

**CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA**

Date: _____

ORDINANCE NO. _____ (2016)

- WHEREAS, under Cherokee Code (C.C.) Section 7-2(a), every person who enters the territory of the Eastern Band of Cherokee Indians (EBCI), which is comprised of all lands within the Qualla Boundary, all lands held by the United States for the benefit of the EBCI or any member of the EBCI and all other lands acquired by the EBCI, notwithstanding the issuance of any right of way, by so entering, shall be deemed to have consented to the jurisdiction of the EBCI; and
- WHEREAS, under C.C. 7-2(b), the Cherokee Court has original jurisdiction over all cases and controversies both criminal and civil in law or in equity which arise under the Charter, laws, customs, and traditions of the EBCI, including cases in which the EBCI, or its officials and employees shall be a party; and
- WHEREAS, under C.C. 14-1.2, any person who enters the territorial jurisdiction of the EBCI is expected to comply with the laws of the EBCI even if they are not subject to the criminal jurisdiction of the court; and
- WHEREAS, according to C.C. 14-1.5, all persons, regardless of race, age, or sex will comply with and be subject to the laws of the EBCI, and will be subject to all of the same charges and fines that enrolled members of the EBCI are subject to whenever they are within the boundaries of Qualla Boundary and its territories, as provided by law; and
- WHEREAS, under C.C. 14-1.5(c), the Cherokee Police Department (CPD) has the right to issue citations to non-members as well as members, as provided by law; and
- WHEREAS, the CPD has determined that there is an additional need for the creation of C.C. Chapter 27 in order to impose a mandatory civil penalty fee in the form of a citation issued against any person who is arrested for violating applicable provisions of the Cherokee Controlled Substances Act in possession of a controlled substance.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present that the Cherokee Code be amended at Cherokee Code Section 14-1.2 and that the proposed Cherokee Code Chapter 27 be adopted to authorize the EBCI to issue civil penalties against any person who violates applicable provisions of the Cherokee Controlled Substances Act, as described as follows:

Sec. 14-1.2. - Application to persons not subject to criminal jurisdiction.

Other persons who enter the territorial jurisdiction of the Eastern Band of Cherokee Indians are expected to comply with the laws of the Eastern Band even if they are not subject to the criminal jurisdiction of the court. If the Tribe is restricted by federal Indian law from prosecuting such a person criminally, then the following civil remedies shall apply to any act by such a person that would otherwise constitute a crime under this chapter or any other criminal law applicable in the Tribe's territory:

(1) If any victim has suffered actual damages as a result of the person's actions, then he or she may bring a civil action, at his or her own expense, against the person in the Cherokee Court for actual and punitive damages, and any other relief permitted by law.

(2) If the person holds a lease, license, permit or other authorization to operate within the Tribe's territory, then that lease, license, permit or authorization may be terminated, after notice, hearing, and a finding that the violation occurred by the committee or agency that issued the lease, license, permit or authorization. Any such termination may be appealed to the Tribal Council, but such an appeal shall not be heard unless the person files a written notice of appeal with the Tribal Operations Program within 30 days after the committee or agency decision.

(3) If a person is arrested for an offense in violation of Article XIV.A. of this Chapter and where the arrest resulted in seizure of a controlled substance, such person shall be subject to the Controlled Substances Civil Penalty Fee described in Cherokee Code Chapter 27, as it may from time to time be amended.

(43) The Tribal Council may order the exclusion of any such person for any length of time that the council determines appropriate to protect the welfare of the Eastern Band, including permanent exclusion, after notice and a hearing pursuant to [Chapter 2](#).

(Ord. No. 117, 3-3-2000)

CHAPTER 27. – CONTROLLED SUBSTANCES CIVIL PENALTY FEE

Sec. 27-1. Purpose and Applicability.

(a) This Chapter shall be interpreted and construed so as to implement the following purposes and policies:

(1) To impose a mandatory civil penalty in the form of a citation issued against any person who is arrested in possession of a controlled substance within the exterior boundaries of the Eastern Band of Cherokee Indians (EBCI) in order to combat the pervasive drug problem ubiquitous in the community; and

(2) To deter any person from possessing controlled substances within the exterior boundaries of the EBCI by utilizing the authority of the Cherokee Indian Police Department to issue citations to non-members as well as members, as provided by law; and

(3) To provide procedures for issuing a controlled substance civil penalty citation in a manner which ensures equal application and compliance with applicable laws.

(b) This Chapter shall take effect 30 days after ratification by the Principal Chief and applies to civil offenses in violation of this Chapter which are imposed on any person in accordance with Cherokee Code Section 14-1.5, that occur on or after 30 days from the date of ratification by the Principal Chief of the Eastern Band of Cherokee Indians.

Sec. 27-2. Definitions.

(a) Except as noted herein, as used in this Chapter, the Tribe hereby adopts the definitions as codified in North Carolina General Statutes (N.C.G.S.) Section 90-87, as amended. Additionally, the following words, terms and phrases as used in this Chapter shall be defined as follows:

(1) *Cherokee Indian Police Department (CIPD)* shall mean the police department for the Eastern Band of Cherokee Indians and all subordinate units falling under the CIPD Chief of Police which are authorized by law to make arrests.

(2) *Civil Infraction* shall mean a civil offense against the Eastern Band of Cherokee Indians in which the remedy involved is liquidated damages, which have been pre-determined by the Tribal Council of the Eastern Band of Cherokee Indians. An infraction is not a crime and the punishment shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

(3) *Controlled Substance Penalty* shall mean a fee issued in the form of a civil citation for violations of the provisions of this Chapter.

(4) *Tribe* shall mean the Eastern Band of Cherokee Indians (EBCI).

Sec. 27-3. Controlled Substances Penalty Fee.

(a) Except as authorized by the Cherokee Code, while within the territorial jurisdiction of the Eastern Band of Cherokee Indians, it shall be unlawful for any person to possess any controlled substance in violation of the Cherokee Controlled Substances Act set forth in Cherokee Code Chapter 14-95.1 through 14-95.37.

(b) All persons arrested by the CIPD for violating the Cherokee Controlled Substances Act while within the territorial jurisdiction of the Eastern Band of Cherokee Indians, shall be subject to a

controlled substances penalty, in the form of a civil infraction, when such arrest resulted in the seizure of any controlled substance by the CIPD.

(c) Any violation described in this Chapter shall be considered a civil infraction, regardless of the nature of any criminal proceedings in any jurisdiction, and shall be subject to enforcement by any means not prohibited by federal law, including but not limited to the issuance of fines, forfeitures or civil contempt. Any penalty imposed for violation of this Chapter shall be in addition to, and not in lieu of, any criminal charge in any jurisdiction.

(d) The Tribal Council of the Eastern Band of Cherokee Indians shall from time to time determine a schedule of liquidated damages for violations of this Chapter, set forth at Section 27-4, as it may be amended, and shall cause said schedule to be published by the Tribe.

(e) All liquidated damages collected by the Cherokee Court shall be returned to the CIPD for enforcement of Tribal laws and ordinances.

Sec. 27-4. Penalties.

(a) Pursuant to this Chapter, any person arrested for violation of the Cherokee Controlled Substances Act resulting in the seizure by the CIPD of any controlled substance is subject to the penalties outlined below:

<u>SCHEDULE</u>	<u>EXAMPLE OF DRUGS COVERED</u>	<u>CIVIL PENALTY FINE</u>
<u>I</u>	<ul style="list-style-type: none">• <u>Heroin, Ecstasy, GHB, Opiates, LSD, other Hallucinogens, and others.</u>• <u>See N.C.G.S. § 90-89 for full list</u>	<u>\$ 500</u>
<u>II</u>	<ul style="list-style-type: none">• <u>Methamphetamine, Morphine, PCP, Cocaine, Methadone, Demerol, Opium, Codeine, Hydrocodone, and others.</u>• <u>See N.C.G.S. § 90-90 for full list</u>	<u>\$ 400</u>
<u>III</u>	<ul style="list-style-type: none">• <u>Ketamine, anabolic steroids, and others.</u>• <u>See N.C.G.S. § 90-91 for full list</u>	<u>\$ 300</u>
<u>IV</u>	<ul style="list-style-type: none">• <u>Benzodiazepines, phenobarbital, Valium, Xanax, Clonazepam, and others.</u>• <u>See N.C.G.S. § 90-92 for full list</u>	<u>\$ 200</u>
<u>V</u>	<ul style="list-style-type: none">• <u>Over the counter cough medicines with codeine, Pyrovalerone and others.</u>• <u>See N.C.G.S. § 90-93 for full list</u>	<u>\$ 100</u>
<u>VI</u>	<ul style="list-style-type: none">• <u>Marijuana, Hashish, Tetrahydrocannabinols, etc.</u>• <u>See N.C.G.S. § 90-94 for full list</u>	<u>\$ 50</u>

Sec. 27-5. Issuance and Payment of Controlled Substances Civil Penalty Citation.

(a) Issuance and Service. Upon arrest and seizure of a controlled substance, the CIPD shall issue a citation for violation of this Chapter by completing a Controlled Substance Civil Penalty Citation at the time of arrest. This citation shall also be served to the arrested individual at the time of arrest and such service shall be acknowledged by signature of the defendant or by signature of the arresting officer where a defendant refuses to acknowledge service by signature.

(b) Issuing Agency. CIPD shall be the issuing agency. The revenue collected from such penalty shall be returned to the CIPD pursuant to C.C. 27-3(e).

(c) Notice. The service of the controlled substances civil penalty citation under Subsection (a) shall constitute notice to appear in court at the date and time found on the face of the citation.

(d) Termination of case. In order to terminate a citation without having to appear in court, a payment in the form of a certified check or money order shall be sent to the address printed on the front of the citation along with a copy of the citation. Payment of the citation shall not be considered an admission of responsibility for the violation cited and shall not be construed as an admission of guilt for any criminal offenses.

(e) Contesting citation. To contest a citation, the person cited must appear before the Cherokee Court at the time and date specified on the face of the citation and plead not responsible. This action will be docketed as a small claims action and will follow the procedures set forth in C.C. 1-11.

(f) Quantum of Proof and Representation pursuant to C.C. 1-11.

(1) The quantum of proof shall be by the greater weight of the evidence that the controlled substances penalty shall be assessed. There shall be a legal presumption of the defendant's possession of a controlled substance when the defendant's arrest resulted in the seizure of a controlled substance and/or any field or lab test shows a positive result.

(2) Nothing in this Section shall be construed to grant the defendant a right to be represented by court-appointed counsel.

(g) Failure to pay or appear. Failure to pay the controlled substance penalty or failure to appear in court described in Subsection (c) may result in a judgment being issued against the defendant cited as the responsible person and an assessment of the civil penalty prescribed. For purposes of this Chapter, a responsible person means an individual found to be responsible for the violated noted on the face of the citation and liable for the penalty found therein.

(h) Judgments. Judgments issued by the Court and the collection thereof shall be governed by Chapter 25 of the Cherokee Code, and will be subject to any full faith and credit provisions of a jurisdiction outside of the Eastern Band of Cherokee Indians.

(i) Appeals. Appeals from a judgment or order issued under this Section shall be filed with the Cherokee Supreme Court in accordance with C.C. 1-11.

Sec. 27-6. Effective Date.

This Chapter shall be effective 30 days from the date of ratification by the Principal Chief and shall be published in the Cherokee One Feather for two consecutive weeks from the date of ratification 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 the Office of the Attorney General on behalf of the Cherokee Indian Police
Department*