

TABLED
OCT 24 2022
AMENDED
PASSED
DEC 08 2022

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JUN 02 2022

ORDINANCE NO.: 303 (2022)

*An ordinance to replace Cherokee Code Chapter 113C
to update and clarify the activities for which an open burning permit is required.*

WHEREAS, the Eastern Band of Cherokee Indians is duly authorized to establish and enact laws under its sovereign powers as a federally recognized Indian Tribe; and

WHEREAS, Cherokee Code Chapter 113C sets out the requirements for control of open burning and identifies the open burning activities that require a permit from the Tribe; and

WHEREAS, open burning presents a risk of harm to persons, property, and the environment; and

WHEREAS, the harm presented by open burning can be managed by a system of permitting and conditions under which open burning is allowed on Tribal land; and

WHEREAS, Cherokee Code Chapter 113C should be amended to improve, update, and clarify what open burning activities require a permit and the Tribal program responsible for issuing the permit.

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Indians, in council assembled, at which a quorum is present, that the present Cherokee Code Chapter 113C is hereby repealed and replaced with the following:

Chapter 113C CONTROL OF OPEN BURNING

Sec. 113C-1. Purpose.

The practice of open burning of combustible materials results in pollution of the air which can detrimentally affect the health and well-being of the human community and the natural resources on which they depend. The purpose of this section is to maintain air quality, control air pollution, and prevent wildland fires resultant from the open burning of materials on Eastern Band of Cherokee Indians trust lands.

Sec. 113C-2. Definitions.

(a) For the purpose of this chapter, the following definitions apply:

(1) Air curtain burner shall mean a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.

- 1 (2) BIA shall mean Bureau of Indian Affairs Eastern Cherokee Agency-Division of Fire and
2 Aviation Management.
- 3 (3) Fire chief shall mean the person authorized by the Tribal government to administer Tribal
4 fire codes and policies.
- 5 (4) Land clearing or land clearance shall mean the uprooting or clearing of vegetation in
6 connection with construction for buildings; right-of-way; agricultural, residential,
7 commercial, or industrial development; mining activities; or the initial clearing of
8 vegetation to enhance property value; but does not include routine maintenance or property
9 cleanup activities.
- 10 (5) Nuisance shall mean causing physical irritation exacerbating a documented medical
11 condition, visibility impairment, or evidence of soot or ash on property or structure other
12 than the property on which the burning is done.
- 13 (6) Occupied structure shall mean a building in which people may live or work or one intended
14 for housing farm or other domestic animals.
- 15 (7) Open burning shall mean the burning of any matter in such a manner that the products of
16 combustion resulting from the burning are emitted directly into the atmosphere without
17 passing through a stack, chimney, or a permitted air pollution control device.
- 18 (8) Portable outdoor fireplace shall mean a portable, outdoor, solid-fuel-burning fireplace
19 constructed of steel, concrete, clay, or other noncombustible material.
- 20 (9) Possessory holder means the person recognized under Tribal law as having the right to
21 have and hold the thing at issue, and who may assert rights as the lawful possessor of a
22 possessory holding in Tribal trust land.
- 23 (10) Possessory holding means an area or parcel of Tribal land that has been assigned to or is
24 recognized by the Tribal government as being the holding of the Tribe, a Tribal member,
25 or group of Tribal members. The assignment or recognition grants to the holder of the
26 interest certain rights, enumerated in Tribal law, in the possessory holding.
- 27 (11) Public road shall mean any road that is part of the state highway system; or any road,
28 street, or right-of-way dedicated or maintained for public use.
- 29 (12) Recreational burning shall mean an outdoor fire burning materials other than rubbish
30 where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable
31 outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of three feet or
32 less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking,
33 warmth, or similar purposes.
- 34 (13) Refuse shall mean any garbage, rubbish, or trade waste.
- 35 (14) Salvageable items shall mean any product or material that was first discarded or damaged
36 and then all, or part, was saved for future use, and includes insulated wire, electric motors,
37 and electric transformers.
- 38 (15) Synthetic material shall mean manmade material, including tires, asphalt materials such
39 as shingles or asphaltic roofing materials, construction materials, packaging for
40 construction materials, wire, electrical insulation, and treated or coated wood.
- 41 (16) Tribe or tribal shall mean and refer to the Eastern Band of Cherokee Indians.

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43 **Sec. 113C-3. Open burning prohibited; control of existing fires.**

- 44 (a) All open burning is prohibited except open burning allowable under this Chapter.
- 45 (b) Burn bans which prohibit open burning during periods of hazardous forest fire conditions
46 or poor air quality conditions may be declared by the Principal Chief. The Principal Chief

1 may prohibit all open burning regardless of whether a permit was obtained. The Principal
2 Chief shall issue a press release containing relevant details of the prohibition to news media
3 serving the area affected. The Principal Chief may cancel any burn permit and suspend the
4 issuance of any new permits upon a determination that hazardous forest fire conditions or
5 poor air quality conditions exist.

- 6 (c) If a fire is set without a permit or is set in any way outside the scope of the permit, the
7 person responsible for setting the fire or causing the fire to be set shall immediately
8 extinguish the fire or take such other action as directed by tribal officials. In the event that
9 the person responsible does not immediately undertake efforts to extinguish the fire or take
10 such other action as directed or if the fire is unattended, tribal officials may enter the
11 property and take responsible steps to extinguish or control the fire.

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13 **Sec. 113C-4. Permissible open burning without a permit.**

- 14 (a) The following types of open burning are permissible without a burn permit:

- 15 (1) Recreational burning and the use of portable outdoor fireplaces if conducted in
16 compliance with the following requirements:
17 (i) Fire shall be contained within an above ground or below ground fire pit;
18 (ii) Only traditional firewood shall be burned (burning of refuse, land clearance
19 materials, or any other material is prohibited);
20 (iii) Pile size shall not exceed two feet in height and three feet in diameter;
21 (iv) Burning shall be located no less than 15 feet from structures or combustible
22 material; and
23 (v) The fire shall be attended by a responsible person at all times.
24 (2) Ceremonial fires conducted for culturally significant traditions if conducted in
25 compliance with the following requirements:
26 (i) The burn pile shall not exceed eight feet in diameter;
27 (ii) The fire shall be located no less than 50 feet from structures or combustible
28 materials;
29 (iii) The fire shall be contained in an above ground or below ground fire pit; and
30 (iv) The fire shall be attended by a responsible person at all times.
31 (3) Campfires and fires used solely for outdoor cooking or for human warmth and
32 comfort and which do not create a nuisance and do not use synthetic materials,
33 refuse, or salvageable materials for fuel.
34 (4) Fires purposely set to forest lands for forest management practices by a government
35 program authorized by law to manage Tribal forest lands.
36 (5) Fires purposely set to agricultural lands for disease, pest control, and other
37 agricultural practices by a government program authorized by law to manage
38 agricultural lands.
39 (6) Fires purposely set for wildlife management practices by a government program
40 authorized by law to manage wildlife
41 (7) Fires purposely set for the instruction and training of firefighting personnel,
42 including fires at permanent firefighting training facilities, or when conducted
43 under the supervision of or with the cooperation of BIA or the Cherokee Fire and
44 Rescue Department.
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1 **Sec. 113C-5. Permissible open burning with a permit.**

2 (a) The following types of open burning are permissible with a permit obtained from Cherokee
3 Fire and Rescue Department.

4 (1) A burn permit for the residential burning of land clearance materials from the
5 permitted property under the following conditions:

- 6 (i) The material burned originates on the possessory holdings and is burned at
7 that location;
8 (ii) The burn pile shall not exceed eight feet in diameter and six feet in height;
9 (iii) If the material is from a residential garden, the garden space is two acres or
10 less in area;
11 (iv) The material does not include municipal solid waste such as nonvegetative
12 materials, household garbage or other manmade materials (i.e., shingles,
13 tires, plastic);
14 (v) The burning is started no earlier than 8:00 a.m. and no additional
15 combustible material is added to the fire between 6:00 p.m. on one day and
16 8:00 a.m. on the following day;
17 (vi) The burning does not create a nuisance;
18 (vii) The location of open burning shall be not less than 50 feet from any
19 structure, and provisions shall be made to prevent the fire from spreading to
20 within 50 feet of any structure; and
21 (viii) The fire shall be attended by a responsible person at all times.

22 (2) A burn permit for a bonfire under the following conditions:

- 23 (i) The bonfire does not exceed eight feet in diameter;
24 (ii) The material does not include municipal solid waste such as nonvegetative
25 materials, household garbage, or other manmade materials (such as
26 shingles, tires, plastic);
27 (iii) The location of open burning shall be not less than 50 feet from any
28 structure, and provisions shall be made to prevent the fire from spreading to
29 within 50 feet of any structure.

30 (3) A burn permit for agricultural burning authorizing the open burning of vegetation
31 such as grass, woody species, crop residue and other dry plant growth for
32 agricultural purposes exceeding two acres in area under the following conditions:

- 33 (i) Agricultural burning shall not be conducted within 200 feet of any structure,
34 unless conducted by a qualified burn-boss of a professional governmental
35 organization with a primary land management mission under an approved
36 prescribed fire plan;
37 (ii) Burning shall be conducted by a possessory holder, Tribal department, or
38 contractor. The individual conducting the burn shall have completed
39 approved training courses and hold a valid certification;
40 (iii) A site inspection must be completed prior to the permit being issued;
41 (iv) The fire shall be constantly attended by a responsible person.

42 (4) A burn permit for prescribed burning authorizing open burning for the purpose of
43 vegetation/habitat management under the following conditions:

- 44 (i) Prescribed burning shall not occur within 25 feet of a structure, unless
45 conducted by a qualified burn-boss of the Cherokee Fire and Rescue
46 Department or BIA.

- (ii) Prescribed burning permits shall only be issued to the possessory holder and burning shall be conducted by a possessory holder, Tribal department, or contractor. The individual conducting the burn shall have completed approved training courses and hold a valid certification;
- (iii) A site inspection must be completed prior to the permit being issued;
- (iv) The fire shall be constantly attended by a responsible person.
- (5) A burn permit for commercial/house site burning authorizing the open burning of land clearance materials, uprooted or cleared trees, stumps, shrubbery, or other natural vegetation in connection with the construction of buildings; rights-of-way; residential, commercial, or industrial development; mining activities; or initial clearing of vegetation to enhance property value under the following conditions:
 - (i) Burning shall not occur within 200 feet of a structure;
 - (ii) A site inspection must be completed prior to the permit being issued;
 - (iii) The fire shall be constantly attended by a responsible person.

Sec. 113C-6. Air curtain burners.

- (a) Material from land clearing, yard waste, or right-of-way maintenance may be carried off-site for open burning by an air curtain burner in accordance with this section. No material may be taken off-site for open burning in areas where a permitted air curtain burner is not available.
- (b) Burn permits shall be required for air curtain burners. Burn permits are issued by the Cherokee Fire and Rescue Department.
- (c) Air curtain burners shall comply with the following conditions in order to obtain a burn permit and at all times during the operation of the air curtain burner:
 - (1) Prevailing winds at the time of burning shall be away from any area, including a public road within 250 feet of the burning, as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;
 - (2) Only material from land clearing, yard waste, or right-of-way maintenance may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
 - (3) No fires shall be started or material added to existing fires when a burn ban is in effect;
 - (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
 - (5) Operators of the air curtain burner shall be certified to read visible emissions and the facility shall be tested for visible emissions within 90 days after initial operation;
 - (6) Air curtain burners shall meet manufacturers specifications for operation and upkeep to ensure complete burning of material charged into the pit;
 - (7) Except during startup, visible emissions shall not exceed five percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than five percent but no more than 35 percent shall be allowed for any one-hour period. During startup, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall

1 not last for more than 30 minutes, and there shall be no more than one startup per
2 day;

3 (8) The operator of an air curtain burner shall not allow ash to build up in the pit to a
4 depth higher than one-third of the depth of the pit or to the point where the ash
5 begins to impede combustion, whichever occurs first. The operator of an air curtain
6 burner shall water the ash prior to its removal to prevent the ash from becoming
7 airborne;

8 (9) Material shall not loaded material into the air curtain burner such that it will
9 protrude above the air curtain;

10 (10) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas
11 may be used to start the fire;

12 (11) The location of the burning at temporary sites shall be at least 500 feet from any
13 dwelling, commercial or institutional establishment, or other occupied structure not
14 located on the property on which the burning is conducted; and

15 (12) The fire shall be constantly attended by a responsible person.

16 (d) Compliance with this section does not relieve any owner or operator of an air curtain burner
17 from the necessity of complying with other public health laws.

18 (e) The owner or operator of an air curtain burner at a permanent site shall keep a daily log of
19 specific materials burned and amounts of material burned in pounds per hour and tons per
20 year. The owner or operator of an air curtain burner at a temporary site shall keep a log of
21 total number of tons burned per temporary site.

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23 **Sec. 113C-7. Penalties.**

24 (a) Any person who violates any of the provisions may be assessed a civil fine by the Cherokee
25 Fire and Rescue Department or by Natural Resources Enforcement. The civil fine shall be
26 not less than \$100.00 but not more than \$1,500.00 for each violation. Each day the violation
27 occurs may be a separate offense. Unpaid civil fines are a debt to the Tribe.

28 (b) Any person who violates any of the provisions shall be guilty of a misdemeanor and shall
29 be subject to a fine of not less than \$100.00, nor more than \$5,000.00 and may be subject
30 to imprisonment of not less than one day, nor more than 90 days. Each day the violation
31 occurs may be a separate offense. As an alternative sentence, any person found guilty may
32 be placed on probation and required to provide not less than 40 hours, but not more than
33 200 hours of community service.

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

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40 *Submitted by Charles Bryson, Cherokee Fire and Rescue Department.*

AMENDED
PASSED
DEC 08 2022

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: DEC 08 2022

ORDINANCE NO. 303 (2022)

Floor Amendment

On page 4, line 8, strike the words, "eight feet", and replace with, "twenty feet".

On page 4, line 23, strike the words, "eight feet", and replace with, "twenty feet".

On page 4, starting on line 38, strike the following, ". The individual conducting the burn shall have completed approved training courses and hold a valid certification".

The attached Resolution/Ordinance No. 303 dated JUNE 02, 2022 was:

PASSED (X)

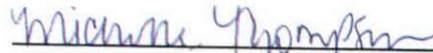
KILLED ()

and ratified in open Council on DECEMBER 8, 2022 by 82 voting for the act
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Teresa McCoy	X			
Boyd Owle	X			
Bucky Brown	X			
TW Saunooke	X			
David Wolfe	X			
Adam Wachacha	X			
Bo Crowe	X			
Bill Taylor				X
Albert Rose	X			
Dike Sneed	X			
Tommye Saunooke				X
	82	0	0	18



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED (☒) VETOED ()

VETO UPHOLD () VETO DENIED ()

DATE: 12/10/22

I hereby certify that the foregoing act of the Council was duly:

PASSED ()

KILLED ()

and ratified in open Council after the same has been interpreted by the Official Interpreter and
has been fully and freely discussed.

INTERPRETED ()

OMITTED ()