

PASSED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, QUALLA BOUNDARY, NC

Date: MAR 05 2024

RESOLUTION NO. 124 (2024)

*A resolution to exclude Erick Cale McKinney 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, ERICK CALE MCKINNEY (Date of Birth: 10/05/1986) is not a member of the EBCI or any other federally recognized Indian Tribe; and

WHEREAS, ERICK CALE MCKINNEY has been residing off Tribal trust lands at 120 Walter Street, Bryson City, Swain County; and

WHEREAS, on January 10, 2024, ERICK CALE MCKINNEY was involved in an incident with an EBCI Tribal member where he is alleged to have threatened to shoot the Tribal member with a crossbow; and

WHEREAS, the alleged threat to the EBCI Tribal member caused fear and intimidation to members of the EBCI community; and

WHEREAS, due to the nature of the alleged actions of ERICK CALE MCKINNEY, Tribal Council has good reason to believe that he is a threat to the integrity, law and order of EBCI lands, and the welfare of the members of the Tribe; and

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, ERICK CALE MCKINNEY 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 ERICK CALE MCKINNEY from entering or being present on Tribal lands for any purpose except as required by Tribal Council or Tribal Court.

BE IT FURTHER RESOLVED that if ERICK CALE MCKINNEY is found improperly on Tribal lands at any time after the effective date of this resolution, he shall be treated as a trespasser and appropriate legal action shall be taken against him.

BE IT FINALLY RESOLVED that all resolutions inconsistent with this resolution are rescinded, and that this resolution shall become effective when ratified by the Principal Chief.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

## Chapter 2 EXCLUSION POWERS OF TRIBE<sup>1</sup>

### Sec. 2-1. Power to exclude.

- (a) The Tribal Council shall have the power to exclude enrolled Tribal members when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members.
- (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.
- (h) The Tribal Council may exclude individuals or entities from lands the Tribe or its entities owns, manages, or controls, but which is not held in trust for the Tribe by the United States. After excluding individuals or entities from lands which are not held in trust, Tribal officials may refer an excluded person to local law enforcement when warranted by appropriate circumstances.

(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; Ord. No. 185, 10-31-2022)

### 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.

(Ord. No. 92, 5-5-1994; Ord. No. 589, Art. III, 2-8-2007; Ord. No. 124, 3-18-2020; Ord. No. 185, 10-31-2022)

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<sup>1</sup>Cross 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.

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### **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 may 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 may 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; Ord. No. 185, 10-31-2022)

### **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 may be removed from the membership roll of the Tribe by resolution of Tribal Council and all privileges pertaining thereto may be suspended indefinitely. If a first-generation descendant is permanently excluded from Cherokee trust lands, Tribal Council may also, by resolution, suspend or revoke the privileges and benefits that the excluded person would otherwise have been eligible to receive as a first-generation descendant.

(Ord. No. 271, 7-24-1996; Ord. No. 124, 3-18-2020; Ord. No. 185, 10-31-2022)

### **Sec. 2-7. Request for exclusion action.**

The following persons may 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.

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- (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; Ord. No. 185, 10-31-2022)

### **Sec. 2-8. Reserved.**

Ord. No. 185, adopted Oct. 31, 2022, repealed § 2-8, which pertained to list of convictions for which exclusion is a punishment and derived from Ord. No. 589, Art. III, adopted Feb. 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 until further action is taken by Tribal Council.
  - (8) *Excluded Person:* Any person who has been excluded from Tribal trust lands by Writ of Emergency Temporary Exclusion or by action of the Tribal Council.
- (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

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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.

- (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) When 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 to issue a writ is not binding on Tribal Council[.] A hearing before Council shall require a review of all appropriate facts and determinations.
- (g) 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; Ord. No. 185 , 10-31-2022)

### **Sec. 2-10. Harboring excluded persons.**

It shall be unlawful for any person to harbor, conceal, or give succor to, any known excluded person. Any person who violates this section shall be guilty of a crime and may be sentenced to a term of imprisonment not to exceed 12 months imprisonment or a fine not to exceed \$5,000.00, or both. Any person convicted under this section shall be sentenced to serve an active term of imprisonment of at least 30 days, which may not be suspended.

( Ord. No. 124 , 3-18-2020; Ord. No. 185 , 10-31-2022)

### **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)

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**Sec. 2-12. Exclusion Registry.**

- (a) The Tribe shall create a publicly available digital registry which contains the names of persons who have been excluded from the lands of the Tribe pursuant to a resolution of Tribal Council. The registry shall be known as the Eastern Band of Cherokee Indians Exclusion Registry.
- (b) The registry shall be maintained by the Cherokee One Feather, and shall contain, at a minimum, the name of the person who is excluded from Tribal lands, the date the exclusion resolution was passed by Tribal Council, and the number of the resolution.
- (c) The Exclusion Registry should contain a copy of the resolution excluding a person from Tribal trust lands, a photograph of the excluded person, as well as any other identifying information so that the public may be informed of persons who have been excluded from Tribal trust lands.
- (d) Upon receiving notice of the death of an excluded person, the person may be removed from the Exclusion Registry.

( Ord. No. 185 , 10-31-2022)

**Sec. 2-13. Rewards authorized.**

The Cherokee Indian Police Department is authorized to establish a system of monetary rewards to be distributed to members of the public to encourage the sharing information by the public which leads to the arrest and conviction of excluded persons who are found to be on Tribal trust lands in violation of a valid exclusion resolution or writ or those who harbor excluded persons.

( Ord. No. 185 , 10-31-2022)

**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 **ERICK CALE MCKINNEY** on the date indicated below by hand delivery to him.

This, the \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Cherokee Indian Police Department Officer



**BEFORE THE TRIBAL COUNCIL  
OF THE EASTERN BAND OF CHEROKEE INDIANS**

**NOTICE OF HEARING**

**TO: ERICK CALE MCKINNEY**

You are hereby notified that a hearing will be held on Tuesday, March 5, 2024, at 9:00 am in the Tribal Council House, located on the Qualla Boundary at 88 Council House Loop, Cherokee, North Carolina, to determine whether you should be **permanently excluded** from the trust lands of the Eastern Band of Cherokee Indians. Exclusion proceedings are conducted pursuant to Cherokee Code Chapter 2. A copy of Cherokee Code Chapter 2 is enclosed for your reference.

The Eastern Band is considering excluding you from Cherokee lands for the reasons provided in the enclosed resolution. The resolution will be presented to the Tribal Council at the hearing. At the conclusion of the hearing, the Tribal Council will vote to determine if you should be excluded.

You have the right to be present and heard in accordance with tribal law.

The attached Resolution/Ordinance No. 124 dated March 5, 2024 was:

PASSED (X)

KILLED ( )

and ratified in open Council on MARCH 5, 2024 by 94 voting for the act and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Perry Shell	X			
Boyd Owle	X			
Bucky Brown	X			
Tom Wahnetah	X			
David Wolfe	X			
Adam Wachacha	X			
Mike Parker	X			
Bo Crowe	X			
Jim Owle	X			
Dike Sneed				X
Michael Stamper	X			
	94	0	0	6



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED (✓) VETOED ( )

VETO UPHELD ( ) VETO DENIED ( )

DATE: 3-21-24

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 ( )