

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

JUN 13 2019

Date

ORDINANCE NO. 623 (2017)

WHEREAS, Utility Task Vehicles ("UTVs"), also known as "Side by Sides", are classified as off-road vehicles and are popular with Tribal members who use them to work on their property and to explore back roads and trails on Cherokee trust land; and

WHEREAS, periodically, in these pursuits, it is necessary or desirable to operate UTVs on certain public roads for which motor vehicle registration is required, as is a driver's license and liability; and

WHEREAS, typically, UTVs are not registered to be operated on public roads and using them on public roads is illegal; and

WHEREAS, the Tribe has the authority to make it legal to operate ATVs on certain roads; and

WHEREAS, implementing a registration system similar to that for other off-road vehicles under Tribal law, and allowing limited use of UTVs on certain roads on Cherokee trust land will enhance the enjoyment of trust lands by enrolled members.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that the Cherokee Code shall be amended as follows to provide a registration or "sticker" system for Utility Task Vehicles (UTVs) on Cherokee trust land and to express parameters for operation of UTVs on certain public roads.

The heading of Article II, Chapter 20 of the Cherokee Code, shall be amended to read as follows:

**ARTICLE II. - OFF-ROAD VEHICLE USE ON TRIBAL RESERVE PROPERTY
AND REGISTRATION OF OFF-ROAD VEHICLES**

Cherokee Code Sec. 20-102 is amended to read as follows:

Sec. 20-102. - Definitions.

As used in this Article:

- (a) *Motor vehicle* means any vehicle which is self-propelled, other than any wheelchair or mobility device, including one that is battery powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.
- (b) *Off-road vehicle* or *ORV* means any motor vehicle designed for or capable of travel off of paved roads and/or over natural terrain, including dirt roads and single and double track trails, water, sand, snow, ice, marsh and swampland, and includes but is not limited to dirt motorcycles, motocross motorcycles, dual sport motorcycles, all-terrain vehicles (regardless of number of wheels), go-karts, jeeps, trucks, cars, and dune buggies, and utility task vehicles (UTVs).
- (c) *Operator* has the same meaning as provided in N.C.G.S. 20-4.01.
- (d) *Owner* has the same meaning as provided in N.C.G.S. 20-4.01.
- (e) *Dirt road* means an unpaved motor vehicle route over 50 inches wide, unless identified and managed as a trail.
- (f) *Trail* means an unpaved motor vehicle route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.
- (g) *Tribal Reserve property* means the property identified in Cherokee Code Sec. 47-16 (describing the boundaries of the Tribal Reserve) and Cherokee Code Sec. 47-17 (describing land reserved for Tribal use). This definition does not include property held as a possessory interest.
- (h) *Tribe* means the Eastern Band of Cherokee Indians.
- (i) UTV means Utility Task Vehicle and is a class of off-road vehicle (ORV) designed to carry one to six people. UTVs have four or more wheels touching the ground (usually in a four-wheel drive configuration) non-straddle seating, steering wheels, foot controls for throttle and braking, occupant restraints (seatbelts), a roll-over protection system (roll cage) and may have a windshield, hard top or soft top, and cab enclosures. The term "UTV" includes the term "Side by Side" (often written as "SxS").

Cherokee Code § 20-106 is amended to read as follows:

Sec. 20-106. - Registration.

- (a) Every ORV operated on Tribal Reserve property, and every UTV operated on a UTV-Allowed Road as provided in Article III of this Chapter, must have affixed to it a valid, unexpired ORV sticker obtained from the Tribe's Budget and Finance Office. The sticker indicates that the ORV has been registered with the Tribe for the calendar year in question.

Registration shall be required within 180 days after the Tribe establishes and marks riding trails, and shall be required for every UTV operated on a UTV-Allowed Road.

- (b) Except as otherwise provided in this subsection (b), ORV stickers and UTV stickers are effective for one calendar year, beginning on January 1 and ending on December 31. A sticker obtained mid-year is effective only for the remainder of that calendar year. The Tribe shall charge a minimum fee of \$10.00 for each ORV registration, and may charge more. The Tribe shall charge a minimum fee of \$100.00 for each annual UTV registration, and may charge more. Proceeds from sticker sales are reserved for use by the Tribe to pay the administrative cost of the sticker program. Any excess over the administrative cost shall be used by the Department of Fish and Game to pay for maintenance of roads, trails, wildlife and wildlife habitat on Tribal Reserve property.
- (1) UTVs may be registered for day-use or for any other period of use that is less than one calendar year, and the fee for such registration shall be set by the Tribe but shall not be less than \$10.00 per day.
- (c) A motor vehicle registered with the state pursuant to N.C.G.S. Chapter 20, Article 3, Part 3 (§ 20-50 et seq.) for highway use is not required to have a Tribal ORV sticker or Tribal UTV sticker.
- (d) Applications for ORV stickers and UTV stickers shall, at a minimum, include all of the following information:
 - (1) The applicant's name, age, mailing address and phone number.
 - (2) The applicant's driver's license number if a licensed driver.
 - (3) The type, size and model of the vehicle to which the sticker will be affixed.
 - (4) Proof of tribal membership, family affiliation or employment as required to satisfy this article.
 - (5) The date issued.
 - (6) A statement that the applicant will operate the vehicle in a safe and responsible manner and according to Tribal law.
 - (6) A statement that the applicant has obtained the appropriate education for operation of the vehicle if such education is required by Tribal law.
 - (7) A statement that the applicant consents to the jurisdiction of the Cherokee Court for controversies related to or arising from the obtaining or use of the sticker or the use of a motor vehicle on Tribal Reserve property or on UTV-Allowed roads.
 - (8) The applicant's signature.
 - (9) The sticker or registration number.
 - (10) Applicant's spouse and children if they will operate on the ORV or UTV being registered.
- (e) The Budget and Finance Office shall keep a record of all registration applications and of all registrations and stickers it issues.

- (f) ORV stickers and UTV stickers are not transferable between vehicles or persons.
- (g) The Budget and Finance Office may refuse to issue an ORV sticker or UTV sticker to an applicant who meets any of the following conditions:
 - (1) Is ineligible to operate an ORV on Tribal Reserve property or is ineligible to operate a UTV on UTV-Allowed roads.
 - (2) Has not paid the required fee.
 - (3) Owes a debt to the Tribe, as confirmed by the Budget and Finance Office.
 - (4) Is proved to have violated any provision of this Article within two years immediately preceding the date of application. Proof of violation must be in the form of citation and if the citation was challenged in Tribal court, proof that the citation was upheld, regardless of the form of judgment.
 - (5) For applicants for UTV stickers, the applicant has pled guilty or been convicted of three or more moving violations in any jurisdiction within the two-year period immediately preceding the date of application for the UTV sticker. For purposes of this Chapter, a moving violation is a violation of a motor vehicle law by the driver of a motor vehicle while it is in motion, and may be classified as infractions, misdemeanors or felonies.

There shall be added to Cherokee Code Chapter 20 a new Article, designated as Article III, to read as follows:

ARTICLE III. - USE OF UTILITY TASK VEHICLES (UTVs)

Sec. 20-300. - Application.

This Article governs use of Utility Task Vehicles (UTVs), also known as "Side-by-Sides" or "SxS", within certain areas and on certain roads located on trust land of the Tribe.

Sec. 20-301. - Interplay with state motor vehicle laws.

In Cherokee Code Sec. 20-1, the Tribe has adopted the motor vehicle laws expressed in Chapter 20 of the North Carolina General Statutes, but has declined to adopt changes to Chapter 20 expressed in N.C.G.A. Senate Bill 189 (2005), Session Law 2005-282, which imposed age and safety requirements for the operation of all-terrain vehicles. The regulation of off-road vehicles on certain roads on trust land of the Tribe is within the province of the Tribe. If any provision of this Article conflicts or is inconsistent with any provision of N.C.G.S. Chapter 20 as adopted by the Tribe, then the provision of this Article shall govern.

Sec. 302. – Definitions.

Utility Task Vehicles (UTVs) shall be defined as provided in Cherokee Code § 20-102.

Sec. 20-303. – Registration of UTVs.

UTVs operated on Tribal reserve property and UTV-Allowed roads on trust land of the Tribe shall be registered with the Tribe as provided in Cherokee Code § 20-106; provided, however, that UTVs operated by persons identified in subsection (a)(2) and used in the course and scope of employment for the performance of official job-related duties are exempt from this registration requirement.

Sec. 20-304. - Who may use.

(a) Only the following persons may operate UTVs on Tribal Reserve property and on UTV-Allowed roads on trust land of the Tribe:

(1) enrolled members of the Tribe, their spouses and their children, regardless of whether the spouses and children are members of the Tribe; and

(2) other persons operating UTVs within the course and scope of their employment and in performance of official job-related duties; and

(3) non-members of the Tribe but only when accompanied by an enrolled member of the Tribe who may lawfully operate the UTV under the provisions of this Chapter.

(b) UTVs, regardless of the purpose for which they are used, may be operated on Tribal Reserve property and the roads designated in this Article only if the UTV has been registered as provided in Cherokee Code § 20-106 and has affixed to it an official, current and valid UTV sticker as required in this Chapter, unless the UTV is exempt from the registration requirement pursuant to Cherokee Code § 20-203.

Sec. 20-305. - Where use is permitted.

(a) UTVs may be operated on Tribal Reserve property but are restricted to use on dirt roads and trails designated by the Tribe as open for ORV use. The designation shall be accomplished by installation of trail signs and/or maintenance of an ORV map by the Tribe. If a dirt road or trail is not expressly designated as open to ORV use, it is deemed closed to that use. If a dirt road or trail is closed by a gate or fence, use of an ORV past the gate or fence is prohibited.

(b) UTVs may also be operated on UTV-Allowed roads, or in the right-of-way of such roads, so long as the UTV-Allowed road in question has a maximum posted speed limit of 35 miles per hour or less and is:

(1) Within the Tribal Reserve as that area is defined by the Tribe; or

- (2) Included on the inventory, maintained by the Bureau of Indian Affairs (BIA), of EBCI reservation roads; or
- (3) On Highway 19 from Wrights Creek Road west toward downtown Cherokee to and including the intersection with Tsali Boulevard (Highway 441); on Tsali Boulevard from its intersection with Highway 19 to the intersection of Tsali Boulevard and Acquoni Road; and on Acquoni Road from its intersection with Tsali Boulevard to the intersection of Acquoni Road and Highway 19.
- (c) UTVs may be operated on an enrolled member's possessory interest in Tribal trust land with permission from the owner or occupier of that possessory interest.
- (d) UTVs shall not be used to pioneer new travel routes off of designated dirt roads and trails on Tribal Reserve property, unless the new travel route is officially authorized by the Tribe.
- (e) UTVs shall not be used on or to cross over a possessory interest of another except with the permission of the owner or occupier of that possessory interest.
- (f) UTVs are expressly prohibited on any road having four or more lanes and any road having a maximum posted speed limit exceeding 35 miles per hour.

Sec. 20-306. – Required equipment.

UTVs operated on UTV-Allowed roads and trails as provided in this Article shall have the following equipment, and such equipment shall be operational and in-use when the UTV is being operated:

- (a) Seatbelts for all occupants.
- (b) Helmets for all occupants under 16 years of age.
- (c) A windshield, but if no windshield is present then the driver of the UTV shall wear shatter-resistant eye protection.
- (d) During hunting season, all occupants of UTVs shall wear blaze orange or other high-visibility clothing.
- (e) Headlights and a taillight, the latter to include brake lights.
- (f) Turn signals, if turn signals were part of the UTV's original equipment from the manufacturer.
- (g) Properly installed and working throttles, brakes, mufflers and spark arrestors. UTVs should be properly tuned and muffled to reduce exhaust sounds and emissions.

Sec. 20-307. Driver's license or training required.

Any person operating a UTV on a UTV-Allowed road shall be not less than 18 years of age and shall have a current, valid driver's license issued by the state of North Carolina or another state or federally recognized Indian tribe. Such license shall not be in a suspended, revoked or expired status. A person who is less than 18 years of age and who does not have a driver's license as otherwise required in this section may operate a UTV on a UTV-Allowed road if the person has completed a UTV driver's safety course acceptable to the Tribe and who shows documentary proof of completion of the safety course.

Sec. 20-308. Rules of the road apply.

(a) UTVs operated on UTV-Allowed roads shall be operated in accord with applicable law and rules of the road as would apply to passenger motor vehicles on such roads. At all times and at all locations, UTVs shall be operated in a reasonable and prudent manner.

(b) Firearms may not be used or carried on UTVs on Tribal Reserve property except as authorized by Tribal law for hunting purposes or as otherwise allowed by Tribal law.

(c) If the Tribe has posted directional signs, trail signs, hours of operation, entrance and exit routes, and other information, those signs and information must be obeyed.

(d) UTVs may cross streams only at designated fording points or where the road or trail crosses the stream.

(e) UTVs that are not registered for use on UTV-Allowed roads shall not be used on paved roads except to cross them at designated points, and along the shoulder of paved roads designated and posted by the Tribe as trail linking routes.

(f) UTV operators should respect other users. Operators should slow down or stop their UTV when they approach others on a trail or dirt road. UTV operators overtaking others should do so slowly and with a wide berth. UTV operators should yield the right of way to those passing them or traveling uphill. UTV operators should yield the right of way to pedestrians, mountain bikers and horses.

(g) UTV operators should leave gates as they find them and should respect private land.

(h) UTVs should not be used in wet areas or during wet conditions if such use will cause a significant disturbance of or damage to the soil.

(i) Littering by any person on Tribal Reserve property or any other location, is prohibited.

(j) UTVs shall not widen single-track trails by being forced down the trail.

(k) Persons using UTVs should treat others courteously and should not use obscene or profane language, gestures, or abusive behavior.

(l) UTVs shall not be used to intentionally chase or disturb wildlife.

Sec. 20-309. – Liability insurance required.

UTVs operated in any area of Tribal trust land that is open to the Tribal public generally shall have liability insurance providing not less than the minimum coverage level required by North Carolina state law, as adopted by the Tribe, for passenger motor vehicles on public roads in North Carolina.

Sec. 20-310. - Limit on liability – Sovereign immunity retained.

Operating a UTV is a hazardous activity that may result in personal injury and damage to personal property. Use of a UTV on Tribal reserve property or on any other property within the possession and control of the Tribe is performed at the user's own personal risk. The Tribe is not obligated to make Tribal Reserve property or other property safe or to warn users of conditions or hazards. The Tribe is not liable for injuries to persons or property that are caused by or which arise out of the operation of UTVs on Tribal Reserve property or any other property within the possession or control of the Tribe. Notwithstanding any other provision of law to the contrary, the Tribe hereby expressly and unequivocally retains its sovereign immunity in connection with any injury, damages or loss in any way incurred or arising out of the registration or operation of a UTV on trust land of the Tribe.

Sec. 20-311. - Enforcement.

The personnel of the Cherokee Department of Fish and Game and the Cherokee Indian Police Department, who are authorized to enforce Tribal law generally, are also authorized to enforce the provisions of this Article within the Qualla Boundary.

Sec. 20-312. - Stopping on officer's signal.

(a) On Tribal Reserve property, any person operating a UTV shall stop upon the signal of a law enforcement officer of the Cherokee Department of Fish and Game or the Cherokee Indian Police Department.

(b) On a Tribal member's possessory interest in Tribal trust land, any person operating a UTV operator must stop upon the signal of the of persons identified in subsection (a) and upon signal of the owner or occupier of the possessory interest.

(c) In all other areas within the exterior boundaries of the Qualla Boundary, any person operating a UTV shall stop upon the signal of the persons identified in subsection (a).

Sec. 20-313. – Operating a UTV while under the influence.

(a) It is illegal for any person to operate a UTV when under the influence of an intoxicating substance or a controlled substance or when impaired by an intoxicating substance or a

controlled substance. North Carolina state law, as adopted by the Tribe, governing operation of a motor vehicle while under the influence of an intoxicating or controlled substance or while impaired by such a substance, and open container violations, shall apply to operation of UTVs within the Qualla Boundary.

Sec. 20-314. - Violations.

(a) A violation of any provision of this Article is an infraction, meaning a civil public offense, not constituting a crime, which is punishable by a fine not exceeding \$500.00 and for which no period of incarceration may be imposed.

(b) Any person who receives three or more infractions within a two-year period for violations of this Article shall have their ORV registration revoked and shall not be eligible to operate an ORV on Tribal Reserve property for two years from the date of revocation.

(c) Imposition of a fine or registration revocation as provided in subsections (a) and (b) does not preclude the Tribe's pursuit of other remedies, or an award of other remedies such as, but not limited to, restitution.

Sec. 20-315. – Not applicable to certain personnel.

This Article III does not govern the operation of UTVs by employees of the Tribe and police, fire, rescue and emergency medical personnel, when such operation is in the performance of official job-related duties within the course and scope of employment.

Sec. 20-316. - Conflict.

If any provision of this Article III conflicts or is inconsistent with any provision of Article II of this Chapter, then the provisions of this Article III shall apply.

Sec. 20-317. - Effective date.

This ordinance shall be in force and effect thirty days after it is ratified by the Principal Chief.

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

Submitted by Vice Chief A. B. Ensley