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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JUN 01 2023

ORDINANCE NO. 1024 (2023)

An ordinance to amend C.C. Chapter 55B regarding membership, distributions and access to records of limited liability companies formed under Chapter 55B.

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Indian tribe with sovereign powers of self-government, including the authority to adopt laws and regulations for the general government of the Tribe, and to enforce obedience to those laws. (EBCI Charter and Governing Document § 23); and

WHEREAS, Cherokee Code (C.C.) Chapter 55B provides the legal basis for the formation of limited liability companies in Tribal law, such as Kituwah, LLC, and other special purpose LLCs such as Qualla Enterprises, LLC; and

WHEREAS, recently there has been some disagreement as to how separate and independent LLCs formed under C.C. Chapter 55B are or should be from the Tribal government regarding certain matters; and

WHEREAS, Chapter 55B should be amended to clarify that LLCs formed under that chapter must comply with certain Tribal audit requirements, provide reasonable access to records and express parameters for distributions back to the Tribe.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that C.C. Chapter 55B shall be amended to read as follows:

Sec. 55B-1.6. The Tribe as the member.

- (a) The Principal Chief, with agreement of the Tribal Council, shall appoint the Kituwah Economic Development Board as a Representative of the Eastern Band of Cherokee Indians in the capacity of member.
- (b) If the Tribe or a Tribal Entity is a Member of an LLC formed under this chapter, any action which is required or permitted to take with respect to approval, consent, appointment, direction, or other matter shall be taken as specified in Section 3.1 of this chapter or, as to actions related to the managers of a manager-managed LLC, as stated in the LLC's operating agreement.
- (c) If the Tribe is the sole member of an LLC formed under this chapter, such tribally owned LLC shall be deemed to possess all of the privileges and immunities of the Tribe, including

1 the Tribe's sovereign immunity from suit, except to the extent otherwise provided in this
2 chapter.

3 (d) If a Tribally-owned LLC, in which the Tribe or a Tribal Entity is the sole member, forms a
4 Tribally-Owned Subsidiary LLC, to which the Tribally-Owned LLC is the sole member,
5 such Tribally-Owned Subsidiary LLC shall possess all of the privileges and immunities of
6 the Tribe, including the Tribes' sovereign immunity from suit except to the extent otherwise
7 provided in this chapter. Notwithstanding the above sentence, the Kituwah Economic
8 Development Board may cause to be waived sovereign immunity for specific purposes in
9 said subsidiary LLC's organic documents.

10 (e) If the Tribe or a Tribal Entity is not the sole member of an LLC formed under this chapter,
11 such LLC must not be deemed to possess the privileges and immunities of the Tribe,
12 including sovereign immunity from suit; provided, however, that the Tribe, or Tribal Entity
13 that is a member, shall retain its privileges and immunities.

14 (f) In no event shall the Kituwah Economic Development Board, or an appointed member
15 representative manager of an LLC in which the Tribe is a member, bind the Tribe's interest
16 as a member in any manner without consent of the Principal Chief with agreement by the
17 Tribal Council; provided that the Tribe's interest as a member may be bound by the Kituwah
18 Economic Development Board or Member actions as stated in this chapter and the operating
19 agreement of the LLC.

20 (g) Any LLC formed under this chapter so that the initial members of the LLC are solely the
21 Tribe or a Tribal Entity, shall not add or change members without the consent of the Tribe
22 expressed in a Tribal Council resolution ratified by the Principal Chief or that has become
23 law without the signature of the Principal Chief.

24 (h) For purposes of Tribal financial audits required under C.C. § 117-46, any LLC formed
25 under this chapter shall be considered a component unit of the Tribe and shall comply with
26 the Tribe's audit requirements.

27 (gi) Nothing contained in this chapter shall be construed as creating any liability or waiving of
28 sovereign immunity of the Tribe in any manner; provided that the assets of any LLC in
29 which the Tribe holds an interest may be subject to liabilities and claims unless otherwise
30 provided herein. In no event shall any action taken by the Tribe as member concerning the
31 exercise of any right or privilege or discharge of any duty with respect to an interest in an
32 LLC be construed as a waiver of immunity or creation of a liability on the tribe separate and
33 apart from its interests as a member of the LLC.

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35 **Sec. 55B-3.2. Records and information.**

36 (a) An LLC shall keep at its principal place of business all of the following:

37 (1) A list, in alphabetical order, of each past and present manager.

38 (2) A copy of the executed Articles of Organization and all amendments to the articles,
39 together with executed copies of any powers-of-attorney under which any articles were
40 executed.

1 (3) A copy of the executed operating agreement and all amendments thereto; together with
2 executed copies of any powers-of-attorney under which any operating agreement was
3 executed.

4 (4) A record of all matters referred to in this chapter as maintained in such record and s
5 which are not otherwise specified in the operating agreement.

6 (b) Upon reasonable request, the Tribal Council, Principal Chief, or Vice Chief may, at their
7 own expense, inspect and copy during ordinary business hours any LLC record ~~unless~~
8 ~~otherwise provided in the operating agreement.~~ Additionally, the Tribal Council, Principal
9 Chief or Vice Chief may request that the LLC records described herein be produced to
10 them. Such request must be in writing and the LLC shall have five working days in which
11 to produce the records.

12 (c) Additionally, the Tribal Council, Principal Chief or Vice Chief may request that the LLC
13 produce financial records, audit records and contracts, regardless of where those items are
14 maintained. Such request must be in writing and the LLC shall have five working days in
15 which to produce the records.

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17 **Sec. 55B-5.2. Allocation of distributions.**

18 (a) Every LLC formed under this chapter shall express in its operating agreement or other
19 writing when, how and in what amount or percentage ~~D~~ distributions of cash or other assets
20 of an the LLC shall be allocated-made to among the members and such expression shall be
21 approved by Tribal Council resolution ratified by the Principal Chief or allowed to become
22 law with the signature of the Principal Chief. ~~-as provided in operating agreement, or if the~~
23 ~~operating agreement does not so provide, on the basis of the value of the contributions made~~
24 ~~by each member.~~

25 (b) No distribution of corporate property among the members of the tribal members shall be
26 made, except out of the net profit of corporate enterprises after all corporate debts then due
27 have been paid.

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

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34 *Submitted by Richard G. Sneed, Principal Chief*