

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

MAY 12 2020

Date: _____

ORDINANCE NO. 180 (2020)

Short Title: amending the Cherokee Code to give Tribal Council the authority to order the forfeiture of an enrolled member's Tribal possessory holdings and improvements thereon, upon conviction of certain violations of the Cherokee Controlled Substances Act.

WHEREAS, the number of people abusing and trafficking in controlled substances on Tribal trust land has increased dramatically; and

WHEREAS, nearly every Cherokee family and every Tribal community has been adversely affected by the increase in drug abuse and trafficking, whether it's been through the overdose or death of a loved one, the incarceration of a relative or community member, or the increase in thefts from area homes and businesses; and

WHEREAS, many of these crimes are committed by enrolled members of the Eastern Band; and

WHEREAS, the threat of incarceration has not deterred some enrolled members from committing drug crimes in violation of the Cherokee Controlled Substances Act; and

WHEREAS, Cherokee Code Chapter 2 gives Tribal Council the authority to exclude or banish anybody who presents a threat to the community, including enrolled members, but Tribal Council does not exercise that authority as to enrolled members; and

WHEREAS, Tribal Council should be given more tools to protect the community; and

WHEREAS, Tribal Council has exclusive authority to control the real and personal property belonging to the Tribe; and

WHEREAS, Tribal Council should exercise its exclusive authority by ordering the forfeiture of an enrolled member's possessory holding and improvements thereon when the enrolled member is convicted of committing certain violations of the Cherokee Controlled Substances Act.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that the Cherokee Code shall be amended as expressed in the attached EXHIBIT A, which: adds a new Chapter to the Cherokee Code, to be designated as Chapter 2A, to govern real property forfeitures; amends C.C. Sec. 14-1.4 governing exclusion and other conviction consequences; and amends C.C. Sec. 47B-2 governing possessory holdings.

1 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
2 rescinded, and that this ordinance shall become effective when ratified by the
3 Principal Chief.

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6 *Submitted by Vice Chief Alan B. Ensley.*

Cherokee Code

Chapter 2A – REAL PROPERTY FORFEITURES

Sec. 2A-1. – Real property forfeitures.

(a) Real property is subject to civil forfeiture to the Eastern Band of Cherokee Indians when the real property is used to facilitate an offense stated in subsection (b). Facilitation shall mean that the property was used to commit, or subsequently conceal, illicit activity.

(b) All civil forfeitures and interests in real property shall proceed as Tribal Council proceedings upon a C.C. §14-95.6 conviction or any state or federal conviction where such offenses would constitute a §14-95.6 offense under the Cherokee Code. For purposes of this Chapter, real property shall mean the possessory holding and all improvements attached to the possessory interest.

(c)

(1) Except as provided in this section –

(A) Real property that is subject of a civil forfeiture action shall not be seized before a Tribal Council resolution is ratified.

(B) The real property possessory interest holders or real property occupants shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

(d)

(1) The Tribal Prosecutor shall initiate a real property forfeiture action against real property by –

(A) Filing a forfeiture resolution and a copy of all attachments;

1 (g) The right to real property forfeitures in accordance with Cherokee Code, Chapter
2 2A, when convicted of a C.C. §14-95.6 offense.