

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: MAR 03 2022

ORDINANCE NO.: 105 (2022)

An ordinance amending various Chapters of the Cherokee Code to clarify the Tribe's laws regarding exclusions of individuals from Tribal trust lands.

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Indian tribe with sovereign powers of self-government; and

WHEREAS, Tribal Council is fully authorized and empowered to adopt laws and regulations for the general government of the Tribe (EBCI Charter and Governing Document § 23); and

WHEREAS, the Tribe has sovereign authority to exclude individuals from Tribal trust lands; and

WHEREAS, several Chapters of the Cherokee Code are implicated by Tribal Council excluding individuals from Tribal trust lands, and they are addressed below; and

WHEREAS, it is necessary for Tribal Council to review its laws surrounding exclusion from time to time to meet the needs of Tribal members; and

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled at which a quorum is present, that Cherokee Code Chapters 2, 14, 47D and 75 are hereby modified as follows:

Chapter 2
EXCLUSION POWERS OF TRIBE

Sec. 2-1. Power to exclude.

(a) The Tribal Council shall have the power to exclude enrolled Tribal members when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members. ~~enrolled Tribal members for sexual offenses against minors and for convictions for trafficking in controlled substance under Chapter 14 of the Cherokee Code. Tribal Council shall also have the authority to exclude enrolled Tribal members for violations of state and federal law where such offenses would constitute trafficking in controlled substance under the Cherokee Code if committed within the territory of the Eastern Band of Cherokee Indians.~~

(b) The Tribal Council shall have the power to exclude other persons from Cherokee trust lands

1 when necessary to protect the integrity and law and order on Tribal lands and territory or the
2 welfare of its members.

3
4 (c) The Tribal Council shall have the power to exclude from or prohibit operation of a business
5 on Cherokee trust lands or specific locations thereon, if the business threatens the health, safety
6 or welfare of Tribal members or Tribal natural resources due to spills, accidents, illegal dumping,
7 or other unauthorized releases of hazardous materials into the environment.

8
9 (d) The power to exclude contains the power to modify or terminate a previously ordered
10 exclusion.

11
12 (e) The Tribe hereby declares that the power to exclude is an inherent and essential part of Tribal
13 sovereignty. It is indispensable to the Tribe's autonomy and self-governance. Further, it is a
14 natural right of the members of this Tribe, through their Tribal leaders and codified Tribal law, to
15 exercise the power of exclusion to protect the Tribe's natural, economic, and cultural resources,
16 and to protect the health, safety and welfare of Tribal members.

17
18 (f) In this Chapter, "exclusion" means the power to limit or prohibit a person's or entity's
19 presence and activities on Tribal lands. "Tribal lands" and "territory" mean lands held in trust for
20 the Tribe by the United States.

21
22 (g) Notwithstanding any other provision of law, the Tribe reserves its sovereign immunity and
23 shall not be liable for claims of loss, damage or injury resulting from exclusions.

24
25 (h) The Tribal Council may exclude individuals or entities from lands the Tribe or its entities
26 owns, manages, or controls, but which is not held in trust for the Tribe by the United
27 States. After excluding individuals or entities from lands which are not held in trust, Tribal
28 officials may refer an excluded person to local law enforcement when warranted by appropriate
29 circumstances.

30
31 Sec. 2-2. Tribal Council proceedings.

32
33 The Tribal Council shall exercise its power to exclude persons from Cherokee trust lands only in
34 open session of the Council. Nothing in this section shall prohibit the issuance of Writs of
35 Emergency Temporary Exclusion under Section 2-9 ~~or the exclusion of persons under Section 2-~~
36 ~~3(f).~~

37
38 Sec. 2-3. Notice and legal defense rights.

39
40 (a) The Tribal Council shall provide reasonable written notice to all persons over whom it
41 exercises the power of exclusion, together with hearing before the Tribal Council.

42
43 (b) Such persons shall be provided with a written statement of the grounds for the proposed
44 exclusion at the same time notice of the hearing is served upon them.

45
46 (c) Such persons ~~shall have the right to~~ may appear in person before the Tribal Council. In a

1 hearing at which the Tribal Council is considering excluding a person or considering modifying
2 or terminating a previously issued order of exclusion, the person being subject to exclusion ~~shall~~
3 ~~have the right to~~ may be represented by legal counsel at his or her own expense. In its discretion,
4 Tribal Council may issue subpoenas for the attendance of witnesses or for documents to be
5 produced. The formal Rules of Evidence do not apply in exclusion hearings conducted by Tribal
6 Council.

7
8 Sec. 2-4. Terms of exclusion.

9
10 The Tribal Council may exclude persons from Cherokee trust lands for limited periods of time,
11 indefinite periods of time or permanently, at the discretion of Tribal Council.

12
13 Sec. 2-5. Votes required for exclusion.

14
15 Once a quorum of Tribal Council is established to consider an exclusion, a majority vote shall be
16 required to approve the exclusion action. Except for Writs for Emergency Temporary Exclusion,
17 exclusion actions shall be presented to Tribal Council by resolution.

18
19 Sec. 2-6. Enrolled members; permanent exclusion.

20
21 If an enrolled Tribal member is permanently excluded from Cherokee trust lands, then the
22 member's name ~~shall~~ may be removed from the membership roll of the Tribe by resolution of
23 Tribal Council and all privileges pertaining thereto ~~shall immediately~~ may be suspended
24 indefinitely.

25
26 Sec. 2-7. Request for exclusion action.

27
28 The following persons ~~with standing to~~ may bring a request to the Tribal Council for an
29 exclusion action against a person who is subject to this Chapter are:

- 30
31 (1) The Principal Chief.
32
33 (2) The Vice Chief.
34
35 (3) Members of the Tribal Council.
36
37 (4) The Chief of the Cherokee Police Department.
38
39 (5) The Tribal Prosecutor.
40
41 (6) The Attorney General.

42
43 ~~Sec. 2-8. List of convictions for which exclusion is a punishment.~~

44
45 ~~The Clerk of Cherokee Court shall semiannually provide Tribal Council with a list of all persons~~
46 ~~convicted of crimes during the preceding six months in which banishment is provided by statute.~~

1 ~~The list shall be transmitted no later than January 31, 2007 and every six months thereafter. The~~
2 ~~initial list shall include all persons convicted since April 1, 2000.~~

3
4 Sec. 2-9. Emergency temporary exclusion.

5
6 (a) Definitions. For the purpose of this section the following definitions shall apply:

7
8 (1) Officer: A sworn law enforcement officer of the Cherokee Police Department or any
9 other law enforcement officer with the responsibility of enforcing Cherokee Law under
10 authority of this code or a mutual aid agreement.

11
12 (2) Cherokee Officer: A sworn law enforcement officer of the Cherokee Police
13 Department only.

14
15 (3) Crimes Against Children: Any act which would violate the provisions of Article VII
16 of Chapter 14 of the Cherokee Code committed within the territorial jurisdiction of the
17 Eastern Band of Cherokee Indians, whether or not the Cherokee Court has jurisdiction
18 over the individual committing the offense.

19
20 (4) Drug Offense: Any act which would violate the provisions of Article XVI of Chapter
21 14 of the Cherokee Code committed within the territorial jurisdiction of the Eastern Band
22 of Cherokee Indians, whether or not the Cherokee Court has jurisdiction over the
23 individual committing the offense. Considering all appropriate aggravating factors which
24 may be present, the term "Drug Offense" shall not include any act which would be
25 punished as a class D offense under Cherokee law.

26
27 (5) Non-member: Any person not officially enrolled as a Tribal member in the Eastern
28 Band of Cherokee Indians

29
30 (6) Designated Official: An individual designated by Cherokee Law to enforce the
31 provisions of this section by issuing Writs of Emergency Temporary Exclusion. Any
32 judicial official of the Cherokee Court shall be a designated official for the purposes of
33 this Chapter. In this Chapter, "judicial official" means a justice, judge or magistrate who
34 is subject to the provisions of Cherokee Code Chapter 7 (the Judicial Code).

35
36 (7) Writ of Emergency Temporary Exclusion (Writ): A legally binding order issued by
37 the designated official exercising the power of exclusion of Tribal Council excluding a
38 non-member from the Cherokee Trust lands. The Writ shall clearly state on its face the
39 date, time and location of the next scheduled Tribal Council session. The Writ shall
40 remain in full force and effect ~~for no longer than 90 days after it is issued by a designated~~
41 ~~official until further action is taken by Tribal Council.~~

42
43 (8) Excluded Person: Any person who has been excluded from Tribal trust lands by Writ
44 of Emergency Temporary Exclusion or by action of the Tribal Council.

45
46 (b) When a Law Enforcement Officer has probable cause to believe that a non-member has

1 committed a Drug Offense, the officer shall bring the non-member before the designated official
2 without unnecessary delay to determine whether a Writ of Emergency Temporary Exclusion is
3 necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of
4 its members. The commission of any Drug Offense by a non-member shall constitute a per se
5 threat to the integrity and law and order on Tribal lands and territory or the welfare of its
6 members.

7
8 (c) The officer shall complete a sworn, written application for Writ of Emergency Temporary
9 Exclusion. The application shall contain a written statement of the essential facts constituting the
10 Drug Offense. If the application establishes probable cause to believe that a Drug Offense has
11 been committed by a non-member, the designated official must issue Writ of Emergency
12 Temporary Exclusion. Without exception, a copy of the application and Writ and any appropriate
13 information considered by the Designated Official shall be transmitted to the Tribal Operations
14 Program of the Tribal Council no later than the next monthly resolution deadline set by the
15 Tribal Operations Program.

16
17 (d) Any Cherokee Officer shall be authorized to execute a Writ of Emergency Temporary
18 Exclusion upon a named non-member. The Cherokee Officer shall execute the Writ by serving a
19 copy of the Writ and application upon the non-member and transporting the non-member to any
20 location outside the territorial jurisdiction of the Eastern Band of Cherokee Indians.

21
22 (e) The issuance and execution of a Writ of Emergency Temporary Exclusion shall be
23 independent of any criminal charges filed against the non-member in Cherokee Court or any
24 other jurisdiction.

25
26 (f) ~~Regardless of whether~~ When a writ is issued, the non-member shall be given notice of the
27 next scheduled meeting of Tribal Council and the application and writ shall be placed upon the
28 agenda. A decision by the Designated Official ~~regarding probable cause shall not be to issue a~~
29 ~~writ is not~~ binding on Tribal Council ~~and~~ A hearing before Council shall require a ~~de novo~~
30 review of all appropriate facts and determinations. ~~If no Writ is issued upon application, the~~
31 ~~Tribal Council may review the facts and hold a proceeding for non-emergency exclusion. At the~~
32 ~~designated meeting or any subsequent scheduled meeting, Tribal Council may renew the Writ~~
33 ~~until the next scheduled session, complete the process of formal exclusion under this chapter, or~~
34 ~~decline to take further action.~~

35
36 (g) ~~The requirements of Cherokee Code Sections 2-2, 2-3, 2-4, 2-5, and 2-7 shall not apply to~~
37 ~~Writs of Temporary Emergency Exclusion issued under this section, but shall apply to all~~
38 ~~subsequent proceedings before Council.~~

39
40 (h) There is no right to judicial appeal of a Tribal Council decision to exclude a person or
41 business (including a decision to prohibit the operation of a business) from Cherokee trust lands;
42 provided, however, nothing in this Chapter shall preclude Tribal Council from re-considering an
43 exclusion and modifying or terminating the order of exclusion by appropriate resolution, if Tribal
44 Council believes a change of circumstances warrants such action.

45
46 Sec. 2-10. Harboring excluded persons.

1
2 Any person who harbors an excluded person on Cherokee trust lands shall be guilty of a crime
3 and upon conviction thereof may be sentenced to a term of imprisonment not to exceed six
4 months or a fine not to exceed \$5,000.00, or both, but shall be sentenced to a mandatory
5 minimum term of not less than seven days.

6
7 It shall be unlawful for any person to harbor, conceal, or give succor to, any known excluded
8 person. Any person who violates this section shall be guilty of a crime and may be sentenced to
9 a term of imprisonment not to exceed twelve months imprisonment or a fine not to exceed
10 \$5,000.00, or both. Any person convicted under this section shall be sentenced to serve an active
11 term of imprisonment of at least thirty days, which may not be suspended.

12
13 Sec. 2-11. Service of exclusion resolution.

14
15 A copy of the Tribal Council resolution excluding a person from Cherokee trust lands shall be
16 served on the excluded individual by a person authorized to serve legal process. Proof of service
17 on excluded individuals shall be maintained by the Tribal Operations Program, in coordination
18 with the Office of the Attorney General.

19
20 Sec. 2-12. Exclusion Registry.

21
22 (a) The Tribe shall create a publicly available digital registry which contains the names of
23 persons who have been excluded from the lands of the Tribe pursuant to a resolution of Tribal
24 Council. The registry shall be known as the Eastern Band of Cherokee Indians Exclusion
25 Registry.

26
27 (b) The registry shall be maintained by the Cherokee One Feather, and shall contain, at a
28 minimum, the name of the person who is excluded from Tribal lands, the date the exclusion
29 resolution was passed by Tribal Council, and the number of the resolution.

30
31 (c) The Exclusion Registry should contain a copy of the resolution excluding a person from
32 Tribal trust lands, a photograph of the excluded person, as well as any other identifying
33 information so that the public may be informed of persons who have been excluded from Tribal
34 trust lands.

35
36 (d) Upon receiving notice of the death of an excluded person, the person may be removed from
37 the Exclusion Registry.

38
39 Sec. 2-13. Rewards Authorized.

40
41 The Cherokee Indian Police Department is authorized to establish a system of monetary rewards
42 to be distributed to members of the public to encourage the sharing information by the public
43 which leads to the arrest and conviction of excluded persons who are found to be on Tribal trust
44 lands in violation of a valid exclusion resolution or writ or those who harbor excluded persons.

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Chapter 14
CRIMINAL LAW

Sec. 14.1.1. – Application to persons subject to criminal jurisdiction of the Cherokee Court.

(a) The following criminal offenses and penalties contained herein shall apply to all members of any federally recognized Indian tribe who violate the provisions of this chapter within the territorial jurisdiction of the Eastern Band of Cherokee Indians. That territorial jurisdiction shall include all lands held in trust for the Eastern Band of Cherokee or its members and all other lands owned by the Eastern Band of Cherokee.

(b) In addition to the penalties contained herein, the court may order a defendant who is found guilty to pay restitution to the victim(s) of the crime, to the Tribe, a Tribal program or a Tribal entity. An order of restitution shall be subject to enforcement as a debt to the Tribe, along with any fine imposed by the court, and the restitution shall be distributed as ordered by the court.

(c) For offenses that ~~allow~~ discuss exclusion as a punishment, such punishment shall only be imposed in the discretion of the Tribal Council in accordance with chapter 2 of the Cherokee Code, however Tribal Council retains the ultimate discretion over the term of exclusion after it reviews all known and relevant facts.

Sec. 14-25.5. – Violations of exclusion resolutions and orders.

(a) It is unlawful for any person who has been excluded from Cherokee trust lands pursuant to this chapter to violate the exclusion resolution or order.

(b) It is unlawful for any person to aide or abet any person in the violation of an exclusion resolution order.

(c) Violation of this section is a misdemeanor punishable by a fine not to exceed \$5,000.00 or incarceration for a period not to exceed ~~six~~ twelve months, or both. Violation of this section is punishable by a mandatory minimum sentence of thirty days imprisonment, which shall not be suspended.

(d) In addition, whether or not the violator of this section is subject to the criminal jurisdiction of the Cherokee Tribal Court:

(1) The Court may impose a civil fine not to exceed \$5,000.00; and

(2) The Court may order forfeiture of any and all personal property of the individual located on Cherokee trust lands and used during the violation of an exclusion resolution or order.

1 (e) The Cherokee Police Department, with help from the Office of the Attorney General, shall
2 develop and keep current a book of excluded individuals, containing identifying information
3 including a photograph, the exclusion resolution and other information that will help the Tribe
4 identify and regulate excluded individuals. The exclusion book shall be made available for public
5 inspection.

6
7 (f) The remedies provided in this section are not exclusive and may be imposed in conjunction
8 with other remedies provided by Tribal law.

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11
12 Sec. 14-70.24. – Aiding the unlawful obtaining of services by excluded person.

13
14 (a) It shall be unlawful for any person to aid or assist a person who has been excluded from
15 Tribal lands pursuant to law to: ~~under the sentence of exclusion to:~~

- 16
17 (1) Attempt to secure or to unlawfully secure any tribal benefit or service; or
18
19 (2) Apply for or attempt to claim any right, privilege or immunity by virtue of
20 membership in the Eastern Band of Cherokee Indians except as provided by law.
21

22 (b) Aiding the unlawful obtaining of services by an excluded person shall be punishable by a fine
23 of \$5,000.00, and by imprisonment for a term not to exceed one year, a fine of \$5,000.00, or
24 both. A person convicted of aiding the unlawful obtaining of services by an excluded person
25 shall serve a mandatory minimum sentence of thirty days imprisonment, which shall not be
26 suspended. And by exclusion for a term equal to the exclusion term originally imposed upon the
27 banished person for which aid or assistance was attempted or secured.

28
29 ***

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31 Sec. 14-95.23. – Drugs; ~~and~~ children and elders.

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33 ***

34
35 (m) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
36 is convicted of an offense under Section 14-95.6 or 14-95.7 and it is found as provided in Section
37 14-95.31 that the person possessed the controlled substance within 300 feet of Tribal real
38 property comprising Tsali Manor or the Sarah Smoker Housing Units, then the person shall be
39 subject to a class A penalty.

40
41 (n) Notwithstanding other provisions of this article, if a person who is 18 years of age or older is
42 convicted of an offense under Section 14-95.6 or 14-95.7 and it is found as provided in Section
43 14-95.31 that any part of the crime occurred in a dwelling which is the primary residence of a
44 vulnerable adult as defined in Section 108-7, then the person will be subject to a class A penalty.

45
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Chapter 47D
LEASING

Sec. 47D-11. - Registration for residential nonmember lessees; Exclusion Registry review.

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

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

(c) Whenever residential lodging or lodging space rental agreements are made with persons who are not members of the Eastern Band of Cherokee Indians for any period greater than 90 days in any one year, regardless of whether the agreement is oral or written, each property owner or operator, whether the Tribal government or one of its entities or not, shall check the EBCI Exclusion Registry to determine whether the lessee has been excluded from Tribal trust lands.

Chapter 75
NEWSPAPERS

Sec. 75-5. - Exclusion Registry.

The One Feather shall maintain the EBCI's Exclusion Registry.

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

Submitted by the Office of the Attorney General, Chris Siewers, Associate Counsel.