

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JUL 14 2022

ORDINANCE NO. 338 (2022)

An ordinance amending C.C. § 47B-3(f) to remove the requirement that the Secretary of Interior or their representative must approve leases or permits of possessory holdings.

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Tribe with the powers of self-governance and Section 23 of the Charter and Governing Document authorizes and empowers Tribal Council to adopt laws for the general government of the Tribe; and

WHEREAS, Section 47B-3(f) of the Cherokee Code permits possessory holders to lease or permit their possessory holdings to third parties; and

WHEREAS, the section allowing possessory holders to lease or permits contains a broad requirement that all such leases or permits must be approved by the Secretary of Interior or their authorized representative; and

WHEREAS, federal approval on possessory holdings is only required for leases or permits in which there would be an encumbrance on the property, such as a mortgage, and Section 47B-3(f) as it is currently written provides an unnecessary hindrance for possessory holders to use and enjoy their property; and

WHEREAS, Section 47B-3(f) should be amended to remove the Tribal requirement that all leases and permits must require federal approval from the Secretary of Interior.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapter 47B shall be amended as follows:

Sec. 47B-3. - Rights granted to Tribal members when possessory holding is issued.

The following rights shall be granted by the Tribe to a Tribal member when a possessory holding is issued:

- (a) Recognition by the Tribal Council that the possessory holding has been assigned to the holder, assuming the holder has complied with the terms and conditions under which the assignment was made.

- 1 (b) The possessory holder may construct a building or other improvements on this possessory
2 holding for residential, business, industrial, or other purposes subject to the approval of the
3 Business Committee.
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- 5 (c) The possessory holder may collect for damages or destruction of any improvement as the
6 result of the issuance of an easement or right-of-way over this holding for any purpose by
7 the Tribe.
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- 9 (d) The possessory holder may collect for the disturbance of the surface of this holding or the
10 interference of the use thereof as a result of the Tribe's issuance of a mineral lease or permit.
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- 12 (e) The possessory holder may transfer all or any part of this holding to another-recognized
13 member of the Band under such conditions as may be prescribed by the Tribal Council.
14
- 15 (f) The possessory holder may grant leases, permits, and licenses on this possessory holding
16 to a member or nonmember of the Tribe, subject to Tribal law and, if applicable, subject to
17 federal law. The possessory holder may grant leases or permits on this possessory
18 holding to a member, or nonmember of the Band for a definite period of time and for a
19 prescribed consideration in accordance with the then applicable rules and regulations of
20 the Bureau of Indian Affairs, and the Tribe and subject to the approval of the Business
21 Committee and the Secretary of the Interior or his authorized representative. Such
22 consideration shall be divided between the possessory holder and the Tribe in percentages
23 established by the Tribal Council.
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25 **BE IT FINALLY ORDAINED** that all ordinances that are inconsistent with this ordinance are
26 rescinded, and that this ordinance shall become effective when ratified by the Principal
27 Chief.
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29 *Submitted by the Ryan A. Clayton, Associate Attorney General, Office of the Attorney General*