

PASSED

CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY, NC

Date: AUG 02 2022

RESOLUTION NO. 363 (2022)

A resolution to exclude Georgia Nicole Cape from the lands of the Eastern Band of Cherokee Indians.

- WHEREAS, the Eastern Band of Cherokee Indians ("EBCI" or "Tribe") has the sovereign authority to exclude persons from lands of the Eastern Band in order to protect the integrity, law and order of the lands, and the welfare of Tribal members; and
- WHEREAS, the Tribal Council has codified its authority to exclude persons from the lands of the Eastern Band at Chapter 2 of the Cherokee Code; and
- WHEREAS, the power to exclude is an inherent and essential part of Tribal sovereignty that is indispensable to the Tribe's autonomy and self-governance; and
- WHEREAS, GEORGIA NICOLE CAPE (Date of Birth: 08/15/1995) is not a member of the Eastern Band of Cherokee Indians, but has indicated she is moving to Cherokee lands and living with a family at 283 Redtail Drive; and
- WHEREAS, on July 10, 2022, at approximately 9:00 pm, Cherokee Indian Police Department officers received a call that a white Nissan Altima was travelling towards the Qualla Boundary at a high rate of speed, nearing 100 miles per hour, and that during the chase a female had been observed to have thrown a gun out of the car; and
- WHEREAS, the white Nissan Altima entered the Qualla Boundary via US Highway 441 and was driving well above the speed limit, was on the wrong side of the road, and was weaving in and out of traffic while maintaining a very high rate of speed; and
- WHEREAS, the white Nissan Altima turned down Seven Clans Lane, then took a left down US Highway 19, collided with a Swain County patrol vehicle, and then the vehicle proceeded toward Bryson City, where the vehicle was finally stopped; and
- WHEREAS, when the chase ended, the driver of the white Nissan Altima was GEORGIA NICOLE CAPE and the passenger was Betty Jo Lambert; and
- WHEREAS, inside the vehicle were multiple items of drug paraphernalia, a controlled substance that appeared to be methamphetamine, and multiple credit cards which had been reported as stolen; and
- WHEREAS, warrants were issued for the arrest of GEORGIA NICOLE CAPE on numerous

charges, including several felony offenses, in both Swain and Jackson counties; and

WHEREAS, Tribal Council is requested to make a determination whether the relevant conduct of GEORGIA NICOLE CAPE rises to the level where she should be excluded "from Cherokee trust lands when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members" See Cherokee Code § 2-1(b); and

WHEREAS, due to the nature of the alleged criminal actions of GEORGIA NICOLE CAPE and based on her believed to be residing on Tribal trust lands, the Tribal Council has good reason to believe that GEORGIA NICOLE CAPE is a threat to the integrity, law and order of EBCI lands and the welfare of the members of the Tribe.

NOW THEREFORE, BE IT RESOLVED by the Tribal Council, in Council assembled with a quorum present, and with the number of votes required by Tribal law, GEORGIA NICOLE CAPE is hereby PERMANENTLY EXCLUDED from all Tribal lands and is hereby notified and ordered to vacate all tribal lands.

BE IT FURTHER RESOLVED that this permanent exclusion prohibits GEORGIA NICOLE CAPE from entering on or being present on Tribal lands for any purpose except as required by Tribal Council or Tribal Court.

BE IT FURTHER RESOLVED that if GEORGIA NICOLE CAPE is found improperly on Tribal lands at any time after the effective date of this resolution, she shall be treated as a trespasser and appropriate legal action shall be taken against her.

BE IT FINALLY RESOLVED that all resolutions inconsistent with this resolution are rescinded, and that this resolution shall become effective when ratified by the Principal Chief.

Submitted by the Attorney General's Office on behalf of the Chief of Police as provided in Cherokee Code Chapter 2.

Chapter 2 EXCLUSION POWERS OF TRIBE¹

Sec. 2-1. Power to exclude.

- (a) The Tribal Council shall have the power to exclude enrolled Tribal members for sexual offenses against minors and for convictions for trafficking in controlled substance under Chapter 14 of the Cherokee Code. Tribal Council shall also have the authority to exclude enrolled Tribal members for violations of state and federal law where such offenses would constitute trafficking in controlled substance under the Cherokee Code if committed within the territory of the Eastern Band of Cherokee Indians.
- (b) The Tribal Council shall have the power to exclude other persons from Cherokee trust lands when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members.
- (c) The Tribal Council shall have the power to exclude from or prohibit operation of a business on Cherokee trust lands or specific locations thereon, if the business threatens the health, safety or welfare of Tribal members or Tribal natural resources due to spills, accidents, illegal dumping, or other unauthorized releases of hazardous materials into the environment.
- (d) The power to exclude contains the power to modify or terminate a previously ordered exclusion.
- (e) The Tribe hereby declares that the power to exclude is an inherent and essential part of Tribal sovereignty. It is indispensable to the Tribe's autonomy and self-governance. Further, it is a natural right of the members of this Tribe, through their Tribal leaders and codified Tribal law, to exercise the power of exclusion to protect the Tribe's natural, economic, and cultural resources, and to protect the health, safety and welfare of Tribal members.
- (f) In this Chapter, "exclusion" means the power to limit or prohibit a person's or entity's presence and activities on Tribal lands. "Tribal lands" and "territory" mean lands held in trust for the Tribe by the United States.
- (g) Notwithstanding any other provision of law, the Tribe reserves its sovereign immunity and shall not be liable for claims of loss, damage or injury resulting from exclusions.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 630, 2-1-2007; Ord. No. 589, Art. III, 2-8-2007; Ord. No. 124, 3-18-2020)

Sec. 2-2. Tribal Council proceedings.

The Tribal Council shall exercise its power to exclude persons from Cherokee trust lands only in open session of the Council. Nothing in this section shall prohibit the issuance of Writs of Emergency Temporary Exclusion under Section 2-9 or the exclusion of persons under Section 2-3(f).

(Ord. No. 92, 5-5-1994; Ord. No. 589, Art. III, 2-8-2007; Ord. No. 124, 3-18-2020)

¹Cross reference(s)—Civil procedure, ch. 1; exclusion or rejection of individuals for Tribal gaming, § 16-9.01 et seq.; enrollment, ch. 49; Tribal government, ch. 117.

Sec. 2-3. Notice and legal defense rights.

- (a) The Tribal Council shall provide reasonable written notice to all persons over whom it exercises the power of exclusion, together with hearing before the Tribal Council.
- (b) Such persons shall be provided with a written statement of the grounds for the proposed exclusion at the same time notice of the hearing is served upon them.
- (c) Such persons shall have the right to appear in person before the Tribal Council. In a hearing at which the Tribal Council is considering excluding a person or considering modifying or terminating a previously issued order of exclusion, the person being subject to exclusion shall have the right to be represented by legal counsel at his or her own expense. In its discretion, Tribal Council may issue subpoenas for the attendance of witnesses or for documents to be produced. The formal Rules of Evidence do not apply in exclusion hearings conducted by Tribal Council.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 589, Art. III, 2-8-2007; Ord. No. 124, 3-18-2020)

Sec. 2-4. Terms of exclusion.

The Tribal Council may exclude persons from Cherokee trust lands for limited periods of time, indefinite periods of time or permanently, at the discretion of Tribal Council.

(Ord. No. 92, 5-5-1994; Ord. No. 124, 3-18-2020)

Sec. 2-5. Votes required for exclusion.

Once a quorum of Tribal Council is established to consider an exclusion, a majority vote shall be required to approve the exclusion action. Except for Writs for Emergency Temporary Exclusion, exclusion actions shall be presented to Tribal Council by resolution.

(Ord. No. 92, 5-5-1994; Ord. No. 530, 1-6-2005; Ord. No. 124, 3-18-2020)

Sec. 2-6. Enrolled members; permanent exclusion.

If an enrolled Tribal member is permanently excluded from Cherokee trust lands, then the member's name shall be removed from the membership roll of the Tribe and all privileges pertaining thereto shall immediately be suspended indefinitely.

(Ord. No. 271, 7-24-1996; Ord. No. 124, 3-18-2020)

Sec. 2-7. Request for exclusion action.

The persons with standing to bring a request to the Tribal Council for an exclusion action against a person who is subject to this Chapter are:

- (1) The Principal Chief.
- (2) The Vice Chief.
- (3) Members of the Tribal Council.
- (4) The Chief of the Cherokee Police Department.

(5) The Tribal Prosecutor.

(6) The Attorney General.

(Ord. No. 271, 7-24-1996; Ord. No. 757, 5-16-2001; Ord. No. 589, Art. III, 2-8-2007; Ord. No. 124, 3-18-2020)

Sec. 2-8. List of convictions for which exclusion is a punishment.

The Clerk of Cherokee Court shall semiannually provide Tribal Council with a list of all persons convicted of crimes during the preceding six months in which banishment is provided by statute. The list shall be transmitted no later than January 31, 2007 and every six months thereafter. The initial list shall include all persons convicted since April 1, 2000.

(Ord. No. 589, Art. III, 2-8-2007)

Sec. 2-9. Emergency temporary exclusion.

(a) *Definitions.* For the purpose of this section the following definitions shall apply:

- (1) *Officer:* A sworn law enforcement officer of the Cherokee Police Department or any other law enforcement officer with the responsibility of enforcing Cherokee Law under authority of this code or a mutual aid agreement.
- (2) *Cherokee Officer:* A sworn law enforcement officer of the Cherokee Police Department only.
- (3) *Crimes Against Children:* Any act which would violate the provisions of Article VII of Chapter 14 of the Cherokee Code committed within the territorial jurisdiction of the Eastern Band of Cherokee Indians, whether or not the Cherokee Court has jurisdiction over the individual committing the offense.
- (4) *Drug Offense:* Any act which would violate the provisions of Article XVI of Chapter 14 of the Cherokee Code committed within the territorial jurisdiction of the Eastern Band of Cherokee Indians, whether or not the Cherokee Court has jurisdiction over the individual committing the offense. Considering all appropriate aggravating factors which may be present, the term "Drug Offense" shall not include any act which would be punished as a class D offense under Cherokee law.
- (5) *Non-member:* Any person not officially enrolled as a Tribal member in the Eastern Band of Cherokee Indians
- (6) *Designated Official:* An individual designated by Cherokee Law to enforce the provisions of this section by issuing Writs of Emergency Temporary Exclusion. Any judicial official of the Cherokee Court shall be a designated official for the purposes of this Chapter. In this Chapter, "judicial official" means a justice, judge or magistrate who is subject to the provisions of Cherokee Code Chapter 7 (the Judicial Code).
- (7) *Writ of Emergency Temporary Exclusion (Writ):* A legally binding order issued by the designated official exercising the power of exclusion of Tribal Council excluding a non-member from the Cherokee Trust lands. The Writ shall clearly state on its face the date, time and location of the next scheduled Tribal Council session. The Writ shall remain in full force and effect for no longer than 90 days after it is issued by a designated official.

- (b) When a Law Enforcement Officer has probable cause to believe that a non-member has committed a Drug Offense, the officer shall bring the non-member before the designated official without unnecessary delay to determine whether a Writ of Emergency Temporary Exclusion is necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members. The commission of any Drug Offense by a non-member shall constitute a per se threat to the integrity and law and order on Tribal lands and territory or the welfare of its members.

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- (c) The officer shall complete a sworn, written application for Writ of Emergency Temporary Exclusion. The application shall contain a written statement of the essential facts constituting the Drug Offense. If the application establishes probable cause to believe that a Drug Offense has been committed by a non-member, the designated official must issue Writ of Emergency Temporary Exclusion. Without exception, a copy of the application and Writ and any appropriate information considered by the Designated Official shall be transmitted to the Tribal Operations Program of the Tribal Council no later than the next monthly resolution deadline set by the Tribal Operations Program.
 - (d) Any Cherokee Officer shall be authorized to execute a Writ of Emergency Temporary Exclusion upon a named non-member. The Cherokee Officer shall execute the Writ by serving a copy of the Writ and application upon the non-member and transporting the non-member to any location outside the territorial jurisdiction of the Eastern Band of Cherokee Indians.
 - (e) The issuance and execution of a Writ of Emergency Temporary Exclusion shall be independent of any criminal charges filed against the non-member in Cherokee Court or any other jurisdiction.
 - (f) Regardless of whether a writ is issued, the non-member shall be given notice of the next scheduled meeting of Tribal Council and the application and writ shall be placed upon the agenda. A decision by the Designated Official regarding probable cause shall not be binding on Tribal Council and hearing before Council shall require a de novo review of all appropriate facts and determinations. If no Writ is issued upon application, the Tribal Council may review the facts and hold a proceeding for non-emergency exclusion. At the designated meeting or any subsequent scheduled meeting, Tribal Council may renew the Writ until the next scheduled session, complete the process of formal exclusion under this chapter, or decline to take further action.
 - (g) The requirements of Cherokee Code Sections 2-2, 2-3, 2-4, 2-5, and 2-7 shall not apply to Writs of Temporary Emergency Exclusion issued under this section, but shall apply to all subsequent proceedings before Council.
 - (h) There is no right to judicial appeal of a Tribal Council decision to exclude a person or business (including a decision to prohibit the operation of a business) from Cherokee trust lands; provided, however, nothing in this Chapter shall preclude Tribal Council from re-considering an exclusion and modifying or terminating the order of exclusion by appropriate resolution, if Tribal Council believes a change of circumstances warrants such action.

(Ord. No. 589, Art. III, 2-8-2007; Ord. No. 400, 12-16-2016; Ord. No. 124, 3-18-2020)

Sec. 2-10. Harboring excluded persons.

Any person who harbors an excluded person on Cherokee trust lands shall be guilty of a crime and upon conviction thereof may be sentenced to a term of imprisonment not to exceed six months or a fine not to exceed \$5,000.00, or both, but shall be sentenced to a mandatory minimum term of not less than seven days.

(Ord. No. 124, 3-18-2020)

Sec. 2-11. Service of exclusion resolution.

A copy of the Tribal Council resolution excluding a person from Cherokee trust lands shall be served on the excluded individual by a person authorized to serve legal process. Proof of service on excluded individuals shall be maintained by the Tribal Operations Program, in coordination with the Office of the Attorney General.

(Ord. No. 124, 3-18-2020)

CERTIFICATE OF SERVICE

I, the undersigned Cherokee Indian Police Department officer, certify that the attached (1) Notice of Hearing, (2) Tribal Council Resolution seeking exclusion, and (3) copy of Cherokee Code Chapter 2, were all served on **GEORGIA NICOLE CAPE** on the date indicated below by hand delivery to her.

This, the _____ day of _____, 2022.

Cherokee Indian Police Department Officer

CERTIFICATE OF SERVICE

I, the undersigned Cherokee Indian Police Department officer, certify that the attached (1) Notice of Hearing, (2) Tribal Council Resolution seeking exclusion, and (3) copy of Cherokee Code Chapter 2, were all served on **GEORGIA NICOLE CAPE** on the date indicated below by hand delivery to her.

This, the 19 day of July, 2022.


Cherokee Indian Police Department Officer

EBCI
CHEROKEE TRIBAL COURT

2022 JUL 19 P 7:17

FILED

The attached Resolution/Ordinance No. 363 dated AUGUST 2, 2022 was:

PASSED (X)

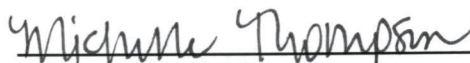
KILLED ()

and ratified in open Council on AUGUST 2, 2022 by 100 voting for the act
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Teresa McCoy	X			
Boyd Owle	X			
Bucky Brown	X			
TW Saunooke	X			
David Wolfe	X			
Adam Wachacha	X			
Bo Crowe	X			
Bill Taylor	X			
Albert Rose	X			
Dike Sneed	X			
Tommye Saunooke	X			
	100	0	0	0



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED (☒) VETOED ()

VETO UPHELD () VETO DENIED ()

DATE: 8/4/22

I hereby certify that the foregoing act of the Council was duly:

PASSED ()

KILLED ()

and ratified in open Council after the same has been interpreted by the Official Interpreter and
has been fully and freely discussed.

INTERPRETED ()

OMITTED ()