

Chapter 20

MOTOR VEHICLES*

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*Cross references—Transportation of alcoholic beverages, § 14-15.3; gasoline tax, § 105-20 et seq.; roads and highways, ch. 136A.

ARTICLE I. MOTOR VEHICLES*

Sec. 20-1. Motor vehicle/traffic laws.

(a) In order to ensure consistency in the application and enforcement of all civil and criminal traffic and motor vehicle laws on the Cherokee Indian Reservation and in surrounding areas, the Tribe adopts Chapter 20 of the North Carolina General Statutes and any amendments to that chapter which may be made in the future. In so doing, all persons operating motor vehicles on the Cherokee Indian Reservation must abide by these provisions, including the North Carolina licensing and registration requirements. Any references in Chapter 20 of the N.C.G.S. to violations occurring within the State of North Carolina shall also include violations occurring within the Cherokee Indian Reservation. Speed limits on all state highways shall be established pursuant to NCGS 20-141. The speed limit for the approximately one-half mile section of US 19 running from the east intersection of US 19 with US 441, eastward to SR 1391 shall be 20 miles per hour. Speed limits on all reservation roads (other than state highways) shall be established and posted by the Cherokee DOT in consultation with the Cherokee Police Department.

(1) Regardless of the Tribe's adoption in subsection (a) of N.C.G.S. Chapter 20 and any amendments to that chapter, the Tribe does not adopt the changes to that chapter that are expressed in N.C.G.A. Senate Bill 189 (2005), Session Law 2005-282, which imposes age and safety requirements for the operation of all-terrain vehicles.

(b) All civil traffic infractions contained therein shall be enforced by the North Carolina Highway Patrol, Federal Law Enforcement Officers, and the Cherokee Police Department who shall cite all violators into the Cherokee court.

(c) Persons subject to the Cherokee court's civil jurisdiction may have civil penalties imposed as set forth in Chapter 20 of the North Carolina Statutes.

***Editor's note**—Ord. No. 324, ratified June 20, 2006, amended the Code by adding an Art. I to this Chapter.

(d) Criminal penalties may only be imposed against persons who are subject to the Cherokee court's criminal jurisdiction and such penalties shall not exceed one year imprisonment, a \$5,000.00 fine or both.

(e) All traffic and motor vehicle violations shall be enforced in accordance with existing compacts in an effort to ensure cooperation between all law enforcement agencies.

(Res. No. 200, 10-6-1980; Ord. No. 471, 9-25-1981; Ord. No. 17, 10-19-1983; Res. No. 101, 2-4-1986; Ord. No. 10, 1-8-1998; Ord. No. 287, 7-17-2000; Ord. No. 324, 5-4-2006)

Sec. 20-2. Reserved.

Editor's note—Ord. No. 287, adopted July 17, 2000 completely repealed the provisions of § 20-2 which pertained to civil traffic infractions and derived from Ord. No. 551, adopted Sept. 9, 1993 and Ord. No. 10, adopted Jan 8, 1998.

Secs. 20-3—20-99. Reserved.

ARTICLE II. OFF-ROAD VEHICLE USE ON TRIBAL RESERVE PROPERTY

Sec. 20-100. Application.

This Article governs off-road vehicle use on Tribal Reserve property.
(Ord. No. 324, 6-20-2006)

Sec. 20-101. Interplay with state motor vehicle laws.

In Cherokee Code Sec. 20-1, the Tribe has adopted the motor vehicle laws expressed in Chapter 20 of the North Carolina General Statutes, but has declined to adopt changes to Chapter 20 expressed in N.C.G.A. Senate Bill 189 (2005), Session Law 2005-282, which imposed age and safety requirements for the operation of all-terrain vehicles. The regulation of off-road vehicles on Tribal Reserve property is solely within the province of the Tribe. If any provision of this Article conflicts or is inconsistent with any provision of N.C.G.S. Chapter 20 as adopted by the Tribe, then the provision of this Article shall govern.

(Ord. No. 324, 6-20-2006)

Sec. 20-102. Definitions.

As used in this Article:

- (a) *Motor vehicle* means any vehicle which is self-propelled, other than any wheelchair or mobility device, including one that is battery powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.
- (b) *Off-road vehicle* or *ORV* means any motor vehicle designed for or capable of travel off of paved roads and/or over natural terrain, including dirt roads and single and double track trails, water, sand, snow, ice, marsh and swampland, and includes but is not limited to dirt motorcycles, motocross motorcycles, dual sport motorcycles, all-terrain vehicles (regardless of number of wheels), go-karts, jeeps, trucks, cars and dune buggies.
- (c) *Operator* has the same meaning as provided in N.C.G.S. 20-4.01.
- (d) *Owner* has the same meaning as provided in N.C.G.S. 20-4.01.
- (e) *Dirt road* means an unpaved motor vehicle route over 50 inches wide, unless identified and managed as a trail.
- (f) *Trail* means an unpaved motor vehicle route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.
- (g) *Tribal Reserve property* means the property identified in Cherokee Code Sec. 47-16 (describing the boundaries of the Tribal Reserve) and Cherokee Code Sec. 47-17 (describing land reserved for Tribal use). This definition does not include property held as a possessory interest.
- (h) *Tribe* means the Eastern Band of Cherokee Indians.

(Ord. No. 324, 6-20-2006)

Sec. 20-103. Who may use.

(a) Only the following persons may operate ORVs on Tribal Reserve property:

- (1) Members of the Tribe, their spouses and their children, regardless of whether the spouses and children are members of the Tribe; and

- (2) Employees of the Tribe and police, fire, rescue and emergency medical personnel, in the performance of official job-related duties.

(b) ORVs, regardless of the purpose for which they are used, may be operated on Tribal Reserve property only if the ORV has been registered with the Cherokee Department of Fish and Game and has received an official, current sticker that is affixed to the ORV as required in this Article; provided, however, that ORVs operated by persons identified in subsection (a)(2) and used in the performance of official job-related duties are exempt from this requirement.

(Ord. No. 324, 6-20-2006)

Sec. 20-104. Where use is permitted.

(a) ORVs operated on Tribal Reserve property are restricted to use on dirt roads and trails designated by the Tribe as open for ORV use. The designation shall be accomplished by installation of trail signs and/or maintenance of an ORV map by the Tribe. If a dirt road or trail is not expressly designated as open to ORV use, it is deemed closed to that use. If a dirt road or trail is closed by a gate or fence, use of an ORV past the gate or fence is prohibited.

(b) ORVs shall not be used to pioneer new travel routes off of designated dirt roads and trails on Tribal Reserve property, unless the new travel route is officially authorized by the Tribe.

(c) ORVs shall not be used on or to cross over a possessory interest except with the permission of the owner or occupier of that possessory interest. (Ord. No. 324, 6-20-2006)

Sec. 20-105. Limit on liability.

Operating an ORV is a hazardous activity that may result in personal injury and damage to personal property. Use of an ORV on Tribal reserve property is performed at the user's own personal risk. The Tribe is not obligated to make Tribal Reserve property safe or to warn users of the property of hazards. The Tribe is not liable for

injuries to persons or property that are caused by or which arise out of the operation of ORVs on Tribal Reserve property.

(Ord. No. 324, 6-20-2006)

Sec. 20-106. Registration.

(a) Every ORV operated on Tribal Reserve property must have affixed to it a valid, unexpired ORV sticker obtained from the Tribe's Budget and Finance Office. The sticker indicates that the ORV has been registered with the Tribe for the calendar year in question.

(b) ORV stickers are effective for one calendar year, beginning on January 1 and ending on December 31. A sticker obtained mid-year is effective only for the remainder of that calendar year. The Tribe shall charge a minimum fee of \$10.00 for each registration, and may charge more. Proceeds from sticker sales are reserved for use by the Tribe to pay the administrative cost of the sticker program. Any excess over the administrative cost shall be used by the Department of Fish and Game to pay for maintenance of roads, trails, wildlife and wildlife habitat on Tribal Reserve property.

(c) A motor vehicle registered with the state pursuant to N.C.G.S. Chapter 20, Article 3, Part 3 (§ 20-50 et seq.) for highway use is not required to have a Tribal ORV sticker.

(d) Applications for ORV stickers shall, at a minimum, include all of the following information:

- (1) The applicant's name, age, mailing address and phone number.
- (2) The applicant's driver's license number if a licensed driver.
- (3) The type, size and model of the vehicle to which the sticker will be affixed.
- (4) Proof of tribal membership, family affiliation or employment as required to satisfy this article.
- (5) The date issued.
- (6) A statement that the applicant will operate the vehicle in a safe and responsible manner and according to tribal law.

(6) A statement that the applicant has obtained the appropriate education for operation of the vehicle if such education is required by Tribal law.

(7) A statement that the applicant consents to the jurisdiction of the Cherokee Court for controversies related to or arising from the obtaining or use of the sticker or the use of a motor vehicle on Tribal Reserve property.

(8) The applicant's signature.

(9) The sticker or registration number.

(10) Applicant's spouse and children if they will operate an ORV.

(e) The Budget and Finance Office shall keep a record of all registration applications and of all registrations and stickers it issues.

(f) ORV stickers are not transferable between vehicles or persons.

(g) The Budget and Finance Office may refuse to issue an ORV sticker to an applicant who meets any of the following conditions:

- (1) Is ineligible to operate an ORV on Tribal Reserve property.
- (2) Has not paid the required fee.
- (3) Owes a debt to the Tribe, as confirmed by the Budget and Finance Office.
- (4) Is proved to have violated any provision of this Article within two years immediately preceding the date of application. Proof of violation must be in the form of citation and if the citation was challenged in Tribal court, proof that the citation was upheld, regardless of the form of judgment.

(Ord. No. 324, 6-20-2006)

Sec. 20-107. Enforcement.

The Cherokee Department of Fish and Game and the Cherokee Police Department are authorized to patrol Tribal Reserve property and are authorized to enforce applicable Tribal law there. (Ord. No. 324, 6-20-2006)

Sec. 20-108. Designated roads and trails.

Persons operating motorized vehicles on Tribal Reserve property shall use designated roads and trails only. Operators shall not establish new roads or trails.

(Ord. No. 324, 6-20-2006)

Sec. 20-109. Stopping on officer's signal.

(a) On Tribal Reserve property, an ORV operator must stop upon the signal of a law enforcement officer or employee of the Cherokee Department of Fish and Game.

(b) On private property, an ORV operator must stop upon the signal of the of persons identified in subsection (a) and upon signal of the landowner or occupier.

(Ord. No. 324, 6-20-2006)

Sec. 20-110. Tampering with signs.

Any sign or other information posted by the Tribe on Tribal Reserve property shall remain posted until removed by the Tribe. Damaging, removing, defacing, changing, or tampering with a sign or other information is prohibited.

(Ord. No. 324, 6-20-2006)

Sec. 20-111. Specific vehicle operation rules.

(a) ORVs used on Tribal Reserve property must have properly installed and working throttles, brakes, mufflers and spark arrestors. ORVs should be properly tuned and muffled to reduce exhaust sounds and emissions.

(b) ORVs used on Tribal Reserve property after sunset and before sunrise, or when visibility is reduced due to insufficient light or atmospheric conditions such as fog, must have operating headlights and taillights.

(c) An ORV may be used to carry no more than one operator and one passenger at a time.

(d) ORV operators and passengers should wear proper safety equipment, including helmets, approved eye protection, boots, gloves, long pants and long sleeve shirts.

(e) ORVs must be operated in a manner that is reasonable and prudent in light of existing conditions. Excessive speed is prohibited. Blind corners should be approached with caution. ORVs must not be operated in a manner that is grossly negligent, careless or reckless, or in a manner intended to hurt another person.

(f) No person may operate an ORV when under the influence of alcohol or a controlled substance or when visibly impaired by alcohol or controlled substance.

(g) Firearms may not be used or carried on an ORV on Tribal Reserve property except as authorized by Tribal law for hunting purposes.

(h) If the Tribe has posted directional signs, trail signs, hours of operation, entrance and exit routes, and other information, those signs and information must be obeyed.

(i) ORVs may cross streams only at designated fording points or where the road or trail crosses the stream.

(j) ORVs that are not registered for highway use pursuant to Article 1 of this chapter may not be used on paved roads except to cross them at designated points, and along the shoulder of paved roads designated and posted by the Tribe as trail linking routes.

(k) ORV operators should respect other users. Operators should slow down or stop their ORV when they approach others on the trail. ORV operators overtaking others should do so slowly and with a wide berth. ORV operators should yield the right of way to those passing them or traveling uphill. ORV operators should yield the right of way to pedestrians, mountain bikers and horses.

(l) ORV operators should leave gates as they find them and should respect private land.

(m) ORVs should not be used in wet areas or during wet conditions.

(n) Littering by any person on Tribal Reserve property is prohibited. Trash must be packed out.

(o) ORVs shall not widen single-track trails by being forced down the trail.

(p) Persons using ORVs should treat others courteously and should not use obscene or profane language, gestures, or abusive behavior.

(q) ORVs must not be used to intentionally chase or disturb wildlife.
(Ord. No. 324, 6-20-2006)

Sec. 20-112. Age restrictions.

Persons operating ORVs on Tribal Reserve property must meet the minimum age recommendations expressed by the manufacturer of the ORV. ORV operators who are less than 16 years of age must be accompanied by a parent or legal guardian and be under the immediate supervision of their parent or legal guardian.
(Ord. No. 324, 6-20-2006)

Sec. 20-113. Tribe may close or restrict area.

The Tribe may close or restrict all or part of the Tribal Reserve property to ORV use. Temporary closures or restrictions shall be by majority vote of the Tribal Timber Committee. Permanent closures or restrictions shall be by majority vote of the Tribal Council. The Executive Committee shall be notified immediately if there is a closure.
(Ord. No. 324, 6-20-2006)

Sec. 20-114. Violations.

(a) A violation of any provision of this Article is an infraction, meaning a civil public offense, not constituting a crime, which is punishable by a fine not exceeding \$500.00 and for which no period of incarceration may be imposed.

(b) Any person who receives three or more infractions within a two-year period for violations of this Article shall have their ORV registration revoked and shall not be eligible to operate an ORV on Tribal Reserve property for two years from the date of revocation.

(c) Imposition of a fine or registration revocation as provided in subsections (a) and (b) does not preclude the Tribe's pursuit of other remedies, or an award of other remedies such as, but not limited to, restitution.

(Ord. No. 324, 6-20-2006)

Sec. 20-115. Effective date.

This ordinance shall be in force and effect thirty days after it is ratified by the Principal Chief.

(Ord. No. 324, 6-20-2006)