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Cherokee Council House  
Cherokee, North Carolina

Date \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_(2026)

WHEREAS, the Charter and Governing Documents of the Eastern Band of Cherokee Indians contains clear language in Section 24 requiring the Tribe to compensate members of the Tribe if the Tribe takes or condemns a Tribal members possessory holding; and,

WHEREAS, the Tribal Council codified Section 24 of the Charter and Governing Documents in Chapter 40 of the Cherokee Tribal Code in 1991; and,

WHEREAS, Chapter 40 codification restricted the method by which a member of the Tribe could require or take action to secure compensation for the Tribe taking or interfering with the Tribal members possessory holding; and,

WHEREAS, Chapter 40 as currently written, limits or otherwise prevents the Cherokee Tribal Court from carrying out the intent of Section 24 of the Charter and Governing Documents of the Tribe; and,

WHEREAS, Chapter 40 needs to be amended to resolve the issues currently preventing Tribal members from requiring the Tribe to compensate them for land taken by condemnation by the Tribe or inverse condemnation by actions of the Tribe.

NOW THEREFORE BE IT RESOLVED by the Tribal Council of the Eastern Band of Cherokee Indians in annual council assembled where a quorum is present that Chapter 40 of the Cherokee Tribal Code is hereby amended as set out in exhibit A

Submitted by Robert Osley Saunooke

## Chapter 40 EMINENT DOMAIN<sup>1</sup>

### Sec. 40-1. Condemnation of land for public purpose.

The Tribe shall have the power to condemn land within the Cherokee Indian Reservation whenever such land is deemed by the Tribal Council to be necessary for a public purpose. The exercise of eminent domain shall be initiated by the Tribal Council passing a resolution identifying the land to be taken for a public purpose, the possessory holder and leasehold tenants and the purpose for which the land will be used.

Eminent domain shall also include inverse condemnation of a possessory holding that may have occurred by any action of the Tribe that restricts, hinders, or otherwise interferes with a possessory holders access to or use of a possessory holding.

### Sec. 40-2. Compensation of land holder.

The possessory holder or leasehold tenant shall be compensated for such condemnation, including inverse condemnation, by payment of the value of the improvements or betterments placed on the land.

### Sec. 40-3. Determination of land value.

If the possessory holder or leasehold tenant does not agree with the Tribe on the value of the improvements or betterments, the Tribe, or possessory holder, shall file suit in the Cherokee Court. If the Tribe brings the suit the Tribe shall deposit with the Clerk a sum equal to the Tribe's appraised value of the improvements or betterments. The actual value of the possessory holding shall be determined by a jury of six Tribal members with said value to include the appraised value of all improvements as well as the present value of the unimproved possessory holding.

The Tribe hereby clearly and unequivocally waives sovereign immunity for any claims brought under this section for inverse condemnation or condemnation brought by the Tribe or a possessory holder of lands within the boundary of the Eastern Band of Cherokee Indians.

### Sec. 40-4. Construction while suit is pending.

The Tribe may proceed with construction of the public purpose while the suit is pending but not without having first obtained the agreement of the possessory holder or leasehold tenant or having filed suit and deposited an amount equal to the appraised value of improvements or betterments.

(Charter, § 24; Ord. No. 19, 11-7-1991)

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<sup>1</sup>Cross reference(s)—Real property, ch. 47; roads and highways, ch. 136A.

## Amendments to Chapter 1 of the Cherokee Tribal Code

Chapter 1 of the Cherokee Tribal Code was written to permit individuals that have been harmed by the intentional or negligent actions of the Tribe, its agents and employees. Since first adopted, no question of a waiver of sovereign immunity has ever been at issue. Quite simply, if the Tribe had and maintained an insurance policy to cover the actions complained of by any person against the Tribe, the court and the policy acted as a waiver for the limits of the insurance policy.

In 2024 the Cherokee Supreme Court held that although the language of Chapter 1-2(g) indicated that the Tribe had waived sovereign immunity for any claims covered by an insurance policy, that was not a sufficient waiver and that the policy maintained by the Tribe needed to include specific language of the waiver. In the history of insurance coverage there has never been such language present in any insurance policy.

The effect of the Supreme Court's order has been to nullify any and all claims brought to the Tribe even though the Tribe has paid for and maintained insurance coverage for the claim. This is particularly troubling for employees of the Tribe who are injured on the job or who are hurt working for the Tribe. In practice, the current insurer of the Tribe for work related injuries can and has refused to provide coverage for Tribal employees. The end result is that an employee cannot bring any legal action to recover for those injuries due to the Supreme Court's ruling.

The Tribe continues to pay for and maintain insurance coverage that is of no effect. The Supreme Court's ruling can be used to clarify coverage by amending the language in Chapter 1 to clearly and unequivocally waive sovereign immunity solely for claims for which the Tribe maintains insurance, up to the limits of said policy.