

TABLED

Cherokee Council House  
Cherokee, Qualla Boundary (NC)  
JAN 09 2020

Date: \_\_\_\_\_

ORDINANCE NO. 82 (2019)

Short Title: *an ordinance to amend Cherokee Code Chapter 18B governing the Tribal Alcoholic Beverage Control Commission (TABCC).*

WHEREAS, Cherokee Code (C.C.) Chapter 18B gives the Tribal Alcoholic Beverage Control Commission (TABCC) authority to regulate the sale, purchase, transportation, manufacture, consumption and possession of alcoholic beverages on EBCI trust lands; and

WHEREAS, the grant of authority in Chapter 18B is comprehensive and gives the Commission autonomy to conduct its activities as it desires so long as those activities satisfy the requirements of the chapter; and

WHEREAS, the Commission has exercised its authority in several ways that are currently allowed by Chapter 18B but that are not consistent with sound fiscal policy for the Tribe generally and decrease the Tribe's ability to maintain its top-tier position in the gaming marketplace; and

WHEREAS, Chapter 18B should be amended to provide reasonable limits on the Commission consistent with the Tribe's overall fiscal approach, sound use of resources and responsible budgeting.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that C.C. Chapter 18B is amended to read as follows:

Sec. 18B-200. - Tribal Alcoholic Beverage Control Commission.

(a) *Creation of Commission; compensation.* The Tribal Alcoholic Beverage Control Commission is created to consist of a chairman and ~~four~~ two associate members. The Commissioners shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Commission's annual budget. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

(b) *Appointment of members.* Members of the Commission shall be appointed by the Principal Chief subject to approval by Tribal Council. Nominees to the Commission shall be enrolled members and selected on the basis of their commitment to the interests and goals of the Commission without forgetting the interests of the Cherokee community, their preparedness to assume responsibility for the decisions

1 of the Commission and to ensure that said decisions are implemented, and their  
2 willingness to devote the time and energy necessary to familiarize themselves with  
3 the strategic, financial and operational issues facing the Commission.

4 (c) *Terms of members.* The Interim Commission shall serve for a term of two years.  
5 Following the expiration of the Interim Commission's term, the Principal Chief shall  
6 appoint five Commissioners for a term of four years, four years, three years, two  
7 years and one year respectively and at least one appointee will be from the Interim  
8 Commission. The Commissioner shall elect their own officers at the start of each  
9 fiscal year. Thereafter, all Commission members shall be appointed to terms of four  
10 years and the established staggered terms shall continue for each Commission  
11 position for future new, renewal or replacement appointments. All Commission  
12 members may be removed for cause by a majority vote of the Tribal Council.  
13 Nothing in this chapter shall be construed to preclude a member of the Commission  
14 from serving successive terms. On and after March 1, 2020, the Commission shall  
15 consist of three members, one of whom shall be Chairman and two of whom shall be  
16 associate commissioners. To accommodate the reduction from five members to  
17 three, the seats of the first two commissioners whose terms expire on and after  
18 March 1, 2020, shall not be filled.

19 (d) *Vacancy.* The Principal Chief shall fill any vacancy on the Commission by  
20 appointing a successor within 30 days after the date on which the vacancy becomes  
21 effective subject to approval by Tribal Council. If the Chairman's seat becomes  
22 vacant, the Vice Chairman shall immediately assume the Chairman's seat and  
23 complete the remaining term of the vacating Chairman. A new member of the  
24 Commission will be appointed by the Principal Chief, subject to approval by Tribal  
25 Council, to complete the remaining term of the former Vice Chairman. The  
26 Commission will then elect a new Vice Chairman.

27 (e) *Employees.* The chairman is authorized to employ, discharge, and otherwise  
28 supervise subordinate personnel of the Commission.

29 (f) *Independence.* Except as otherwise provided in this Chapter, in all matters within  
30 its purview and responsibilities, the Commission shall be and shall act independently  
31 and autonomously from the Principal Chief, Tribal Council, the Tribal Gaming  
32 Commission and the Tribal Casino Gaming Enterprise. No prior or subsequent  
33 review by the Principal Chief, Tribal Council, the Tribal Gaming Commission or the  
34 Tribal Casino Gaming Enterprise shall be required or permitted, except as otherwise  
35 explicitly provided in this chapter. Notwithstanding any other provision in this  
36 Chapter, the Commission shall be subject to the annual budget process and budget  
37 appropriations by Tribal Council.

38 (g) *Sovereign Immunity of the Commission.* The Commission, as an instrumentality of  
39 the Tribe, retains all of the Tribe's rights, privileges and immunities, including  
40 sovereign from suit.

41 (h) *Oath of Office.* Prior to beginning their official duties, each member of the  
42 Commission shall take the following oath before some officer authorized to  
43 administer oaths: "I do solemnly swear (or affirm) that I will faithfully execute the  
44 duties of Commissioner as a member of the Tribal Alcoholic Beverage Control

1 Commission and will to the best of my ability, preserve, protect and defend the  
2 charter and governing document and laws confirmed and ratified by the enrolled  
3 members of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm)  
4 that I have not obtained my appointment to this Commission by bribery or any undue  
5 or unlawful means or fraud, and that in all measures which may come before me, I  
6 will so conduct myself as in my judgment shall appear most conducive to the  
7 interest and prosperity of the Eastern Band of Cherokees."

- 8 (i) All Commissioners will be subject to initial and subsequent random drug testing per  
9 the Tribal personnel policy. Refusal to submit to any drug testing or a positive test  
10 result shall result in an immediate dismissal from the Commission. Drug testing shall  
11 be paid from the annual budget of the Commission.
- 12 (j) All Commissioners are subject to the same criminal background checks as TCGE  
13 and TGC employees. Each Commissioner is required to update their information.

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15 Sec. 18B-203. - Powers and duties of the Commission.

16 (a) *Powers.* The Commission shall have authority to:

- 17 (1) Administer the Tribal ABC laws;
- 18 (2) Provide for enforcement of the Tribal ABC laws, in conjunction with the ALE  
19 Division;
- 20 (3) Issue ABC permits as allowed under this Ordinance;
- 21 (4) Adopt rules and procedures for the issuance and enforcement of ABC permits;
- 22 (5) ~~Administer an~~ Submit to Tribal Council annually a proposed budget in the  
23 same manner as the majority of other Tribal programs, annual budget with said  
24 budget to be approved annually by the Tribal Council. The Commission, and  
25 the personnel and activities it oversees, shall be subject to Tribal funding and  
26 appropriations in the same manner as the majority of other Tribal programs; and
- 27 (6) Act as the distributor of all alcohol on Tribal trust lands. Spirituous liquor and  
28 fortified wine shall be purchased by TABCC directly from North Carolina  
29 Warehouse, or as needed from a local ABC Store. Malt beverages and  
30 unfortified wine shall be purchased from North Carolina authorized distributors  
31 and may be redistributed from a TABCC warehouse or authorized to be  
32 delivered directly to TABCC authorized permittee; and
- 33 (7) Issue any retail ABC license or permit issued by the North Carolina Alcoholic  
34 Beverage Control Commission, including a temporary license or permit.  
35 Negotiate and enter into contract with North Carolina ABC Commission for  
36 purchase of spirituous liquor and fortified wine; and
- 37 (8) Adopt fiscal control rules concerning the borrowing of money, maintenance of  
38 working capital, investments, appointment of a financial officer, the daily  
39 deposit of funds and any other rules necessary to assure the proper  
40 accountability of public funds.

1 (b) *Implied powers.* The Commission shall have all other powers which may be  
2 reasonably implied from the granting of the express powers stated in subsection (a),  
3 or which may be incidental to, or convenient for, performing the duties given to the  
4 Commission.

5 (c) Limitations.

6 (1) Notwithstanding any other provision of this Chapter, all moneys collected by or  
7 under authority of the Commission and this Chapter shall be timely remitted to  
8 the Tribe's Department of the Treasury and shall become part of the General  
9 Fund for further appropriation and use consistent with Tribal law and policy  
10 governing the General Fund.

11 (2) The Commission shall not authorize, impose, enforce or collect any fine,  
12 penalty, fee, tax, surcharge or other charge that is excessive. As used herein,  
13 excessive means greater (in dollar amount and frequency) than what is imposed  
14 by the equivalent state and local authorities in the North Carolina counties  
15 situated west of Buncombe County.  
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17 Sec. 18B-500. - Tribal alcohol law-enforcement agents.

18 (a) *Appointment.* The Tribal Alcoholic Beverage Control Commission of the Eastern  
19 Band of Cherokee Indians shall appoint a Chief Tribal alcohol law-enforcement  
20 agent. The Chair of the Tribal Alcoholic Beverage Commission or the Chair's  
21 designee shall have the authority to supervise day-to-day activities of the Chief  
22 alcohol law-enforcement agent or the Chair's designee. The Chief Tribal alcohol-law  
23 enforcement agent may appoint, with the approval of the Tribal ABC Commission,  
24 one additional Tribal alcohol law-enforcement agents and other enforcement  
25 personnel. Tribal alcohol law-enforcement agents, including the Chief agent, shall be  
26 designated as "Tribal alcohol law-enforcement agents." When conducting their  
27 official duties in any gaming establishment owned by the Tribe, all Tribal alcohol  
28 law-enforcement agents shall dress in plain clothes (meaning office appropriate  
29 attire), unless an emergency mandates other attire necessary to protect the health and  
30 safety of the agents.

31 (b) *Subject matter jurisdiction.* After taking the oath prescribed for a peace officer, a  
32 Tribal alcohol law-enforcement agent shall have authority to arrest and take other  
33 investigatory and enforcement actions for any criminal offense. The primary  
34 responsibility of an agent shall be enforcement of the Tribal ABC and controlled  
35 substance laws; however, an agent may perform any law-enforcement duty assigned  
36 by the Chief alcohol-law enforcement agent or the Chair's designee.

37 (c) *Territorial jurisdiction.* A Tribal alcohol law-enforcement agent is a Tribal officer  
38 with jurisdiction throughout the lands of the Eastern Band of Cherokee Indians.

39 (d) *Service of commission orders.* Tribal alcohol law-enforcement agents may serve  
40 and execute notices, orders, or demands issued by the Tribal Alcoholic Beverage  
41 Control Commission for the surrender of permits or relating to any administrative  
42 proceeding. While serving and executing such notices, orders, or demands, alcohol

1 law-enforcement agents shall have all the power and authority possessed by law-  
2 enforcement officers when executing an arrest warrant.

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4 Sec. 18B-804. - Alcoholic beverage pricing.

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6 The uniform pricing of spirits sold to permittees and the public shall be the same  
7 uniform price as published by North Carolina General Statutes Sec. 18B-804,  
8 except that the price shall not include and the TABCC shall not impose any tax or  
9 markup or surcharge on alcoholic beverages (malt beverages, spiritous liquor,  
10 fortified wines and unfortified wines). ~~Where a tax or markup is imposed in this~~  
11 ~~section, the TABCC is authorized to impose the same tax or markup as a Tribal~~  
12 ~~tax or markup, where appropriate, and to utilize such tax or markup in operations~~  
13 ~~of TABCC and profits after operation shall be distributed as determined by Tribal~~  
14 ~~Council.~~

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16 BE IT FURTHER ORDAINED that this amendment shall be effective upon ratification  
17 by the Principal Chief, and all prior ordinances and resolutions that are  
18 inconsistent with this ordinance are rescinded.

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21 *Submitted by Principal Chief Richard G. Sneed*

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