

TABLED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: JUN 01 2023

ORDINANCE NO. 623 (2023)

*An ordinance to amend the Tribe's criminal law governing public nuisance  
and to authorize real property forfeitures for repeated violations.*

WHEREAS, the Eastern Band of Cherokee Indians is a federally-recognized Indian tribe with sovereign powers of self-government, including the authority to adopt laws and regulations for the general government of the Tribe, and to enforce obedience to those laws. (EBCI Charter and Governing Document § 23); and

WHEREAS, Cherokee Code (C.C.) § 14-25.14 makes it unlawful to create a public nuisance, but in its current form does not adequately deter repeated violations; and

WHEREAS, C.C. § 14-25.14 should be amended to increase the penalty for repeated violations; and

WHEREAS, additionally, C.C. § 2A-1, governing forfeitures of real property to the Tribe, should be amended to authorize civil legal actions by the Tribe for the forfeiture of real property that was used to repeatedly violate the public nuisance law.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that C.C. § 14-25.14 and C.C. § 2A-1 shall be amended to read as follows:

**Sec. 14-25.14. - Public nuisance.**

(a) It shall be unlawful to do any act, or fail to perform any duty, without lawful authority to do so, which act or omission either:

(1) Unreasonably and substantially annoys and injures or endangers the comfort, repose, health, or safety of three or more persons; or

(2) Offends public decency; or

(3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for use or passage any lake, stream, or campground, pow-wow ground, public park, square, street, highway, or road; or

(4) In any way unreasonably renders three or more persons insecure in life or the use of property.

1 (b) Public nuisance shall be punishable by a fine not to exceed \$250.00, by a term of  
2 imprisonment not to exceed three months, or both. A second conviction shall be punishable by a  
3 fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, or both. If two  
4 or more convictions occur from the same address, the real property associated with that address  
5 shall be subject to the civil forfeiture process as outlined in C.C. § 2A-1.  
6

7 **Sec. 2A-1. - Real property forfeitures.**

8 (a) Real property is subject to civil forfeiture to the Eastern Band of Cherokee Indians when the  
9 real property is used to facilitate an offense stated in subsection (b) of this section. Facilitation  
10 shall mean that the property was used to commit, or subsequently conceal, illicit activity.

11 (b) All civil forfeitures and interests in real property shall proceed as Tribal Council proceedings  
12 upon a second or subsequent C.C. § 14-95.6 C.C. § 14-25.14 conviction, or any Tribal, state, or  
13 federal conviction where such offenses would constitute a § 14-95.6 offense under the Cherokee  
14 Code. For purposes of this Chapter, real property shall mean the possessory holding and all  
15 improvements attached to the possessory interest.

16 (c)(1) Except as provided in this section:

17 (a) Real property that is subject of a civil forfeiture action shall not be seized before a  
18 Tribal Council resolution is ratified.

19 (b) The real property possessory interest holders or real property occupants shall not be  
20 evicted from, or otherwise deprived of the use and enjoyment of, real property that is the  
21 subject of a pending forfeiture action.

22 (2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting  
23 an inspection and inventory of the property shall not be considered a seizure under this  
24 subsection.

25 (d)(1) The ~~Tribal Prosecutor~~ Office of the Attorney General shall initiate a real property  
26 forfeiture action against real property by:

27 (a) Filing a forfeiture resolution and a copy of all attachments;

28 (b) The right to real property forfeitures in accordance with Cherokee Code, Chapter 2A,  
29 when convicted of a C.C. §14-95.6 or C.C. § 14-25.14 offense.

30  
31 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are  
32 rescinded, and that this ordinance shall become effective when ratified by the  
33 Principal Chief.

34  
35  
36 *Submitted by Michael Stamper, Painttown Tribal Council representative*  
37