

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JUN 02 2022

ORDINANCE NO.: 303 (2022)

An ordinance to amend Cherokee Code Chapter 113C to update and clarify the activities for which an open burning permit is required.

WHEREAS, the Eastern Band of Cherokee Indians is duly authorized to establish and enact laws under its sovereign powers as a federally recognized Indian Tribe; and

WHEREAS, Cherokee Code (C.C.) Chapter 113C sets out the requirements for control of open burning and identifies the open burning activities that require a permit from the Tribe; and

WHEREAS, open burning presents a risk of harm to persons, property and the environment; and

WHEREAS, C.C. § 113C-1, 113C-5, and 113C-6 should be amended to update and clarify what open burning activities require a permit and the Tribal program responsible for issuing the permis.

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, Cherokee Code § 113C-1, 113C-5, and 113C-6 are amended to read as follows:

Chapter 113C CONTROL OF OPEN BURNING

Sec. 113C-1. Purpose.

The practice of the open burning of combustible materials ~~results in~~ presents a risk of harm to persons, property and the environment if the fires are not properly controlled and conducted. ~~pollution of the air which can detrimentally affect the health and well-being of the human community and the natural resources on which they depend.~~ The purpose of this section is to provide a framework for regulating open burning ~~control the air pollution resultant from the open burning of combustible materials on the Cherokee Indian Reservation.~~

Sec. 113C-5. Permissible open burning without a permit.

- (a) The following types of open burning ~~are permissible~~ may be conducted without a permit:
- (1) Open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - a. ~~The material burned originates on the premises of private residences and is burned on those premises;~~

- b. ~~There are no public pickup services available;~~
- c. ~~The material does not include municipal solid waste such as nonvegetative materials, household garbage or other manmade materials (i.e., shingles, tires, plastic).~~
- d. ~~The burning is started no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;~~
- e. ~~The burning does not create a nuisance; and~~
- f. ~~Material is not burned when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;~~

- (2 a) Campfires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials, refuse or salvageable materials for fuel;
- (3 b) Fires purposely set to forest lands for forest management practices by a government program authorized by law to manage Tribal forest lands;
- (4 c) Fires purposely set to agricultural lands for disease, pest control, and other agricultural practices by a government program authorized by law to manage agricultural lands;
- (5 d) Fires purposely set for wildlife management practices by a government program authorized by law to manage wildlife;
- (9 e) Fires purposely set for the instruction and training of firefighting personnel, including fires at permanent firefighting training facilities, or when conducted under the supervision of or with the cooperation of one or more of the following agencies:
 - a. (1) The Bureau of Indian Affairs Branch of Forestry;
 - b. (2) The North Carolina Insurance Department;
 - c. (3) North Carolina technical institutes; or
 - d. (4) North Carolina community colleges, including:
 - 1 a. The North Carolina Fire College;
 - 2 b. The North Carolina Rescue College; or
 - e. (5) The Cherokee Fire Department.

Sec. 113C-6. Permissible open burning with a permit.

(a) The following types of open burning are permissible only if conducted pursuant to a valid, effective permit duly issued by the Tribal entity identified in this section.

- (1) Open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, is permissible if a written permit is issued by the Cherokee Fire Department and the following conditions are met:
 - a. The material burned originates on the premises of private residences and is burned on those premises;
 - b. There are no public services available that would alleviate the need for open burning of the permitted material;
 - c. The material does not include municipal solid waste such as nonvegetative materials, household garbage or other manmade materials (i.e. shingles, tires, plastic).

- 1 d. The burning is started no later than 8:00 a.m. and no additional combustible
2 material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the
3 following day;
4 e. The open burning does not create a public nuisance; and
5 f. Material is not burned when the Principal Chief has banned burning for that area.
6 a (2) Open burning for land clearing or right-of-way maintenance is permitted if the following
7 conditions are met, and a written permit from the from the Tribe's Department of Natural
8 Resources is issued pursuant to rules adopted by the Division of Agriculture and Natural
9 Resources under C.C. Chapter 150. The following guidelines shall be adhered to in
10 permitting the open burning of for land clearing or ~~construction debris~~ right-of-way
11 maintenance:-
12 (1) a. Prevailing winds at the time of burning are away from any area, including any
13 public road that is within 250 feet of the burning as measured from the edge of the
14 pavement or other roadway surface, which may be significantly affected by smoke,
15 ash, or other air pollutants from the burning;
16 (2) b. The location of the burning is at least 1,000 feet from any dwelling, group of
17 dwellings, or commercial or institutional establishment, or other occupied structure
18 not located on the property on which the burning is conducted. The Department of
19 Natural Resources may grant exceptions to the setback requirements if:
20 a-1. A signed, written statement waiving objections to the open burning associated
21 with the land clearing operation is obtained before the open burning begins from
22 all residents or owners of dwellings, commercial or institutional establishments,
23 or other occupied structures within 1,000 feet of the open burning site; or
24 b-2. An air curtain burner as described in Rule 113C-7 of this Chapter, is utilized at
25 the open burning site;
26 e-3. Heavy oils, asphaltic materials such as shingles and other roofing materials,
27 items containing natural or synthetic rubber, or any materials other than plant
28 growth are not burned. However, kerosene, distillate oil, or diesel fuel may be
29 used to start the fire;
30 d-4. Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and
31 no combustible material is added to the fire between 6:00 p.m. on one day and
32 8:00 a.m. on the following day, except that, under favorable meteorological
33 conditions, deviation from these hours of burning may be granted by the
34 Department of Natural Resources. The owner or operator of the open burning
35 operation shall be responsible for obtaining written approval for burning during
36 periods other than those specified in this Part; and
37 e-5. No fires are started or vegetation is added to existing fires when the Tribe's
38 Division of Agriculture and Natural Resources has banned burning for that area.
39

40 BE IT FINALLY ORDAINED, that all ordinances and resolutions inconsistent with this ordinance
41 are rescinded, and this ordinance shall become effective upon ratification by the
42 Principal Chief.
43
44

45 *Submitted by Charles Bryson, Cherokee Fire Department*