

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

DATE: MAR 14 2019

ORDINANCE NO. 521 (2019)

WHEREAS, Chapter 47A of the Cherokee Code governs the Tribe's environmental site review process for commercial and multifamily real property; and

WHEREAS, the chapter references the "Grants Administration Office" as the primary office handling the site development review process, and this office has since been renamed to the "Tribal Planning Office;" and

WHEREAS, Chapter 47A needs to be amended to reflect this change.

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

47A – Environmental Site Review

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

- (a) *Purpose.* The site plan review process set forth in this section is intended to protect the public health and safety, promote the general welfare of the communities, and conserve the environment by assuring that commercial and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion and sedimentation; protection of the groundwater; protection of wildlife habitat, fisheries, and unique natural areas; protection of cultural and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously and aesthetically into the fabric of the community.
- (b) *Application.* A site plan review is required for those projects identified in subsections (d)(1), (d)(2) and (d)(3) that are located on Tribal lands. A site plan review and approval must be obtained before any work may begin on the site or structure involved. For purposes of this site plan review ordinance, "Tribal lands" means any real property held in trust for the Eastern Band of Cherokee Indians or owned by the Tribe.
- (c) *Administration.* The administration and enforcement of the site development review process shall be the responsibility of the Tribal Business Committee. In addition, in the event that Tribal funds are to be expended for extension of public utilities, or for the construction or extension or reduction of streets and roads, or to make similar improvements to the public infrastructure, the Tribal Council shall approve the project funding and the Tribal Business Committee shall approve the project plans prior to the commencement of construction. The ~~Grants Administration~~ Tribal Planning Office shall serve as the primary staff for the review

process, for enforcement, for guidelines, and for offering recommendations to assist in the administration of this review process.

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

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

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

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

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

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

- (1) *Preapplication conference.* A preapplication conference with the ~~Grants Administration~~ Tribal Planning Office is required prior to beginning the site plan review process. The purpose of the preapplication conference is to:

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

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

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

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

The ~~Grants Administration~~ Tribal Planning Office will use its discretion in deciding what should be presented to the Planning Board. If a site plan review will be reviewed by the

89 Planning Board, the ~~Grants Administration~~ Tribal Planning Office (and the applicant, if
90 deemed necessary by the ~~Grants Administration~~ Tribal Planning Office) shall be prepared
91 to discuss the following:

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

- 96 (3) *Site plan application.* After consultation with the Tribal Planning Board, the applicant
97 must submit three copies of the site plan and supporting documentation and three full sets
98 of construction documents including three copies of elevation drawings to the ~~Grants~~
99 ~~Administration~~ Tribal Planning Office. The ~~Grants Administration~~ Tribal Planning Office
100 will distribute the site plan and construction drawings to those programs listed on the site
101 plan review checklist for review. The initial review process for Tribal programs should
102 not exceed two weeks after the plans have been submitted. During the two week period a
103 program may seek an extension for providing comment. Extensions must be submitted to
104 the ~~Grants Administration~~ Tribal Planning Office and must be sought prior to the
105 expiration of the existing period. Summary comments will be available in the ~~Grants~~
106 ~~Administration~~ Tribal Planning Office upon request.

107 Following review by the ~~Grants Administration~~ Tribal Planning Office, and other
108 applicable departments, the ~~Grants Administration Office and other applicable~~
109 ~~departments~~ the ~~Grants Administration~~ Tribal Planning Office will generate a report
110 based on all findings and will present its recommendations at subsequent Planning Board
111 the next regularly scheduled Planning Board session at which time any final
112 recommendations and issues will be addressed.

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

117 Upon approval by the Business Committee, the applicant may apply for any tribal
118 licensing/permit requirements not able to be obtained until the proposal was passed. If an
119 application is denied, an appeal may be filed with the Tribal Council within 30 days after
120 the Committee's decision. All appeals shall be submitted to the Tribal Council in writing.
121 The Tribal Council shall have the option of hearing the appeal in an open meeting or
122 making a decision without a meeting based on the record and written information
123 presented. Tribal Council shall decide whether to overturn the decision of the Business
124 Committee or to let the decision of the Business Committee stand. Tribal Council's
125 decision may be appealed to the Tribal Court if the appeal is filed with the court within
126 30 days of the date that Tribal Council issued its decision. Review by the Tribal Court
127 shall be limited to determining whether the Council's decision was an abuse of discretion.

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

(g) *Submission requirements.* Applicants must submit to the ~~Grants Administration Tribal Planning Office~~ site plan applications on forms provided by the ~~Tribal Planning 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 Tribal Planning Office~~) unless specifically waived in writing by the ~~Grants Administration Tribal Planning Office~~. The ~~Grants Administration Tribal Planning 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 Tribal Planning 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 Tribal Planning 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 final review of the site plan by the Business Committee one of the following actions may be taken:

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

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

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

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

- (3) *Minor changes to approved plans.* Minor changes in approved site plans necessary to address field conditions may be approved by the Building Inspections Office or designee of Business Committee provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change must be endorsed in writing on the approved plan by the Building Inspections Office or designee of Business Committee.
- (4) *Amendments to approved plans.* Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any minor variation from the plans, proposals, and supporting documents, except those as described in subsection 47A-1(h)(3) herein, is subject to review and approval by Tribal Council.
- (i) *Reserved.*
- (j) *Severability.* The invalidity or unenforceability of any section or provision of this section shall not be held to invalidate or void any other section or provision of this section.
- (k) *Enforcement.*
- (i) The Business Committee may take all actions necessary and proper to enforce compliance with this section including, but not limited to, prohibiting the performance of acts within the purview of this section, imposing fines, issuing temporary injunctions or stop orders, requiring that acts performed while in violation of this section be reversed or undone, and directing that any site plan application or approval be suspended or revoked. The Business Committee may delegate enforcement responsibility to a division or office within the Tribal government. Unless and until a contrary delegation is expressed by the Business Committee, enforcement responsibility is hereby delegated to the ~~Grants Administration~~ Tribal Planning Office.
- (ii) When appropriate, the ~~Grants Administration~~ Tribal Planning Office should first give the violator written notice of the violation and five calendar days to comply with this section before taking further action; provided, however, if immediate action must be taken to prevent acts prohibited by this section or to prevent disturbance of land or disturbance of land or construction of structures, notice and five-day compliance period are not required; provided, further, that fines may be imposed only after consultation with, and approval of the fine, by the Business Committee.
- (iii) The Cherokee Police Department shall assist efforts to enforce compliance with this Section 47A-1 if its assistance is deemed necessary by the enforcement authority.
- (l) *Fine.* Any person or entity that conducts an activity governed by this Section 47A-1 without first obtaining approval for the conduct or for the site pursuant to this section may be fined an amount not to exceed \$500.00 per day for each day the violation occurs.
- (m) *Unlawful conduct.* Activities governed by this Section 47A-1 must be performed in compliance with applicable law.
- (n) *Remedies not exclusive.* Any right or remedy expressed in this Section 47A-1 is not exclusive. The Tribe reserves the right to enforce compliance with this section by any and all actions available under law, including but not limited to civil and criminal actions.

220 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
221 rescinded, and that this ordinance shall become effective when ratified by the Principal Chief.
222
223
224 *Submitted by the Office of the Attorney General*