

**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), 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; 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, the Tribe established and now maintains the Eastern Band of Cherokee Indians Sex Offender Registry which the Cherokee Indian Police Department maintains and operates pursuant to the provisions of Article X., Chapter 14 of the Cherokee Code; and
- WHEREAS, pursuant to C.C. 14-50.21, sex offender registration requirements of the EBCI apply to those subject to the provisions contained in subsection (b) of that Section; and
- WHEREAS, the scope of the restricted area as defined in C.C. 14-50.21 is currently written in such a way that fails to implement the intent of the Tribe's sex offender registration legislation; and
- WHEREAS, in order to maximize protection of all persons located within the territory of the EBCI there is a need for amendments to Article X of C.C. Chapter 14 regarding sex offenders.

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 as follows:

Sec. 14-50.21. - Terminology and covered offenses.

(a) Definitions. The definitions below apply to this article only.

- (10) Restricted areas. Restricted areas are any place where it is reasonably believed that children congregate and areas within 1,000 feet of schools, parks, playgrounds, or other places used primarily by children under the age of 18, unless prior approval is secured from the Tribal SORNA officer. areas described as public parks, playgrounds, school campuses, school buildings (including daycare centers), libraries, museums, school bus stops, activity buses, school buses, athletic, sports and recreation facilities, fields and their parking lots, school events (including school sponsored or employee supervised functions or field trips, on or off school property), bathing beaches, swimming and/or wading pools, or any place where it is reasonably believed that children may congregate.

Sec. 14-50.24. - Registration.

(e) Failure to appear for registration and absconding.

- (1) Failure to appear. In the event a sex offender fails to register with the Tribe as required by this code, the Cherokee Indian Police Department or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribe that the sex offender failed to appear for registration.
- (2) Absconded sex offenders. If the Cherokee Indian Police Department or designee receives information that a sex offender has absconded the Cherokee Indian Police Department shall make an effort to determine if the sex offender has actually absconded.
- a. In the event no determination can be made, the Cherokee Indian Police Department or designee shall ensure the Tribal police and any other appropriate law enforcement agency is notified.
 - b. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
 - c. If an absconded sex offender cannot be located then the Tribal police shall take the following steps:
 1. Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,
 2. Notify the U.S. Marshals Service,
 3. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
 4. Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and

5. Enter the sex offender into the National Crime Information Center Wanted Person File.

- (3) Failure to register. In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the Cherokee Indian Police Department shall take all appropriate follow-up measures including those outlined in section 5.05(B). The Cherokee Indian Police Department shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the Tribe's jurisdiction.

(f) It shall be a crime for a sex offender to fail to register with the Cherokee Indian Police Department, to intentionally offer false information to the Cherokee Indian Police Department or fail to comply with any other provisions of this article.

(g) Hindrance of sex offender registration.

(1) A person is guilty of an offense if they:

- a. Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender who is in violation of this article;
- b. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this article; or
- c. Provide information to a law enforcement agency regarding a sex offender which the person knows to be false.

Sec. 14-50.26. - Restrictions.

(a) Registered sex offenders shall:

- (1) ~~Avoid~~ Have no contact with minors and vulnerable adults. Registered sex offenders shall ~~refrain from residing~~ not reside in any home or residence where a minor or a vulnerable adult resides (exceptions may apply when the registered sex offender is himself under 18 or in situations where a minor is a biological child of registered sex offender and parental rights have not been terminated). Registered sex offenders shall not be licensed nor permitted to work in or around the care of minors or vulnerable adults.
- (2) In the event a registered sex offender seeks employment which may involve ~~some~~ contact with minors or vulnerable adults (for example, in a fast food restaurant), the sex offender must first notify the employer of his/her sex offender status prior to beginning such employment. It is unlawful for any offender to provide volunteer services, with or without compensation, at any place where a minor is present.
- (3) ~~Sex offenders who attend schools with minors or with vulnerable adults shall~~ Notify school administrators of his/her sex offender status if they attend schools with minors or vulnerable adults. This must be done prior to enrollment, or, if the sex offender is already enrolled, notification must be done prior to attending any classes or school functions. Continuing enrollment must be approved by school administration.
- (4) Enter, complete and pay for a mental health program specifically related to sexual offender therapy and abide by all policies and procedures of the sex offender treatment program.

(5) ~~Refrain from the~~ Not use of illegal substances and voluntarily submit to drug testing upon request of the designated Tribal SORNA officer.

(6) Attain a substance abuse assessment and comply with all recommendations.

(7) ~~Sex offenders are~~ For sex offenders with convictions for offenses involving minors, be prohibited from knowingly being present in restricted areas as defined in C.C. 14-50.21(a)(10), unless prior approval is secured from the Tribal SORNA officer.

~~public parks, playgrounds, school campuses (except per subsection (3) above), school buildings (including daycare centers) (except per subsection (3) above), libraries, museums, school bus stops, activity buses, school buses, athletic, sports and recreation facilities, fields and their parking lots, school events (including school sponsored or employee supervised functions or field trips, on or off school property), bathing beaches, swimming and/or wading pools, campgrounds, movie theaters, or any place where it is reasonably believed that children may congregate.~~

(8) ~~Sex offenders shall~~ Not knowingly reside within 1,000 feet of the property on which any public or non-public school or child care center is located.

(9) ~~Sex offenders residence may~~ Not use their residence be used to care for minors or vulnerable adults unless prior approval is secured from the Tribal SORNA officer.

(10) ~~Sex offenders are~~ Be prohibited from accessing ~~to~~ commercial social networking Web sites that permit minors to become members or to create or maintain personal Web pages on the commercial social networking Web site.

(11)

(b) It is illegal for anyone who has reason to believe that an offender is in violation of Tribal, State or Federal laws to intentionally assist the offender in eluding arrest by withholding information or failing to notify law enforcement of the offender's non-compliance, and if known, the whereabouts of the offender.

(12) ~~Hindrance of sex offender registration:~~

a. ~~A person is guilty of an offense if they:~~

- ~~1. Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender who is in violation of this article;~~
- ~~2. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this article; or~~
- ~~3. Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.~~

Sec. 14-50.27. - Crimes and civil sanctions.

(a) Criminal penalty.

(1) ~~It shall be a crime for a sex offender to fail to register with the Cherokee Indian Police Department, to intentionally offer false information to the Cherokee Indian Police Department or fail to comply with any other provisions of this article.~~

(12) Violation of this article shall be punished as follows:

- a. For a first offense, by imprisonment for not less than one year nor more than three years, all or any part of which may be suspended in the court's discretion, and a fine of up to \$15,000.00.
 - b. For a second offense, by imprisonment for not less than three years, all or any part of which may be suspended in the court's discretion, and a fine of not less than \$15,000.00.
 - c. For a third or subsequent offense, by imprisonment for not less than three years, which term shall not be suspended, stayed or otherwise delayed or reduced.
- (b) Civil penalty. Each violation of a provision of this code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt.
- (c) Banishment/exclusion by Tribal Council and exclusion by court order.
 - (1) A sex offender who is a Tribal member and who fails to register or maintain registry updates and changes, or fails to comply in any way with the requirements and restrictions of this article, on two or more occasions may be subject to exclusion by court order or exclusion (i.e. banishment) from the trust lands of the Eastern Band of Cherokee Indians.
 - (2) Rights of Tribal members subject to petition for exclusion by Tribal Council for failure to register or for failure to comply with sex offender requirements:
 - a. The individual shall have a right to:
 - 1. Be represented by counsel, at their own expense.
 - 2. Remain silent.
 - 3. Present and cross-examine witnesses.
 - 4. Have the hearing recorded.
 - 5. Public hearing.
 - 6. 45 days' written notice of the proceedings. Such notice shall be served personally. If the Tribal attorney is unable to serve notice on the individual within 20 days, the prosecutor may use publication notice in the Cherokee One Feather.
 - (3) Non-Tribal members who fail to register or who fail to comply with sex offender requirements:
 - a. A non-Tribal member who fails to register or maintain registry changes and updates, or fails to comply with any other requirements included in this article, including failure to comply with the requirements of section 14-50.26. shall be subject to a forfeiture not to exceed \$5,000.00, revocation of all licenses and privileges on the Eastern Cherokee Indian Reservation, and exclusion by Tribal Council from the reservation pursuant to chapter 2 of this Code.
 - (4) Duration of exclusion:
 - a. An individual excluded from the reservation by Tribal Council shall have the opportunity to petition for restoration of status of Tribal member and/or residency after 15 years for tier 1 and after 25 years for tier 2.
 - b. Hearing on a petition for restoration of status shall be at the Tribal council's discretion.
 - (5) If a sex offender is excluded from the reservation pursuant to this article the Police Department shall:
 - a. Escort the individual to the boundary of the reservation and remove him or her.

- b. Serve notice on other jurisdictions as in subsection (c)(2)(a.)~~(6.)~~ of this section.

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