

# TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

DATE: JAN 10 2019

ORDINANCE NO. 453 (2019)

WHEREAS, Cherokee Code (C.C.) Chapter 47 governs Tribal real property and interests therein; and

WHEREAS, C.C. Chapter 47 has been amended many times over the years and would be improved by being re-organized by subject area so that Tribal members can more easily research and know the law; and

WHEREAS, re-organizing C.C. Chapter 47 into several smaller chapters, each of which addressing a different area of Tribal real property law, will increase understanding and compliance with the law; and

WHEREAS, the re-organization provided in this ordinance will not change the substantive law that already that is expressed in the Cherokee Code; and

WHEREAS, this ordinance will divide C.C. Chapter 47 into the following smaller chapters, each focused on a different subject area, as follows: Chapter 47A – Environmental Site Review; Chapter 47B – Possessory holdings; Chapter 47D – Leasing; Chapter 47E – Easements, Permits, and Rights of Ways; and

WHEREAS, additionally, this ordinance will designate a new Chapter 47C for future codification of the Tribal Realty Office and a new Chapter 47F for future codification of Tribal landlord-tenant laws; and

WHEREAS, in this ordinance existing C.C. § 47-4(g), which governs inheritance of possessory holdings, will be moved to Chapter 28, which governs inheritance laws of the Tribe, and C.C. § Section 47-4(g) will be renumbered as C.C. § 28-4 and re-titled as “Inheritance of Tribal Possessory Holdings”. This ordinance does not make any substantive changes to the body of C.C. § 47-4(g); and

WHEREAS, multiple sections in the Cherokee Code cite to Chapter 47 and those citations need to be corrected to comport with the re-organization presented in this ordinance; and

WHEREAS, an index has been attached to this ordinance to describe where each section of C.C. § Chapter 47 is moved and provides a list new section numbers.

1 NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee  
2 Indians assembled, at which a quorum is present, that Chapter 47 of the Cherokee  
3 Code is hereby repealed in its entirety and is replaced by Chapters 47A-47F, that  
4 C.C. Chapter 28 shall be amended as expressed herein, and that all citations of  
5 Chapter 47 elsewhere in the Cherokee Code shall be corrected to comport with the  
6 reorganized Chapter 47 provided herein, as follows:

7  
8 Chapter 47A – Environmental Site Review

9  
10 Sec. 47A-1. - Commercial and Multifamily Site Development Review.

11  
12 (a) Purpose. The site plan review process set forth in this section is intended to protect the public  
13 health and safety, promote the general welfare of the communities, and conserve the environment  
14 by assuring that commercial and multifamily construction is designed and developed in a manner  
15 which assures that adequate provisions are made for traffic safety and access; emergency access;  
16 water supply; sewage disposal; management of storm water, erosion and sedimentation; protection  
17 of the groundwater; protection of wildlife habitat, fisheries, and unique natural areas; protection  
18 of cultural and archaeological resources; minimizing the adverse impacts on adjacent properties;  
19 and fitting the project harmoniously and aesthetically into the fabric of the community.

20  
21 (b) Application. A site plan review is required for those projects identified in subsections (d)(1),  
22 (d)(2) and (d)(3) that are located on Tribal lands. A site plan review and approval must be  
23 obtained before any work may begin on the site or structure involved. For purposes of this site  
24 plan review ordinance, "Tribal lands" means any real property held in trust for the Eastern  
25 Band of Cherokee Indians or owned by the Tribe.

26  
27 (c) Administration. The administration and enforcement of the site development review process  
28 shall be the responsibility of the Tribal Business Committee. In addition, in the event that  
29 Tribal funds are to be expended for extension of public utilities, or for the construction or  
30 extension or reduction of streets and roads, or to make similar improvements to the public  
31 infrastructure, the Tribal Council shall approve the project funding and the Tribal Business  
32 Committee shall approve the project plans prior to the commencement of construction. The  
33 Grants Administration Office shall serve as the primary staff for the review process, for  
34 enforcement, for guidelines, and for offering recommendations to assist in the administration  
35 of this review process.

36  
37 (d) Construction projects requiring review. Applicants shall present site plans and construction  
38 drawings (if required) to the Tribe at times and places stated herein for all of the following  
39 projects:

40 (1) Ground disturbing projects. Any project on Tribal lands, regardless of the type of  
41 project, that disturbs or alters more than one acre of ground.

42 (2) Commercial/institutional projects. Any commercial, industrial, office or institutional  
43 development project to be located upon Tribal lands which involve any new construction,  
44 reconstruction, remodeling (interior and exterior) and/or demolition of a building or structure  
45 privately owned, tribally owned, or owned by any public or semipublic corporation or body.

1       (3) Multi-family residential projects. Any subdivision, multifamily structure or parcel of  
2       land containing three or more of the following units on the premises: manufactured  
3       housing, cabin rentals, camper trailers and/or recreational vehicles (RVs).  
4

5       (e) Exemptions. Any non-commercial building, structure or home used solely for single-family  
6       residential occupancy is exempt, unless included in subsection (d)(3). However, each dwelling  
7       unit shall meet the provisions set forth in Resolution No. 228, adopted by Tribal Council  
8       March 7, 2002, as well as the requirements of Tribal law.  
9

10      (f) Review procedures. To assist the Business Committee in the review process, those  
11      individuals seeking approval of site development plans shall follow these steps.

12      (1) Preapplication conference. A preapplication conference with the Grants Administration  
13      Office is required prior to beginning the site plan review process. The purpose of the  
14      preapplication conference is to:

- 15      a. Allow the Grants Administration Office to understand the nature of the proposed use  
16      and the issues involved in the proposal; and  
17      b. Allow the applicant to understand the site plan review process and required  
18      submissions.

19      The preapplication conference shall be informal and informational in nature. There shall  
20      be no fee for a preapplication review, and such review shall not cause the plan to be a  
21      pending application or proceeding. The Grants Administration Office will provide an  
22      application packet to the applicant, which shall include, at a minimum, a copy of this  
23      ordinance, a copy of the guidelines, a contact list and a flowchart.

24      The applicant must prepare and submit to the Grants Administration Office all pertinent  
25      information including a property map from the BIA, site plans, construction drawings and  
26      other supporting documentation upon request from the Grants Administration Office.

27      (2) Preliminary site plan and construction drawings review. After completion of the  
28      preapplication conference, depending on the nature of the project, the Grants  
29      Administration Office will present the proposed project to the Tribal Planning Board or  
30      will begin the site plan review checklist process.

31      The Grants Administration Office will use its discretion in deciding what should be  
32      presented to the Planning Board. If a site plan review will be reviewed by the Planning  
33      Board, the Grants Administration Office (and the applicant, if deemed necessary by the  
34      Grants Administration Office) shall be prepared to discuss the following:

- 35      a. The proposed site, including its location, size, and general characteristics;  
36      b. The nature of the proposed use and potential development; and  
37      c. Any issues or questions about existing municipal regulations and their applicability  
38      to the project.

39      (3) Site plan application. After consultation with the Tribal Planning Board, the applicant  
40      must submit three copies of the site plan and supporting documentation and three full sets  
41      of construction documents including three copies of elevation drawings to the Grants  
42      Administration Office. The Grants Administration Office will distribute the site plan and  
43      construction drawings to those programs listed on the site plan review checklist for  
44      review. The initial review process for Tribal programs should not exceed two weeks after  
45      the plans have been submitted. During the two week period a program may seek an  
46      extension for providing comment. Extensions must be submitted to the Grants

Administration Office and must be sought prior to the expiration of the existing period. Summary comments will be available in the Grants Administration Office upon request. Following review by the Grants Administration Office and other applicable departments the Grants Administration Office will generate a report based on all findings and will present its recommendations at subsequent Planning Board the next regularly scheduled Planning Board session at which time any final recommendations and issues will be addressed.

After recommendations have been received and the necessary departments have been notified and have been given an opportunity to provide input on the checklist, the developer's application will be taken by the Grants Administration Office to the Business Committee for consideration.

Upon approval by the Business Committee, the applicant may apply for any tribal licensing/permit requirements not able to be obtained until the proposal was passed. If an application is denied, an appeal may be filed with the Tribal Council within 30 days after the Committee's decision. All appeals shall be submitted to the Tribal Council in writing. The Tribal Council shall have the option of hearing the appeal in an open meeting or making a decision without a meeting based on the record and written information presented. Tribal Council shall decide whether to overturn the decision of the Business Committee or to let the decision of the Business Committee stand. Tribal Council's decision may be appealed to the Tribal Court if the appeal is filed with the court within 30 days of the date that Tribal Council issued its decision. Review by the Tribal Court shall be limited to determining whether the Council's decision was an abuse of discretion.

- (4) *Fees.* Each department shall make its fee requirements available to developers and the Grants Administration Office continuously during business hours. Applicants shall provide a copy of receipts from permit fees, and other departmental fees shall be provided to the Grants Administration Office to ensure the applicant's compliance with Tribal policies.

- (g) *Submission requirements.* Applicants must submit to the Grants Administration Office site plan applications on forms provided by the Grants Administration Office, along with evidence of payment of the required fees, and the required plans and related information. The submission must address information requested in the "Guidelines on Site Planning & Development" document (which shall be made available at the Grants Administration Office) unless specifically waived in writing by the Grants Administration Office. The Grants Administration Office may waive any of the submission requirements upon a written request of the applicant. Such request must be made at the time of the preapplication conference or at the initial review of the application by the Planning Board. A waiver of any submission requirement may be granted only if the Grants Administration Office's written finding that the information is not required to determine compliance with the standards. If there arise discrepancies between the submission requirements and other sections of the Tribal Code, whichever regulation is more stringent will be the one to comply with. All applications must comply with the Tribe's "Guidelines on Site Planning & Development" document.

- (h) (1) *Project determination.* The Grants Administration Office will not reserve a space on future Business Committee agenda until plans and drawings have been submitted and the site plan review checklist is complete and the Planning Board has been notified. At the

1 final review of the site plan by the Business Committee one of the following actions may  
2 be taken:

- 3 a. Approval of the site development application;
- 4 b. The Committee may request additional information prior to taking final action;
- 5 c. The Committee may request that the applicant redesign all or part of the project prior  
6 to taking final action; or
- 7 d. Deny approval of the site development application.

8 Upon approval by the Business Committee, the applicant must apply for all required and  
9 applicable licenses and permits.

10 Any projects approved pursuant to this ordinance must be commenced within six months  
11 of approval and completed within the time specified by approving entity. If construction  
12 has not been substantially commenced and substantially completed within the specified  
13 period presented in the application to the Grants Administration Office, the approval shall  
14 be null and void. The applicant may request an extension of the approval deadline prior  
15 to the expiration of the period. Such request must be in writing to the Business  
16 Committee. At its discretion, the Business Committee may grant not more than two  
17 extensions of six-months each if the approved project conforms with all laws in effect at  
18 the time the extension is granted, and if all tribal, federal and state approvals and permits  
19 are current and in force.

20 (2) *Recording of the approved plan.* One copy of the approved site plan checklist and  
21 construction drawings must be recorded in the Cherokee Agency (BIA) Realty Office  
22 within 30 days of approval and the applicable real property lease number provided to the  
23 Grants Administration Office. Failure to record the plan within 30 days shall void the  
24 approval. An extension will be at the discretion of the Business Committee.

25 (3) *Minor changes to approved plans.* Minor changes in approved site plans necessary to  
26 address field conditions may be approved by the Building Inspections Office or designee  
27 of Business Committee provided that any such change does not affect compliance with  
28 the standards or alter the essential nature of the proposal. Any such change must be  
29 endorsed in writing on the approved plan by the Building Inspections Office or designee  
30 of Business Committee.

31 (4) *Amendments to approved plans.* Approvals of site plans are dependent upon and limited  
32 to the proposals and plans contained in the application and supporting documents  
33 submitted and affirmed to by the applicant. Any minor variation from the plans,  
34 proposals, and supporting documents, except those as described in subsection 47A-  
35 1(h)(3) herein, is subject to review and approval by Tribal Council.

36  
37 (i) *Reserved.*

38  
39 (j) *Severability.* The invalidity or unenforceability of any section or provision of this section  
40 shall not be held to invalidate or void any other section or provision of this section.

41  
42 (k) *Enforcement.*

- 43 (i) The Business Committee may take all actions necessary and proper to enforce  
44 compliance with this section including, but not limited to, prohibiting the performance of  
45 acts within the purview of this section, imposing fines, issuing temporary injunctions or  
46 stop orders, requiring that acts performed while in violation of this section be reversed or

- 1 undone, and directing that any site plan application or approval be suspended or revoked.  
2 The Business Committee may delegate enforcement responsibility to a division or office  
3 within the Tribal government. Unless and until a contrary delegation is expressed by the  
4 Business Committee, enforcement responsibility is hereby delegated to the Grants  
5 Administration Office.
- 6 (ii) When appropriate, the Grants Administration Office should first give the violator  
7 written notice of the violation and five calendar days to comply with this section before  
8 taking further action; provided, however, if immediate action must be taken to prevent  
9 acts prohibited by this section or to prevent disturbance of land or disturbance of land or  
10 construction of structures, notice and five-day compliance period are not required;  
11 provided, further, that fines may be imposed only after consultation with, and approval  
12 of the fine, by the Business Committee.
- 13 (iii) The Cherokee Police Department shall assist efforts to enforce compliance with this  
14 Section 47A-1 if its assistance is deemed necessary by the enforcement authority.
- 15 (l) *Fine.* Any person or entity that conducts an activity governed by this Section 47A-1 without  
16 first obtaining approval for the conduct or for the site pursuant to this section may be fined an  
17 amount not to exceed \$500.00 per day for each day the violation occurs.
- 18
- 19 (m) *Unlawful conduct.* Activities governed by this Section 47A-1 must be performed in  
20 compliance with applicable law.
- 21
- 22 (n) *Remedies not exclusive.* Any right or remedy expressed in this Section 47A-1 is not  
23 exclusive. The Tribe reserves the right to enforce compliance with this section by any and all  
24 actions available under law, including but not limited to civil and criminal actions.  
25

## 26 Chapter 47B – Possessory Holdings

### 27 Sec. 47B-1. - Control of Property.

28 The Tribal Council shall direct the management and control of all property, either real or personal  
29 belonging to the Eastern Band of Cherokee Indians.

### 30 Sec. 47B-2. - Rights Reserved to Tribe when Possessory Holding is Issued.

31 The following rights shall be reserved by the Tribe when possessory holdings are issued to  
32 individual Tribal members:

- 33 (a) Legal title to land shall remain vested in the United States of America in Trust for the  
34 Eastern Band of Cherokee Indians.
- 35 (b) The power and responsibility to control the leasing of, the transfer of, and the manner  
36 and method of inheritance and devise of the possessory holding.
- 37 (c) All minerals are reserved to the Tribe together with the right to issue mineral leases and  
38 permits and to draw the income therefrom or allocate the income therefrom between the  
39 Tribe and the possessory holder.
- 40 (d) The power and responsibility to control the cutting of timber on the possessory holding.
- 41 (e) To grant or create easements and rights-of-way for roads, streets, alleys, water lines,  
42 sewer lines, electric and telephone lines, or any other public utility over the possessory  
43 holding.
- 44
- 45

1       (f) The right to zone, from time to time, the land area within which the possessory holding  
2       may be situated and to control type and nature of the use thereof.

3  
4       Sec. 47B-3. - Rights Granted to Tribal Members when Possessory Holding is Issued.

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

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

10       (b) The possessory holder may construct a building or other improvements on this  
11       possessory holding for residential, business, industrial, or other purposes subject to the  
12       approval of the Business Committee.

13       (c) The possessory holder may collect for damages or destruction of any improvement as  
14       the result of the issuance of an easement or right-of-way over this holding for any purpose  
15       by the Tribe.

16       (d) The possessory holder may collect for the disturbance of the surface of this holding or  
17       the interference of the use thereof as a result of the Tribe's issuance of a mineral lease or  
18       permit.

19       (e) The possessory holder may transfer all or any part of this holding to another recognized  
20       member of the Band under such conditions as may be prescribed by the Tribal Council.

21       (f) The possessory holder may grant leases or permits on this possessory holding to a  
22       member, or nonmember of the Band for a definite period of time and for a prescribed  
23       consideration in accordance with the then applicable rules and regulations of the Bureau  
24       of Indian Affairs, and the Tribe and subject to the approval of the Business Committee  
25       and the Secretary of the Interior or his authorized representative. Such consideration shall  
26       be divided between the possessory holder and the Tribe in percentages established by the  
27       Tribal Council.

28  
29       Sec. 47B-4. - Abandonment.

30       Any Tribal member who abandons such assigned lands and fails to utilize it during a period of five  
31       years shall forfeit all right, title and interest to said lands which shall revert to the Tribe.

32  
33       Sec. 47B-5. - Transfer of Possessory Holdings.

34       No transfer of a possessory holding shall be valid unless the transfer is consented to and approved  
35       by both a husband and wife. However, the consent and approval of nonmember spouse shall not  
36       be required inasmuch as such spouse has no right of ownership to Tribal lands.

37  
38       Sec. 47B-6. - Posting of Land Transfers Between Members.

39       (a) Any Tribal member desiring to transfer a possessory holding shall have a notice posted at  
40       the Indian Agency Office and at the Cherokee Post Office for ten days in advance of the  
41       regular monthly meeting of the Business Committee. The notice shall set out a full description  
42       of the land intended to be transferred.

43       (b) The Business Committee shall not approve any land transfer that has not met the above  
44       notice posting requirement.

45  
46       Sec. 47B-7. - Transfer of Lease.

1 These conditions shall not restrict the Tribal member from leasing the possessory holding or selling  
2 the possessory right to another Tribal member according to custom and subject to approval of the  
3 Business Committee.

4  
5 Sec. 47B-8. - Boundaries of Tribal Reserve.

6  
7 The boundaries of the Tribal Reserve are as follows:

8  
9 Beginning at a point 1.4 miles from the Soco Gap, at the boundary line of the Reservation on  
10 Cranberry Branch, from this point proceed to the State Highway across Soco Creek. From the State  
11 Highway to Jumper Gap, from Jumper Gap to the point indicated on the map as one mile above  
12 Charlie Sampson's house on Jenkins Creek. From this point on Jenkins Creek through the  
13 Littlejohn Gap and across Bigwitch to the Wrights Creek Gap, from the Wrights Creek Gap straight  
14 across to the mouth of the Heintooga Creek, from the mouth of Heintooga Creek straight up the  
15 Reservation line by the Soco Gap back to the starting point on Cranberry Branch.

16  
17 Sec. 47B-9. - Lands Reserved for Tribal Use.

18 (a) Lots 76, 77, 78, and 79 of the Qualla Boundary as surveyed and subdivided by M.S. Temple,  
19 being four lots in Soco Gap, have commercial value and shall be reserved for Tribal use or for  
20 commercial lease by the Tribe.

21 (b) Such portion of the land around Soco Falls and within a radius of half a mile from the falls  
22 shall be reserved for the benefit of and use of the Tribe.

23 (c) Other tracts of land that in the opinion of the Business Committee are of commercial value  
24 to the Tribe may be withheld by the Business Committee for the sole use and benefit of the  
25 Tribe.

26 (d) Consideration of any commercial lease on unassigned Tribal lands shall be restricted to a  
27 maximum use of ten acres to protect the Tribal Reserve land base for the benefit of an use of  
28 the Tribe.

29  
30 Sec. 47B-10. - Churches.

31 Those churches on Reservation lands which presently hold under lease shall be assigned those  
32 parcels of land on which a church is located, with such assignments recorded in the Cherokee  
33 Agency Realty Office. When such lands cease to be used for church purposes the land and  
34 improvements shall revert to Tribal status.

35  
36 Sec. 47B-11. - Camping and Picnicking.

37 (a) Camping and picnicking shall be restricted to designated areas on the Cherokee Indian  
38 Reservation. Camping and picnicking shall be limited to those areas specifically provided by  
39 the Tribe for such purposes or to such campground and picnic areas operated as commercial  
40 businesses by Tribal members or leasehold tenants.

41 (b) The Cherokee Police Department shall advise all persons camping or picnicking in an  
42 unauthorized area that they are violating a Tribal ordinance and direct them to an authorized  
43 area for such activities.

44  
45 **Chapter 47C – Tribal Realty Office - Reserved**



## Chapter 47D – Leasing

### Sec. 47D-1. - Leases.

The Business Committee shall negotiate, approve and execute in behalf of the Tribe all leases or permits for both assigned and unassigned Tribal lands in compliance with existing Tribal law and federal law and regulations appertaining thereto and based on the merits of each application.

### Sec. 47D-2. - Deed of Trust Lien.

(a) The filing and recording of a leasehold deed of trust or mortgage on parcels of Cherokee Indian trust land within the State of North Carolina shall constitute a valid and enforceable first lien on such leasehold.

(b) Perfection of leasehold deed of trust lien shall be accomplished by recording both a lease and deed of trust or mortgage in the Books of Miscellaneous Records in the Realty Office of the Cherokee Bureau of Indian Affairs.

### Sec. 47D-3. - Allowable Fees.

The fees, including trustee fees, charged in connection with any loan secured by a mortgage or deed of trust on a leasehold interest on the Cherokee Indian Reservation for any collection, foreclosure or attorney's fees, shall not exceed those allowed under North Carolina state law, and shall not exceed those charged in the area surrounding the reservation.

### Sec. 47D-4. - Assignment of Home Sites.

Upon resolution, the Tribal council may assign Tribal land to Tribal members on the condition that the Tribal member constructs a permanent dwelling on the land within three years after the assignment is made. If a permanent dwelling is not constructed within this time period, the land shall automatically revert back to the Tribe and any money paid to the Tribe by the member for this land shall be refunded. The Tribe shall apply the following standards when assigning Tribal land to Tribal members:

(1) Lots may only be assigned to Tribal members who do not own a possessory holding suitable for a home site, who are head of a household, and who have never received such an assignment from the Tribe.

(2) The transfer of possessory holding shall not be effective until the Tribal member has made full payment for the land. The Tribal member shall be given 90 days from the date the Principal Chief ratifies the above resolution to fulfill this obligation of payment.

(3) Three years after the date of transfer, an inspection will be made by the Tribe to ensure that a dwelling has been constructed on the assigned land. If this requirement is not met, the assigned land will automatically revert back to the Tribe, the assignee will be notified, and upon request, the assignee will be reimbursed for the purchase price of the land.

(4) Once the transfer has been made to the member purchasing the property, that member may not transfer or sell the property to any member of the Tribe. They have to come back before the Lands Committee, which will come back before Tribal council, within a three-year time frame.

### Sec. 47D-5. - Assignments as Security for Home Loans.

- 1 (a) Tribal members with possessory holdings shall have the right to assign or pledge a leasehold  
2 interest in such holding as security for a loan which is used to purchase, construct, refinance  
3 or improve a home for the member.
- 4 (b) Leasehold mortgages shall be assignable by the mortgagor only in the event of default;  
5 provided, this does not limit the authority of the lender, maker, insurer or guarantor of the  
6 mortgage loan, including successors and assigns, from assigning, transferring or otherwise  
7 conveying a leasehold mortgage to a mortgage servicer, subservicer or agent, or from selling  
8 leasehold mortgages.
- 9 (c) Leasehold mortgages for homes shall only include that portion of the possessory holding  
10 which is surveyed for and upon which the house or improvement is located, together with road  
11 rights-of-way.
- 12 (d) Leasehold mortgages may include limitations and prohibitions on the mortgagor's authority  
13 to use, grant leases or permits, assign or otherwise transfer the leasehold interest, provided the  
14 limitations and prohibitions are relevant to the protection of the secured party's or guarantor's  
15 interest in the leasehold.
- 16 (e) A Tribal member who abandons assigned lands is not thereby relieved of his obligation to  
17 repay a loan secured by a leasehold mortgage.
- 18 (f) If a Tribal member defaults on a loan to purchase, refinance, construct or improve a home  
19 secured by a leasehold interest, and does not cure the default, thereby causing the Tribe to  
20 exercise its option to purchase, pay on a loan guarantee, or causing the secured party to  
21 foreclose on the interest (and if granted a foreclosure by the Cherokee Court), the member  
22 shall have no more right to the possessory interest and the interest assigned to the Tribe to  
23 obtain the leasehold interest shall revert to the Tribe.
- 24 (g) Nothing in this chapter shall be construed to prohibit the Tribe or a lender, maker, insurer or  
25 guarantor of a mortgage loan, including successors and assigns, from exercising rights  
26 associated with a secured interest in improvements on Tribal lands if the improvements are  
27 pledged as security for a loan to purchase, refinance, construct or improve a home.

28  
29 Sec. 47D-6. - Assignment as Security for Loans other than Homes.

30 Tribal members with possessory holdings shall have the right to assign a leasehold interest  
31 through a leasehold mortgage as security for small business loans, building repair loans, building  
32 expansion loans, operating loans, or other business related loans.

33  
34 Sec. 47D-7. - Reversionary Rights; - Housing Authority.

- 35 (a) Upon payment in full of loans made to the Qualla Housing Authority by H.U.D. under the  
36 Mutual Help Housing Program, the Tribal Council shall assign possessory holdings to the  
37 tribal member or members who have signed and are listed as "homebuyer" and, if any,  
38 "homebuyer's spouse" on the Mutual Help and Occupancy Agreement, as amended at the time  
39 of the loan pay-off, and any reversionary interests of prior occupants of such home, including  
40 the original contributor of the home site, shall be null and void.
- 41 (b) The Qualla Housing Authority shall have policies and procedures for adding, changing, or  
42 removing homebuyers or homebuyers' spouses from the Mutual Help and Occupancy  
43 Agreement in the event of marriage, divorce, death, or other change of family status.

44  
45 Sec. 47D-8. - Eviction.

- 1 (a) The Cherokee Court shall have authority to evict persons living in houses built by the Qualla  
2 Housing Authority or in other rental housing, when such persons are in arrears on their rental  
3 payments.
- 4 (b) The Cherokee Court shall have authority to evict persons occupying residences or buildings  
5 used for commercial or industrial purposes where such premises are occupied under lease and  
6 the occupant, tenant or lessee:
- 7 (1) Is in default or arrears on their lease or rent payments; or  
8 (2) Is continuing to occupy the leased premises after the term of the lease has expired; or  
9 (3) Has done or committed any act by which, according to the condition of the lease, their  
10 leasehold or rental estate has ceased; or  
11 (4) Does not have a valid lease approved by the Tribe and Bureau of Indian Affairs in effect;  
12 or  
13 (5) Has vacated or abandoned the property for a period of 30 days.
- 14 (c) The Cherokee Court shall have authority to evict persons occupying residences or buildings  
15 used for commercial or industrial purposes when such premises are subject to a leasehold deed  
16 of trust or mortgage and the Cherokee Court has entered an Order of Foreclosure in favor of  
17 a leasehold mortgage holder.
- 18 (d) Pleadings, notice and service of process requirements for eviction proceedings shall comply  
19 with the Rules of Civil Procedure adopted and applicable to the Cherokee Court.
- 20 (e) At the termination of the lease term to Qualla Housing Authority for mutual help housing  
21 program units, only the Tribal Council shall have authority to reassign the possessory interest  
22 in the land.

23  
24 Sec. 47D-9. - Home Improvement Program.

- 25 (a) Tribal members selected to participate in the Program shall assign a house site of  
26 approximately one-half acre if serviced by Tribal sewer, or one acre if not serviced by Tribal  
27 sewer, to the Tribe. Participants shall thereafter be tenants of the Tribe.
- 28 (b) All participants in the Home Improvement Program must sign an agreement setting forth the  
29 consideration received by them in exchange for their assigning their possessory rights to said  
30 house site together with any rights to transfer or convey the house site except with the approval  
31 of the Tribe.
- 32 (c) Participants must continuously occupy and live in the improved house. Participants may not  
33 sell, rent, lease, transfer or convey the house or any part thereof. If participants vacate the  
34 improved house, or purport to sell, rent, lease, transfer or convey the property, the Tribe shall  
35 have the right to reassign the home and house site.
- 36 (d) If a participant is residing in the improved house at the time of his death, the house site and  
37 all improvements thereon shall remain the property of the Tribe for the remaining time of the  
38 initial 12-year period under the Home Improvement Program agreement.
- 39 (e) The above restrictions shall be binding upon the participants for 12 years following execution  
40 of their agreement with the Tribe. If the participants continue to occupy the home at the end  
41 of the 12-year period, such participants may then transfer or convey the house site and  
42 improvements to another Tribal member.
- 43 (f) The participant shall convey a right-of-way to the house site to the Tribe which shall be valid  
44 for the duration of the restriction period.
- 45 (g) All restrictions shall be binding for the 12 years immediately succeeding construction of the  
46 home and shall run with the property.

1 (h) It is prohibited to deliver housing benefits under this section to any person who has been  
2 convicted of or plead guilty to a controlled substance violation, in any jurisdiction, within the  
3 ten years preceding possession of a Home Improvement Program home.

4 (i) The Home Improvement Program Committee shall have the power to enact Policies and  
5 Procedures to carry out the intent of this section.

6  
7 Sec. 47D-10. - Lease Rental Bonds.

8 Where security in the form of a rental bond on properties leased by the Tribe is required by federal  
9 regulations, neither the Tribal Council nor any Council committee shall have authority to postpone,  
10 suspend or waive a rental bond.

11  
12 Sec. 47D-11. - Registration for Residential Nonmember Lessees.

13 (a) When residential lodging or lodging space rental agreements are made with persons who are  
14 not members of the Eastern Band of Cherokee Indians for any period greater than 90 days in  
15 any one year, regardless of whether the agreement is oral or written, each property owner or  
16 operator shall each month register his or her name and the name of the lessee and all live-in  
17 guests on a monthly tribal levy form with the Budget and Finance Office.

18 (b) This section does not apply to persons or entities who are entering an agreement with the  
19 Tribal government or one of its entities for residential housing in an official housing program  
20 of the Tribe or a Tribal entity.

21  
22 **Chapter 47E – Easements, Permits, and Right of Ways**

23  
24 Sec. 47E-1. - Easements and Holdings Bordering Roadways.

25 (a) The boundary line of all possessory holdings that border upon any road or highway shall run  
26 with the right-of-way or easement line of such road or highway.

27 (b) So long as any such road or highway is maintained and used, the property within the right-  
28 of-way or boundary lines of such road or highway shall be and remain the property of the  
29 Tribe, and may be used for any lawful purpose as authorized by the Tribal Council, subject to  
30 the road or highway use right.

31 (c) In the event any road or highway shall be permanently closed or abandoned as a road or  
32 highway, at that time the boundary lines of the possessory holdings on either side of such road  
33 or highway shall be extended to the centerline of the abandoned road or highway, subject to  
34 any then existing public rights or uses in the lands within the abandoned area.

35  
36 Sec. 47E-2. - Road Rights-of-Way.

37 In order to prevent encroachments and ensure proper maintenance to BIA roads within the  
38 Cherokee Indian Reservation, there is hereby reserved a right-of-way to the Tribe for 30 feet from  
39 the centerline of each BIA road and control of the 60-foot road right-of-way is granted to the  
40 Cherokee Department of Transportation.

41  
42 Sec. 47E-3. - Encroachment of Road Permit.

43 (a) Before any construction shall be started within 30 feet of the centerline of any road on the  
44 Cherokee Reservation, a written request for an Encroachment Permit shall be submitted to the  
45 Cherokee Department of Transportation. Such permit shall require approval of the Tribal  
46 Roads Committee.

(b) For purposes of this section, construction shall include, but not be limited to, fence building, home construction, trenching, laying electric power lines, water lines, telephone cable, septic tank, drain fields, signs, access road and driveway intersections.

Sec. 47E-4. - Public Access to Bridges.

Any bridge built for a private citizen by the Cherokee Roads Commission requires said private citizen to grant public access to said bridge and grant right-of-way to public use. As such, the easement shall be by the least intrusive method upon the private citizen and the least expensive.

**Chapter 47F – Landlords and Tenants -- Reserved**

**Chapter 28 – Inheritance**

Sec. 28-1, Sec. 28-2, and Sec. 28-3 are unchanged.

Sec. 28-4 – “Inheritance of Tribal Possessory Holdings”

(a) Any improvements placed on the land are considered the personal property of the possessory holder in which the Tribe has no interest. They may be bequeathed by will, or absent a will, shall be distributed to the next of kin in the manner provided by the laws of the State of North Carolina.

(1) If the holder of the possessory right shall die and leave surviving a wife or a husband who is also a member of the Band, the survivor shall have a life interest in the possessory holding.

(2) If the holder of the possessory right shall die and leave surviving a wife who is not a member of the Tribe, the surviving widow shall, at the option of the Tribal Council, be permitted to use and occupy the holding during her lifetime if she does not remarry, but will not be recognized to have any possessory rights in the holding.

(3) If the holder of the possessory right shall die and leave a surviving husband or wife who is a nonmember, together with surviving minors who are Tribal members, the surviving spouse may use the possessory holding and improvements for the benefit of such minors during the period of their minority; then the possessory holding shall, with the approval of the Tribal Council, be partitioned by agreement to the heirs. A surviving nonmember wife shall, with the approval of the Tribal Council, be permitted to use a portion equal to a child's share under conditions set forth in section 28-4(a)(2). A surviving nonmember husband shall, with the approval of the Tribal Council, be permitted to use a portion equal to a child's share under conditions set forth in section 28-4(a)(4).

(4) If the holder of the possessory right shall die and leave a surviving husband or children or heirs other than a nonmember wife who are nonmembers of the Tribe, but who under state law would be entitled to inherit personal property from the holder of the possessory right, the Tribal Council, at their option, shall (A) purchase the improvements recognized to be the personal property of the holder of the possessory rights at their fair appraised value, or (B) give Tribal approval for a permit or lease to the surviving husband or other nonmember for use of the improvements and premises on which they are located for such period of time as will enable the



(8) Baiting shall be allowed only on a hunter's own assigned possessory holding. Baiting shall be allowed on the possessory holding of another only with the owner's written permission. Baiting on individual possessory holding with the permission of the landowner and upon "Tribal Reserve Property" as defined in ~~section 47-16~~ Sec. 47B-8 of the Cherokee Code shall be permitted from April 1 through August 15. All bait must be removed from site no later than August 15. All hunters must notify the Natural Resource Enforcement Office of the location of all bait and/or bait sites no later than three days after establishment of such sites. Failure to do so will result in a fine of no less than \$100.00 per bait site.

Sec. 113-15. - Enforcement.

(b) The jurisdiction of Natural Resources Enforcement Officers extends to all areas set out in this Chapter 113 of the Cherokee Code, and to all other matters within the Cherokee Code which it directs Natural Resources Enforcement Officer to enforce. The Natural Resources Enforcement Officers are specifically granted jurisdiction over all aspects of:

(1) Boating and water safety;

(2) Hunting and trapping;

(3) Fishing;

(4) Activities in woodlands and on inland waters governed by Chapter 113 of the Cherokee Code.

In addition, Natural Resources Enforcement Officers have concurrent jurisdiction over all offenses under this Chapter involving "Tribal Reserve Property" as defined in ~~Sec. 47-16~~ Sec. 47B-8 of the Cherokee Code.

### **Chapter 117 – Tribal Government**

Sec. 117-34. - Lands Committee; procedures.

(f) *Prior acts or laws.* Any and all prior resolutions, ordinances or codifications of such (~~i.e., section 47-27 of the Cherokee Code~~) that operate in conflict with the procedures set forth herein are hereby rescinded.

### **Chapter 136 – Signs and Billboards**

Sec. 136-2. - Jurisdiction.

All billboards shall be under the sole and exclusive jurisdiction of the Tribal Council of the Eastern Band of Cherokee Indians. No billboards shall be allowed on Cherokee trust land except with the approval of the Tribal Business Committee.

The Planning Office and its successor offices shall serve as the primary staff for the administration of this article, at the direction of the Business Committee. Staff duties shall include, but not be limited to, review of billboards, the enforcement of rules and decisions of the Business Committee, for offering recommendations to assist in regulatory efforts, and referring billboard matters not delegated to the staff to the Business Committee for its consideration. The extent practicable, the Business

Committee and the Planning Office shall administer this article and the regulation of billboards in the same manner as the site review process expressed in Cherokee Code ~~Section 47-2~~ Sec. 47A-1.

1 The Business Committee is authorized to adopt standards, rules and procedures for the  
2 regulation of billboards so long as such measures are consistent with this article and are not less  
3 restrictive than this article.

4  
5 Sec. 136-26. - Administration and variance.

6 The Planning Office and its successor offices shall serve as the primary staff for the  
7 administration of this article, at the direction of the Business Committee. Staff duties shall  
8 include, but not be limited to, review of signs, the enforcement of rules and decisions of the  
9 Business Committee, for offering recommendations to assist in regulatory efforts, and referring  
10 sign matters not delegated to the staff to the Business Committee for its consideration. The extent  
11 practicable, the Business Committee and the Planning Office shall administer this article and the  
12 regulation of signs in the same manner as the site review process expressed in Cherokee  
13 Code ~~Section 47-2~~ Sec. 47A-1.

14 The Business Committee is authorized to adopt standards, rules and procedures for the  
15 regulation of commercial signs and advertisements so long as such measures are consistent with  
16 this article and are not less restrictive than this article.

17 Variances shall be submitted to the Planning Office for review and forwarded to Business  
18 Committee for approval or denial.

19  
20 **Chapter 45 – Recording and Foreclosure of Leasehold Interests**

21  
22 Sec. 45-21. - Continuance of uncompleted sale.

23 A sale commenced but not completed within the time allowed by ~~section 47-20~~ Cherokee  
24 Code Sec. 45-20 describing the time of sale shall be continued by the person holding the sale to  
25 a designated time between 10:00 a.m. and 4:00 p.m. on the following day, other than Sunday or  
26 a legal holiday. If a continuance becomes necessary, the person holding the sale shall publicly  
27 announce the time to which the sale is continued.

28  
29  
30 BE IT FINALLY ORDAINED that all ordinances and resolutions that are inconsistent with this  
31 ordinance are rescinded, and that this ordinance shall become effective when  
32 ratified by the Principal Chief.

33  
34 *Submitted by the Office of the Attorney General and Tribal Realty Services*



## **ATTACHMENT**

### **Cherokee Code Chapter 47 Reorganization Index**

**This document is not part of the reorganization, nor is it part of the Cherokee Code. It is included as an aid in understanding the Chapter 47 reorganization ordinance. The new codification is listed beneath the current citation for each affected section.**

#### **47A – Environmental Site Review**

Sec. 47-2. - Commercial and multifamily site development review.

- Codified as 47A-1

#### **47B – Possessory Holdings**

Sec. 47-1. - Control of property.

- Codified as 47B-1

Sec. 47-3. - Rights reserved to Tribe when possessory holding issued.

- Codified as 47B-2

Sec. 47-4(a)-(f). - Rights granted to member when possessory holding issued.

- Codified as 47B-3

Sec. 47-6. - Abandonment.

- Codified as 47B-4

Sec. 47-9. - Transfer of possessory holdings.

- Codified as 47B-5

Sec. 47-10. - Posting of land transfers between members.

- Codified as 47B-6

Sec. 47-7. - Transfer of lease.

- Codified as 47B-7

Sec. 47-16. - Boundaries of Tribal Reserve.

- Codified as 47B-8

Sec. 47-17. - Lands reserved for Tribal use.

- Codified as 47B-9

Sec. 47-28. - Churches.

- Codified as 47B-10

Sec. 47-23. - Camping and picnicking.

- Codified as 47B-11

#### **47C – Tribal Realty Office - *Reserved***

#### **47D – Leasing**

Sec. 47-25. - Leases.

- Codified as 47D-1

Sec. 47-30. - Deed of trust lien.

- Codified as 47D-2

Sec. 47-14. - Allowable fees.

- Codified as 47D-3

Sec. 47-11. - Assignment of home sites.

- Codified as 47D-4

Sec. 47-12. - Assignments as security for home loans.

- Codified as 47D-5

Sec. 47-13. - Assignment as security for loans other than homes.

- Codified as 47D-6

Sec. 47-21. - Reversionary rights; - housing authority.

- Codified as 47D-7

Sec. 47-22. - Eviction.

- Codified as 47D-8

Sec. 47-24. - Home Improvement Program.

- Codified as 47D-9

Sec. 47-26. - Lease rental bonds.

- Codified as 47D-10

Sec. 47-31. - Registration for residential nonmember lessees.

- Codified as 47D-11

#### **47E – Easements, Permits, and Right of Ways**

Sec. 47-19. - Easements and holdings bordering roadways.

- Codified as 47E-1

Sec. 47-18. - Road rights-of-way.

- Codified as 47E-2

Sec. 47-20. - Encroachment of road permit.

- Codified as 47E-3

Sec. 47-32. - Public access to bridges.

- Codified as 47E-4

#### **47F – Landlords and Tenants - *Reserved***

#### **Chapter 28 – Inheritance**

Sec. 47-4(g) – “Inheritance of Tribal Possessory Holdings”

- Codified as 28-3