

TABLED
AMENDED

CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY

OCT 26 2017

Date

ORDINANCE NO. 18 (2017)

WHEREAS, the Eastern Band of Cherokee Indians, as a Tribal government, enjoys certain common law legal protections, such as sovereign immunity; and

WHEREAS, sovereign immunity can be a complete bar to lawsuits against the Tribal government unless the Tribal government clearly and unequivocally waives sovereign immunity; and

WHEREAS, in the case of Teesateskie v. Eastern Band of Cherokee Indians Minors Fund, et al, (Case No. 12-CV-059; October 12, 2015) the Cherokee Supreme Court interpreted governing law to mean that the Tribe had not clearly and unequivocally waived its sovereign immunity; and

WHEREAS, as a result, Tribal members and the public generally are not able to seek a remedy in the Cherokee Court for losses allegedly caused by the Tribal government for torts such as negligence or alleged unlawful actions by those working on behalf of the government; and

WHEREAS, as a modern, responsive government, the Tribe should amend the Cherokee Code to provide a waiver of sovereign immunity in the same limited manner that other reasonable and fair sovereign entities do, such as other tribes, the United States government, all 50 state governments, and countless municipalities.

NOW THEREFORE BE IT ORDAINED in Council assembled at which a quorum is present, that Cherokee Code Sec. 1-2 is amended to read as follows:

Sec. 1-2. - Civil jurisdiction and limited waiver of sovereign immunity.

(a) The Cherokee Court shall have jurisdiction over all persons, businesses, corporations or other legal entities in civil suits which arise on the Cherokee Indian Reservation.

(b) The Cherokee Court shall exercise jurisdiction over the domestic relations of all individuals residing on Cherokee trust lands. Jurisdiction shall be exercised for cases including but not limited to child protection and child welfare, divorce, separation, child custody, support, alimony, adoption, guardianship, and paternity.

(c) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over tortious conduct of all persons where the conduct occurs on Indian trust land.

(d) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over disputes involving any contract that is negotiated or executed on Indian trust land, or involves any interest in Cherokee trust lands and contractual right of the Tribe.

(e) The Cherokee Court of Indian Offenses or any successor Court shall exercise jurisdiction over all persons, firms, corporations, partnerships or other legal business entities which conduct business on Cherokee trust lands. Such jurisdiction shall be limited to transactions involving or affecting individual Indians, Indian owned businesses, Tribal laws and policy or Indian property.

(f) The enforcement of all eviction and foreclosure proceedings shall be in the Cherokee Court. The Cherokee Court shall have jurisdiction over all leasehold foreclosures of deeds of trust or mortgages on Cherokee trust lands. Valid deeds of trust or mortgages approved by the Tribe and Bureau of Indian Affairs shall constitute enforceable first liens against such leaseholds.

(g) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over actions against the Eastern Band of Cherokee Indians and sovereign immunity is hereby waived only for actions seeking the following relief:

- (1) An injunction, writ of mandamus or a declaratory judgment concerning individual rights guaranteed by the Indian Civil Rights Act.
- (2) Damages for condemnation by the Tribe through the Tribe's exercise of eminent domain.
- (3) Damages for tort claims. ~~where the Tribe maintains insurance coverage for such claims, with recovery not to exceed the amount of liability coverage maintained by the Tribe.~~
- (4) Damages for breach of contract but only if the contract contains a an express and unequivocal waiver of the Tribe's sovereign immunity.

The Tribe's waiver of sovereign immunity is further limited as follows: if the action (or claim) seeks a payment of money from the Tribe, the Tribe's waiver is limited to actions (or claims) for which the Tribe maintains insurance coverage, the

insurer does not deny coverage for the action or claim, and recovery shall not exceed the amount of liability coverage maintained by the Tribe.

(h) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall retain personal jurisdiction over persons or entities resident on Cherokee trust lands for a period of six months after such persons or entities move from Cherokee trust lands.

(i) None of the foregoing language is intended to grant a waiver of sovereign immunity against the Eastern Band of Cherokee Indians so that a temporary restraining order or preliminary injunction may be entered against the Eastern Band of Cherokee Indians or any agent or official acting in their official capacity, ex parte or otherwise, unless said action is instituted by the Eastern Band of Cherokee Indians against said agent or employee or official.

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief, and all ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by: Richard Sneed, Principal Chief

**CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY**

Date: December 7, 2017

ORDINANCE NO. 18 (2017)

Floor Amendment

In Ordinance No. 18 (2017), on page 2, delete the proposed changes to subsection (g) of C.C. § 1-2 and insert the following changes to subsection (g):

“(g) The Cherokee Court of Indian Offenses or any successor Cherokee Court shall exercise jurisdiction over actions against the Eastern Band of Cherokee Indians and sovereign immunity is hereby waived only for actions seeking the following relief:

- (1) An injunction, writ of mandamus or a declaratory judgment concerning individual rights guaranteed by the Indian Civil Rights Act; or any constitution the Tribe may officially adopt as its governing document.
- (2) Damages for condemnation by the Tribe through the Tribe’s exercise of eminent domain.
- (3) Damages for tort claims. ~~where the Tribe maintains insurance coverage for such claims, with recovery not to exceed the amount of liability coverage maintained by the Tribe.~~
- (4) Damages for breach of a written contract where the contract contains an express and unequivocal waiver of the Tribe’s sovereign immunity.
- (5) The waiver of sovereign immunity expressed in subparagraphs (1) - (4) above is further limited as follows: if the action seeks payment of monetary damages from the Tribe, the waiver is limited to actions for which the Tribe maintains liability insurance coverage, and recovery shall not exceed the amount of coverage maintained by the Tribe.
- (6) The Tribe’s limited waiver of sovereign immunity provided in subsection (g) by amendments expressed in Ordinance No. 18 (2017), shall apply only to causes of actions arising on and after February 1, 2018.”

Floor amendment submitted by Michael W. McConnell, Interim Attorney General