

TABLED

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: JUN 13 2019

ORDINANCE NO. 625 (2019)

WHEREAS, due to increased use of illegal drugs in Cherokee, the Cherokee Indian Police Department (CIPD) frequently receives complaints about individuals who are in a public place and who appear to be under the influence of an illegal drug; and

WHEREAS, Tribal law does not currently prohibit being under the influence of an illegal drug while in a public place, unless a person is also disruptive as defined in C.C. § 14-15.5; and

WHEREAS, even when an individual may be significantly impaired on an illegal drug while in a public place, the CIPD cannot lawfully detain or arrest them unless the individual has committed some other crime; and

WHEREAS, the inability of CIPD to detain or arrest illegal drug users even when they are significantly impaired in public has led to public frustration over the unfair and inaccurate perception that the CIPD is refusing to act; and

WHEREAS, Tribal law should be amended to give the CIPD another tool for keeping our community safe by making it unlawful for individuals to be under the influence of an illegal drug while in a public place.

NOW THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Cherokee Code Sec. 14-15.1 shall be amended to read as follows:

Sec. 14-15.1. - Public intoxication.

(a) ~~No person may be prosecuted solely for being intoxicated in a public place. A person intoxicated in a public place but not disruptive may be rendered assistance as provided in subsection (c).~~ Definitions:

(1) "Intoxicated" means under the influence of an intoxicating substance to the point where there is an appreciable impairment of a person's mental faculties or physical faculties, or both.

(2) "Intoxicating substance" means alcohol, or a controlled substance listed in the Cherokee Code Article XIV, Chapter 14, known as the Cherokee Controlled Substances Act, or listed in N.C.G.S. Chapter 90, known as the North Carolina Controlled Substances Act, or any other drug or psychoactive substance capable of impairing a person's mental or physical faculties, or any combination of such substances.

1 (3) "Public place" means:

- 2 a. Any public street public highway, public sidewalk, public vehicular area as
3 defined in N.C.G.S. § 20-4.01 and incorporated through C.C. § 20-1, public park
4 and/or plaza. Other publicly owned or leased property, public transportation
5 facility, school and school grounds or property;
6 b. Common areas of apartments and condominium communities;
7 c. Commons areas or public housing properties;
8 d. Any place of business or amusement which is open to the public;
9 e. Any private property which adjoins any of the areas described in subsections (a)
10 through (d) of this definition and to which the public has ready access;
11 f. Any other property which is open to the public, whether publicly or privately
12 owned; and
13 g. Any motor vehicle in or on the areas described in this definition.

14 (b) ~~Any person arrested for being intoxicated and disruptive in a public place, under Sec. 14-~~
15 ~~15.5, deemed by the arresting officer to be in need of shelter or health care as provided for in~~
16 ~~subsection (c), may be transported to an appropriate facility by the officer and issued a citation~~
17 ~~for being intoxicated and disruptive in a public place. It shall be unlawful for any person to be~~
18 ~~intoxicated in a public place.~~

19 (c) ~~—An officer may render assistance to any person found intoxicated in a public place by taking~~
20 ~~any of the following actions:~~

21 (1) ~~The officer may direct or transport the intoxicated person to their home.~~

22 (2) ~~The officer may direct or transport the intoxicated person to the home of a friend or~~
23 ~~relative willing to accept them.~~

24 (3) ~~The officer may direct or transport an intoxicated person in need of clothing or shelter~~
25 ~~but unable to provide for him or herself to an appropriate facility authorized for this~~
26 ~~purpose by the Tribal Council.~~

27 Public intoxication shall be punishable by imprisonment for not more than seven (7) days, a
28 fine not to exceed \$25.00, or both.

29 (d) ~~—An intoxicated person directed or transported to a shelter or health care facility may be~~
30 ~~detained only until they are sober or for a maximum of 24 hours. An intoxicated person may~~
31 ~~elect to remain at the facility for a longer period if the facility is able to accommodate them.~~
32 A conviction under this section shall not fall within the purview of, nor form the basis for, a
33 Habitual Offender designation under C.C. § 14-3.

34 (e) ~~—The officer may use reasonable force to restrain the intoxicated person if necessary to protect~~
35 ~~himself, the intoxicant or others. No officer shall be held civilly or criminally liable on account~~
36 ~~of reasonable measures taken under authority of this section.~~

37 (f) ~~—An intoxicated person who is incarcerated under this section may pay the \$30.00 jail fee~~
38 ~~within ten days of the period of incarceration. If the \$30.00 fee is not paid in that time frame,~~
39 ~~the intoxicated person may be brought to court, and court costs may be added to the jail fee to~~
40 ~~cover the administrative expenses.~~

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

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5 *Submitted by the Office of the Attorney General*