities shall not be granted.
- j. Executive Committee Documents, including:
 - 1. Secretarial notes,
 - 2. Minutes of Executive Sessions,
 - 3. Memos of Executive Sessions, and
 - 4. Resolutions of Executive Sessions shall not be granted.
- k. Nation Land Documents.
 - 1. Requests for information that is part of negotiations in a proposed land purchase by the Nation shall not be granted until that purchase is completed.
 - 2. Requests for documents that would reveal the location of archaeological sites or culturally significant sites may not be granted.
 - 3. Requests for documents and information concerning land assignments may not be granted depending on who is requesting the information and if the information includes personal information, which may be redacted.

Section 4.02 Limited Release of Protected Records

Notwithstanding Section 4.01, the Executive Committee may, at its discretion and subject to legal restrictions, determine to release a Protected Record or a portion of a Protected Record if it determines that release of the Protected Record is in the best interests of the Nation and its citizenry.

**ARTICLE 5 –
OPEN MEETINGS OF EXECUTIVE COMMITTEE**

Section 5.01 Meetings of the Executive Committee

Any meeting in which the Executive Committee takes action by vote is an official meeting of the Executive Committee. All official meetings of the Executive Committee shall be open to Tribal citizens to view through a recording or through streaming the meeting live. No recording or live streaming is made available for:

- a. Executive Committee working sessions, in which no actions or votes are taken; and

- b. Executive Sessions of the Executive Committee, in which confidential matters are discussed, including proposed or confidential projects or negotiations, matters of litigation, advice from an attorney that is protected by attorney-client privilege or attorney work product privilege, matters in which the Nation is legally obligated to maintain privacy, or other matters that would be protected as a Protected Nation Document when memorialized as listed in Section 4.01.