

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

DATE: OCT 31 2019

ORDINANCE NO.: 48 (2019)

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9 **WHEREAS**, Cherokee Code § 14-15.1 makes it unlawful for any person to be intoxicated in a
10 public place and states that public intoxication may be punished by imprisonment
11 for not more than seven days, a fine not to exceed \$25.00, or both; and
12

13 **WHEREAS**, Cherokee Code § 15-11.6, which governs the release or detention of an accused
14 person pending trial and, in subsection (d), imposes an automatic ten-day detainer
15 if the accused is already on release for a pending offense in Tribal Court or
16 another jurisdiction, or is on probation in Tribal Court or another jurisdiction, or
17 has active warrants against him or her; and
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19 **WHEREAS**, the time periods in the two sections are inconsistent and need to be reconciled to
20 prevent a situation whereby a defendant charged with public intoxication could be
21 incarcerated for a greater period of time pending trial than if he or she could be if
22 convicted and sentenced under the public intoxication law; and
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24 **WHEREAS**, Cherokee Code § 14-15.1, governing public intoxication, should be amended to
25 increase the potential period of incarceration under that section to ten days,
26 consistent with the ten day incarceration period provided in Cherokee Code § 15-
27 11.6.
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29 **NOW THEREFORE BE IT ORDAINED** by the Tribal Council of the Eastern Band of
30 Cherokee Indians assembled, at which a quorum is present, that Cherokee Code §
31 14-15.1 shall be amended to read as follows:
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33 **Sec. 14-15.1. – Public intoxication.**
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35 (a) Definitions:

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

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

44 (3) *Public place* means:

45 a. Any public street public highway, public sidewalk, public vehicular area as defined
46 in N.C.G.S. § 20-4.01 and incorporated through C.C. Section 20-1, public park

- 47 and/or plaza. Other publicly owned or leased property, public transportation
48 facility, school and school grounds or property;
49 b. Common areas of apartments and condominium communities;
50 c. Commons areas or public housing properties;
51 d. Any place of business or amusement which is open to the public;
52 e. Any private property which adjoins any of the areas described in subsections (a)
53 through (d) of this definition and to which the public has ready access;
54 f. Any other property which is open to the public, whether publicly or privately
55 owned; and
56 g. Any motor vehicle in or on the areas described in this definition.
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58 (b) It shall be unlawful for any person to be intoxicated in a public place. .
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60 (c) Public intoxication shall be punishable by imprisonment for not more than ~~seven~~ ten days, a
61 fine not to exceed \$25.00, or both.
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63 (d) A conviction under this section shall not fall within the purview of, nor form the basis for, a
64 habitual offender designation under C.C. Section 14-3.
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66 **BE IT FINALLY ORDAINED** that all ordinances that are inconsistent with this ordinance are
67 rescinded, and that this ordinance shall become effective when ratified by the
68 Principal Chief.
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71 *Submitted by the Tribal Prosecutor's Office*