

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: FEB 04 2021

ORDINANCE NO.: 380 (2021)

An ordinance decriminalizing small amounts of marijuana.

WHEREAS, the Eastern Band of Cherokee Indians, as a federally recognized Indian tribe, has the inherent sovereign authority to make its own laws to govern activities on Tribal lands; and

WHEREAS, many enrolled members of the Tribe have expressed to Tribal Council, the Principal Chief, and the Vice Chief that those members support changing Tribal law to allow for medical marijuana; and

WHEREAS, there is evidence that when used responsibly medical marijuana can help treat chronic illness and conditions including epilepsy, seizures, muscle spasms, cancer, glaucoma, multiple sclerosis, nausea, pain (including lessening the dependence on opioids), complications related to Alzheimer's Disease, Crohn's Disease, and multiple mental health conditions; and

WHEREAS, enrolled members should not be prohibited from responsibly possessing and using small amounts of marijuana for medicinal and health reasons; and

WHEREAS, Tribal Council has previously passed resolutions to investigate the possible benefits of marijuana for the Tribe in Res. No. 241 (2016), Res. No. 635 (2017), Res. No. 401 (2018), Res. 24 (2019), and Res. 323 (2020); and

WHEREAS, while marijuana continues to be prohibited by the federal Controlled Substances Act (21 U.S.C. 801 *et seq.*), several tribes, 36 states, and the District of Columbia have legalized medical marijuana to some extent; and

WHEREAS, under the U.S. Farm Bill of 2014 and the U.S. Farm Bill of 2018, the federal government has relaxed its stance on cannabis and has allowed and encouraged the legal use of hemp, a type of cannabis, in some circumstances; and

WHEREAS, it is in the best interests of the Tribe for the Tribal Council to allow small amounts of marijuana be used for medicinal and health purposes; and

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled at which a quorum is present, that in order to allow

for medicinal use of small amounts of marijuana that Chapter 14 of the Cherokee Code shall be amended as follows:

[No changes from Cherokee Code Sec. 14-95.1 to 14-95.4.]

Sec. 14-95.5. - Possession of a controlled substance.

- (a) Except as authorized by Cherokee Law, it is unlawful for any person to possess a controlled substance.
- (b) Unless a person's conduct is covered under some other provision of law providing greater punishment, possession of a controlled substance classified in schedule I, II, III, IV, or V shall be punished with a class C penalty.
- (c) Unless a person's conduct is covered under some other provision of law providing greater punishment, possession of more than exceeding one and one-half of an ounce (avoirdupois) of marijuana, the possession of more than three one-twentieths of an ounce (avoirdupois) of extracted resin of marijuana, commonly known as hashish, or the possession of any other controlled substance classified in Schedule VI shall be known as "aggravated possession of marijuana," and shall be punished with a class C penalty.
- ~~(d) Unless a person's conduct is covered under some other provision of law providing greater punishment, possession of one-half of an ounce (avoirdupois) or less of marijuana, the possession of one-twentieth of an ounce (avoirdupois) or less of extracted resin of marijuana, commonly known as hashish shall be known as "simple possession of marijuana," and be punished with a class D penalty.~~
- ~~(+)(d)~~ Unless a person's conduct is covered under some other provision of law providing greater punishment, possession of unfinished dextromethorphan shall be classified in schedule V and shall be punished with a Class C penalty.
- ~~(+)(e)~~ Unless a person's conduct is covered under some other provision of law providing greater punishment, possession of 2.5-dimethoxy-4-ethylphenethylamine (2 C-E) shall be classified in schedule I and shall be punished with a class C penalty.

[No changes from Cherokee Code Sec. 14-95.6 to 14-95.10.]

Sec. 14-95.11. - Drug paraphernalia.

- (a) As used in this Section, "drug paraphernalia" means all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body. "Drug paraphernalia" includes, but is not limited to, the following:
- (1) Kits for planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (2) Kits for manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - (3) Isomerization devices for increasing the potency of any species of plant which is a controlled substance;
 - (4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of controlled substances;
 - (5) Scales and balances for weighing or measuring controlled substances;
 - (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose for mixing with controlled substances;

~~(7) Separation Gins and sifters for removing twigs and seeds from, or otherwise cleaning or refining, marijuana;~~

~~(8)(7)~~ Blenders, bowls, containers, spoons, and mixing devices for compounding controlled substances;

~~(9)(8)~~ Capsules, balloons, envelopes and other containers for packaging small quantities of controlled substances;

~~(10)(9)~~ Containers and other objects for storing or concealing controlled substances;

~~(11)(10)~~ Hypodermic syringes, needles, and other objects for parenterally injecting controlled substances into the body;

~~(12)(11)~~ Objects for ingesting, inhaling, or otherwise introducing ~~marijuana~~, cocaine, hashish, or hashish oil into the body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

~~e. Objects commonly called roach clips, for holding burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~

~~fe.~~ Miniature cocaine spoons and cocaine vials;

~~gf.~~ Chamber pipes;

~~hg.~~ Carburetor pipes;

~~ih.~~ Electric pipes;

~~ji.~~ Air-driven pipes;

~~kj.~~ Chillum;

~~lk.~~ Bongs;

~~ml.~~ Ice pipes or chillers.

(b) The following, along with all other relevant evidence, may be considered in determining whether an object is drug paraphernalia:

(1) Statements by the owner or anyone in control of the object concerning its use;

(2) Prior convictions of the owner or other person in control of the object for violations of controlled substances law;

(3) The proximity of the object to a violation of the Controlled Substances Act;

(4) The proximity of the object to a controlled substance;

(5) The existence of any residue of a controlled substance on the object;

(6) The proximity of the object to other drug paraphernalia;

(7) Instructions provided with the object concerning its use;

(8) Descriptive materials accompanying the object explaining or depicting its use;

(9) Advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a seller of tobacco products or agricultural supplies;

(12) Possible legitimate uses of the object in the community;

(13) Expert testimony concerning its use;

(14) The intent of the owner or other person in control of the object to deliver it to persons whom he knows or reasonably should know intends to use the object to facilitate violations of this article.

(c) It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repack, store, contain, or conceal a controlled substance which it would be unlawful to possess, or to inject, ingest, inhale, or otherwise introduce into the body a

1 controlled substance which it would be unlawful to possess. Violation of this section shall be known
2 as "possession of drug paraphernalia", and shall be punished with a class D penalty.

3 (d) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent
4 to deliver, drug paraphernalia knowing that it will be used to plant, propagate, cultivate, grow,
5 harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package,
6 repack, store, contain, or conceal a controlled substance which it would be unlawful to possess,
7 or that it will be used to inject, ingest, inhale, or otherwise introduce into the body a controlled
8 substance which it would be unlawful to possess. Violation of this section shall be punished with a
9 class C penalty.

10 (e) Possession, delivery, possession with intent to deliver, or manufacture with intent to deliver, of
11 each separate and distinct item of drug paraphernalia is a separate offense.

12 (f) It is unlawful for any person to purchase or otherwise procure an advertisement in any newspaper,
13 magazine, handbill, or other publication, or purchase or otherwise procure an advertisement on a
14 billboard, sign, or other outdoor display, when he knows that the purpose of the advertisement, in
15 whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia
16 described in this Section. Violation of this section shall be punished with a class D penalty.
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18 [No changes from Cherokee Code Sec. 14-95.12 to 14-95.37.]
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21 BE IT FINALLY ORDAINED, that all ordinances inconsistent with this ordinance are rescinded,
22 and this ordinance shall become effective upon ratification by the Principal Chief.
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24 Submitted by: *Principal Chief Richard G. Sneed*

25 *Jeremy Wilson, Governmental Affairs Liaison*

26 *Joseph Owle, Secretary of Agriculture and Natural Resources*