

TABLED

Cherokee Council House
Cherokee, North Carolina

NOV 04 2021

Date

ORDINANCE NO. 28 (2021)

An ordinance establishing a tax to be imposed on persons who are not members of the Tribe who trespass on Tribal lands.

WHEREAS, the Eastern Band of Cherokee Indians (EBCI) is a federally-recognized Indian tribe with sovereign powers of self-government; and

WHEREAS, periodically, someone who is not a member of the Tribe and who is not related to an enrolled member will attempt to, and may succeed in, occupying or encroaching on Tribal trust land without having authority from the Tribe to do so; and

WHEREAS, the Tribe's options for legally addressing unauthorized use or occupancy of Tribal land is sometimes limited by the type and location of the unauthorized activity; and

WHEREAS, the Tribe can expand its legal options for addressing this unauthorized activity by establishing in Tribal law a process for imposing a monetary tax on the person or group or business entity engaging in unauthorized activity.

WHEREAS, Cherokee Code Chapter 105, governing taxation, should be amended to add a means of taxing unauthorized use or occupancy of Tribal trust lands.

NOW, THEREFORE, BE IT RESOLVED by the Eastern Band of Cherokee Indians, in Tribal Council Assembled, at which a quorum is present, that Cherokee Code Chapter 105 shall be amended by the addition thereto of a new Article, to be designated as Article VII, to read as follows:

ARTICLE VII. Tax on Unauthorized Use of Tribal Land.

Sec. 105-50. Tax on unauthorized use or occupancy of Tribal land.

(a) Any person who enters on and uses or occupies Tribal land without proper authority from the Tribe, for any period greater than 24 hours, shall be required to pay the tax described in this Article.

(b) The tax imposed in this article is due and payable from owners and occupiers, jointly and severally.

Sec. 105-51. Rate.

The tax described in this article shall be imposed at the following rate: ten dollars (\$10.00) for each calendar day on which the unauthorized use or occupancy occurs.

1 **Sec. 105-52. Role of Finance Office and Business Committee.**

2 All matters regarding the tax shall be decided by the Business Committee or by the Finance Office
3 upon delegation of authority by the Business Committee.

4 **Sec. 105-53. Payment; due date; interest.**

- 5 (a) The tax shall be collected by and paid to the Tribe's Finance Office.
6
7 (b) The tax shall be due thirty days after the unauthorized use or occupancy has occurred. The
8 tax shall remain due until it is paid or waived as provided in this article.
9
10 (c) Taxes that are not paid within ten (10) calendar days of the due date shall be assessed
11 interest at the same rate as the rate for Tribal levy expressed in C. C. § 105-1 on a per
12 annum basis, on the amount of tax due the Tribe. Payment by dishonored check shall be
13 considered nonpayment.

14 **Sec. 105-54. Waiver.**

15 The Tribe may, in its discretion, waive any portion of the tax or all of the tax, upon receipt of a
16 written request for a waiver presented by the person charged with paying the tax or his
17 representative. The Business Committee shall have exclusive authority to grant or deny waivers
18 for the Tribe.

19 **Sec. 105-55. Optional distribution to possessory holder.**

20 The Tribe may choose to pay up to fifty percent (50%) of any tax collected under this article to the
21 respective possessory holder(s) of the Tribal parcel(s) on which the unauthorized use or occupancy
22 occurred, if the parcel has been assigned to a possessory holder pursuant to Tribal law.

23 **Sec. 105-56. Limitations.**

- 24 (a) Nothing in this section shall be construed to impair the Tribe's authority to pursue other
25 civil remedies or criminal charges (such as for trespass) against any person required to pay
26 the tax under this section.
27
28 (b) Nothing in this article shall be construed as a grant of authority to use or occupy Tribal
29 land.

30 **Sec. 105-57. Effective date.**

31 The tax described in this article shall apply on and after January 1, 2021.

32 **Sec. 105-58. Definitions.**

33 The following definitions apply in this Article.

- 34 (a) "Person" means an individual who: (1) is not an enrolled member of the Eastern Band of
35 Cherokee Indians; or (2) is not a married to an enrolled member; or (3) is not a first-
36 generation descendant of an enrolled member; or (4) has been excluded or banished from

1 Tribal lands under C.C. Chapter 2, regardless of their enrollment status or status as a first-
2 generation descendant. "Person" shall also include social and religious groups and
3 business entities.

4
5 (b) "Tribal land" means real property held in trust by the United States for the Tribe.

6
7 (c) "Use or occupy" means encroaching on Tribal land by building, placing or extending a
8 structure or road onto Tribal land, overnight camping in areas not authorized by the Tribe
9 for such use, and also includes inhabiting an existing structure.

10
11 (d) "Without proper authority" means the following:

12 (1) If the parcel has not been assigned by the Tribe to a Tribal member or is not held by a
13 first-generation descendant per Tribal law, "without property authority" means the
14 person upon whom the tax is imposed has not obtained written authority from the Tribal
15 government through a lease, permit, license, written easement or other writing allowing
16 for the use of the land.

17
18 (2) If the parcel has been assigned to a Tribal member or is held by a first-generation
19 descendant per Tribal law, "without proper authority" means the person upon whom
20 the tax is imposed does not have permission from the Tribal member or first generation
21 descendant, and such permission may be in writing or oral.

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23 BE IT FINALLY RESOLVED that all resolutions inconsistent with this resolution are rescinded,
24 and that this resolution shall become effective when ratified by the Principal Chief.

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26
27 *Submitted by Michael W. McConnell, Attorney General.*