

# TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: DEC 07 2023

## ORDINANCE NO. 53 (2023)

*An ordinance amending Chapter 47D authorizing the Tribal Realty Services Office to promulgate rules and regulations consistent with the HEARTH Act.*

WHEREAS, the United States Congress enacted the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), codified as 25 U.S.C. 415(h), to authorize Tribal approval in lieu of Secretarial approval for the leasing of restricted Tribal trust lands under federal regulatory standards; and

WHEREAS, in order for the Tribe to take advantage of the HEARTH Act, the Tribe must adopt Tribal leasing regulations that meet the minimum federal regulatory standards; and

WHEREAS, the Tribe entered into a P.L. 93-638 contract with the Bureau of Indian Affairs for Real Estate Services in 2020 and the Tribal Realty Services Office has been drafting leases consistent with federal regulatory standards since the contract's execution, but with Secretarial approval; and

WHEREAS, the Tribal Realty Services Office is prepared to promulgate rules and regulations that would allow the Tribe to approve these same leases without Secretarial approval; and

WHEREAS, these leasing regulations would authorize the Tribe to approve leases for business, agricultural, residential, wind and solar, wind energy evaluation, as well as for public, religious, educational, or recreational leases on Tribal trust lands; and

WHEREAS, the Tribal Business Committee held its regularly scheduled meeting on April 25, 2023, and voted to submit this ordinance to Tribal Council to amend Chapter 47D of the Cherokee Code to authorize the Tribal Realty Services Office to promulgate rules and regulations consistent with the HEARTH Act so that the Tribe may approve its own leases without Secretarial approval.

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

### CHAPTER 47D – LEASING

#### ARTICLE I TRIBAL LEASES AND ASSIGNMENTS

1  
2 Sections 47D-1 through 47D-11 remain unchanged.

3  
4 Sections 47D-12 through 47D-19 are reserved for future codification.

5  
6 ARTICLE II  
7 HEARTH ACT

8  
9 Section 47D-20. Purpose and Authority

10  
11 The Eastern Band of Cherokee Indians, through its inherent authority and authority expressed in  
12 the Tribe's Charter and Governing Document, hereby adopts the following laws for the leasing of  
13 its Tribal land, held in trust by the United States of America.

14  
15 Sec. 47D-21. Leases of restricted fee interests in Tribal lands.

16  
17 (a) Authorized purposes; terms of the lease.

18  
19 (1) Any Tribal lands held in trust by the federal government for the benefit of the Eastern  
20 Band of Cherokee Indians, may be leased from the Tribe with the approval of the  
21 Tribe's Business Committee for public, religious, educational, recreational, residential,  
22 wind and solar, wind energy evaluation, mineral extraction, or other commercial  
23 purposes, including the development or utilization of natural resources in connection  
24 with operations under such leases, for grazing purposes, and for those farming purposes  
25 which require the making of a substantial investment in the improvement of the land  
26 for the production of specialized crops as determined by the Tribe.

27  
28 (2) Commercial and wind and solar leases shall not exceed twenty-five (25) years except  
29 that a lease may include an option to renew for two (2) additional terms, provided that  
30 each term of which shall not exceed twenty-five (25) years.

31  
32 (3) Leases for non-commercial public, religious, educational, recreational, or residential  
33 purposes shall not exceed 75 years. The non-commercial public, religious, educational,  
34 recreational, or residential lease may provide for an initial term of less than 75 years  
35 with a provision for one or more renewals so long as the maximum term, including all  
36 renewals, does not exceed 75 years.

37  
38 (4) Wind energy evaluation leases shall not exceed three (3) years except that a wind energy  
39 evaluation lease may include an option to renew for one (1) additional term not to  
40 exceed three (3) years.

41  
42 (4) All leases and renewals shall be made under such terms as may be hereafter regulated  
43 by the Tribal Realty Services Office when consistent with 25 U.S.C. 415(h).

44  
45 Sec. 47D-22. Business Committee approval of leases of restricted fee interests.

1 (a) At the discretion of the Business Committee, any lease of Tribal land held in trust by the federal  
2 government for the purposes authorized by this chapter, except a lease for the exploration,  
3 development, or extraction of any mineral resources, shall not require the additional approval  
4 of the Secretary of the Department of the Interior so long as the Tribal regulations promulgated  
5 by Tribal Realty Services Office and used in administering such leases are compliant with 25  
6 USC 415(h).

7  
8 (b) Possessory Interests.

9  
10 (1) If the land subject to a proposed lease has a Tribal possessory interest assigned from it  
11 to one or more Tribal members, then the owners of the possessory interest shall be a  
12 necessary party to the lease with final authority over the terms of the lease as long as  
13 the lease comports with 25 U.S.C. 415(h).

14  
15 (c) Prior to approval of any lease or extension of an existing lease pursuant to this chapter, the  
16 Tribe shall first satisfy to itself that adequate consideration has been given to the relationship  
17 between the use of the leased lands and the use of neighboring lands; the height, quality, and  
18 safety of any structures or other facilities to be constructed on such lands; the availability of  
19 police and fire protection and other services; the availability of judicial forums for all criminal  
20 and civil cases arising on the leased lands; and the effect on the environment of the uses to  
21 which the leased lands will be subject.

22  
23 Sec. 47D-23. Rules and regulations.

24  
25 (a) The Tribal Realty Services Office is hereby authorized to promulgate administrative rules and  
26 regulations under Cherokee Code Chapter 150 in furtherance of this article except that any  
27 appeals of decisions made by the Tribal Realty Services Office shall be made to the Tribal  
28 Business Committee in lieu of an administrative law judge subject to the final jurisdiction of  
29 the Cherokee Court.

30  
31 (b) If the Tribe executes a lease pursuant to Tribal regulations under subsection (a) of this section,  
32 the Tribal Realty Services Office shall provide the Secretary of the Department of the Interior  
33 with:

34  
35 (1) a copy of the lease, including any amendments or renewals to the lease; and

36  
37 (2) if the lease that allows for lease payments to be made directly to the Tribe, then  
38 documentation of all lease payments made.

39  
40 Sec. 47D-24 Limited waiver of sovereign immunity.

41  
42 The Tribe grants a limited waiver of immunity for suits brought in the Cherokee Court for breach  
43 of contract and for the limited purpose of resolving lease contract disputes arising under leases  
44 authorized and executed pursuant to this Article.

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.  
4

5 *Submitted by the Office of Attorney General.*