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Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: JUN 13 2019

ORDINANCE NO. 624 (2019)

WHEREAS, the increase in the sale and use of illegal drugs in Cherokee has also increased complaints to the Cherokee Indian Police Department (CIPD) about individuals who loiter in public areas while allegedly seeking, exchanging, or consuming illegal drugs; and

WHEREAS, CIPD officers cannot currently detain or arrest those individuals because Tribal law does not prohibit loitering in public areas for the purpose of engaging in unlawful drug-related activity; and

WHEREAS, to give the community and the CIPD another tool for fighting the menace presented by unlawful drug-related activity, Tribal law should be amended to prohibit loitering for the purpose of engaging in unlawful drug-related activity.

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 14 of the Cherokee Code shall be amended by adding thereto a new section, identified as Sec. 14-25.20 and to read as follows:

Sec. 14-25.20 – Loitering for unlawful drug-related activity.

(a) Definitions.

(1) “Drug” as used in this section means any controlled substance, or its immediate precursor, listed in Schedules I, II, III, IV, or V of the Cherokee Code, Chapter 14, Article XIV.A., known as the “Cherokee Controlled Substances Act” or Chapter 90, Article 5 of the North Carolina General Statutes, known as the “North Carolina Controlled Substances Act or Schedule I, II, III or IV of the Title 21 of the United States Code, known as the “Controlled Substances Act”.

(2) “Unlawful Drug-Related Activity” means any of the following:

- a. Administering drugs, or counterfeit drugs, whether by injection, inhalation, ingestion, or any other means to oneself or to another person; or
- b. Delivering drugs, or counterfeit drugs, by the actual, constructive or attempted transfer of drugs, or counterfeit drugs, from one person to another; or
- c. Distributing drugs, or counterfeit drugs, by transferring or arranging for their transfer by other means.

(3) “High drug activity area” means any area available to the public for common usage known by the Cherokee Indian Police Department, during the relevant period of time, as

45 a location reporting a higher incidence of complaints or arrests for drug related activity
46 than is average for the rest of the Boundary.

47 (4) "Known unlawful drug user, possessor or seller" means:

- 48 a. A person who had, to the knowledge of the arresting officer, within one year prior
49 to the date of his or her arrest for violation of this ordinance, been convicted of
50 any infraction or crime involving drugs or counterfeit drugs in any jurisdiction; or
- 51 b. A person who is displaying physical characteristics of use of drugs including, but
52 not limited to, slurred speech, poor coordination, needle marks on the body,
53 glassy eyes, constricted or dilated pupils; or
- 54 c. A person who is the subject of an order prohibiting his or her presence in a high
55 drug activity area.

56 (5) "Loiter" means to stand about or to proceed with many stops.

57 (6) "Public place" means:

- 58 a. Any public street public highway, public sidewalk, public vehicular area as
59 defined in N.C.G.S. 20-4.01 and incorporated through C.C. §20-1, public park
60 and/or plaza. Other publicly owned or leased property, public transportation
61 facility, school and school grounds or property;
- 62 b. Common areas of apartments and condominium communities;
- 63 c. Commons areas or public housing properties;
- 64 d. Any place of business or amusement which is open to the public;
- 65 e. Any private property which adjoins any of the areas described in subsections (a)
66 through (d) of this definition and to which the public has ready access;
- 67 f. Any other property which is open to the public, whether publicly or privately
68 owned; and
- 69 g. Any motor vehicle in or on the areas described in this definition.

70 (b) It is unlawful for any person to loiter in or near any thoroughfare, place open to the
71 public, or any public or private place for purpose of engaging in unlawful drug-related
72 activity. Circumstances which may be considered in determining whether a person's
73 manner or situation manifests an intent to engage in unlawful drug-related activities
74 include, but are not limited to any of the following:

- 75 (1) Such person is a known unlawful drug user, possessor or seller;
- 76 (2) Such person behaves in such a manner as to raise reasonable suspicion that such
77 person is engaging in or about to engage in unlawful drug-related activity such as
78 acting as a "lookout" or flagging down vehicles or pedestrians;
- 79 (3) Such person is known by the arresting officer to be a member of a gang associated
80 with unlawful drug-related activity;
- 81 (4) Such person transfers small objects or packages for currency or any other thing of
82 value in a furtive fashion which would lead a law enforcement officer to believe
83 that an exchange of an unlawful drug has occurred or is about to occur;
- 84 (5) Such person takes flight upon the appearance of a law enforcement officer;
- 85 (6) Such person manifestly endeavors to conceal himself or herself or conceal any
86 object which could reasonably be involved in unlawful drug-related activity;

87 (7) The area or location is known by the arresting officer as a high drug activity area;
88 or

89 (8) Any vehicle involved is registered to, or known to be regularly operated by, a
90 person known by law enforcement to be an unlawful drug user, possessor or
91 seller, or who has an outstanding warrant for arrest for an unlawful drug-related
92 offense.

93 (c) Loitering for unlawful drug-related activity shall be punishable by a fine not to exceed
94 \$250.00, by a term of imprisonment not to exceed three months, or both.

95 (d) Upon a second or subsequent conviction under this section, a punishment of a fine not to
96 exceed \$500.00 or a term of imprisonment not to exceed six months, or both may be
97 imposed.

98 (e) If any portion of this section is for any reason held invalid or unconstitutional by a court
99 of competent jurisdiction, such portion shall be deemed severable and the holding shall
100 not affect the validity of the remaining portions of this section.

101
102 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
103 rescinded, and that this ordinance shall become effective when ratified by the
104 Principal Chief.

105
106 *Submitted by the Office of the Attorney General*