

**STATE OF GEORGIA
COUNTY OF CHEROKEE**

RESOLUTION NO. 2021-R-107

A RESOLUTION ESTABLISHING A MORATORIUM ON THE ACCEPTANCE OF ANY APPLICATIONS RELATED TO THE DEVELOPMENT OF ANY NEW CONSTRUCTION SINGLE FAMILY RESIDENTIAL SUBDIVISIONS; TO REPEAL CONFLICTING RESOLUTIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

WHEREAS, the Cherokee County Board of Commissioners ("the Board") has been vested with substantial powers, rights and functions to generally regulate the practice, conduct or use of property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the County; and

WHEREAS, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where exigent circumstances warrant the same (*see, City of Roswell et al v. Outdoor Systems, Inc.*, 274 Ga. 130 (2001); *Lawson v. Macon*, 214 Ga. 278 (1958); *Taylor v. Shetzen*, 212 Ga. 101 (1955)); and

WHEREAS, the Georgia Supreme Court, in *DeKalb County v. Townsend*, 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."; and

WHEREAS, the Board has found that the interests of the public necessitate the enactment of a moratorium for health, safety, morals and general welfare purposes by means which are reasonable and not unduly oppressive; and

WHEREAS, the Board has, as a part of planning, zoning and growth management, been in review of the Code of Ordinances, Cherokee County, Georgia ("Code"), the Development Ordinance of Cherokee County, Georgia ("Development Regulations"), the 1992 Zoning Ordinance of Cherokee County ("Zoning Ordinance") and the 2018 Update Cherokee County Comprehensive Plan ("Comprehensive Plan") and has been studying the County's best estimates

and projections of the type of development which could be anticipated within Cherokee County;
and

WHEREAS, the Board deems it important to develop a comprehensive development plan which integrates all of these concerns, and therefore, considers a moratorium a proper exercise of its police powers; and

WHEREAS, the Board, therefore, considers it paramount that land use regulation continues in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of Cherokee County; and

WHEREAS, the Board has always had a strong interest in growth management so as to promote the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community, and in particular the lessening of congestion on County streets, security of the public from crime and other dangers, promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the County including access to air and light, and facilitation of the adequate provision of transportation and other public requirements; and

WHEREAS, it is the belief of the Board that the concept of "public welfare" is broad and inclusive; that the values it represents are spiritual as well as physical, aesthetic as well as monetary; and that it is within the power of the County "to determine that a community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26 (1954); *Kelo v. City of New London*, 545 U.S. 469 (2005); and

WHEREAS, it is also the opinion of the Board that "public welfare" includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the County, making the most appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting the economic well-being of the community, facilitating adequate provision of public services, and the preservation of the resources of the County; and

WHEREAS, the Board is, and has been, interested in developing a cohesive and coherent policy regarding certain uses in the County, and intends to promote community development through stability, predictability and balanced growth which will further the prosperity of the County as a whole;

NOW THEREFORE BE IT RESOLVED, that the Cherokee County Board of Commissioners hereby finds and authorizes the following:

Section 1. Findings of Fact

- (a) The County's Code, Development Regulations, Zoning Ordinance and Comprehensive Plan require further review by the County as they relate to new single family residential subdivisions.
- (b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses and Cherokee County if the current land use regulation scheme in and for the use described in subsection (a) above in the County were to be utilized by property owners prior to a more thorough review.
- (c) The County's ongoing review and potential revision of its Code, Development Regulations, Zoning Ordinance and Comprehensive Plan requires a limited cessation of land disturbance permits, rezoning or zoning action applications, building permit, and any other applications for any kind of permit, approval or permits for or related to any new single family residential subdivisions in all zoning districts except R-40, R-60, R-80, and AG.
- (d) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any such applications, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the County.
- (e) This moratorium is being adopted after a properly noticed public hearing conducted on December 21, 2021.

Section 2. Imposition of Moratorium

- (a) The Board hereby enacts a moratorium on the acceptance of applications for land disturbance permits, rezoning or zoning action applications, building permit, and any other applications for any kind of permit, approval or permits for or related to any new single family residential subdivisions in all zoning districts except R-40, R-60, R-80, and AG.
- (b) The Board further enacts a moratorium on the acceptance of applications of any kind related to the "Rental housing-related" use, identified by NAICS Code# 531110, Article 7, Section 7.2 of the 1992 Zoning Ordinance of Cherokee County.
- (c) The duration of this moratorium enacted herein shall be until the County adopts a revision of the Code, Development Regulations, Zoning Ordinance or Comprehensive Plan related

to the above referenced uses, or until _____ days has elapsed from the adoption of this Resolution, or until affirmative action by the County to terminate the moratorium, whichever first occurs. This moratorium may also be extended by the County after a public hearing conducted in compliance with Georgia's Zoning Procedures Law (O.C.G.A. § 36-66.1, et seq.),

- (d) This moratorium shall be effective immediately upon adoption of this Resolution.
- (e) This moratorium shall have no effect upon approvals or permits previously issued or as to development plans previously approved by the County. The provisions of this Resolution shall not affect the issuance of permits or site plan reviews that have received preliminary or final approval by the County or for which consultations have been had with the County staff on or before the effective date of this Resolution. The provisions of this Resolution shall not prohibit new amendments to final plats recorded prior to the effective date of this Resolution.
- (f) As of the effective date of this Resolution, no applications for development or permits or for any other purposes related to the use described in subsection (a) or (b) above shall be accepted by any agent, employee or officer of the County with respect to any property in Cherokee County, and any application so accepted for filing, and any permit purportedly issued as a result thereof will be deemed in error, null and void and of no effect whatsoever and shall constitute no assurance whatsoever of any right to engage in any act, and any action in reliance on any such permit shall be unreasonable.

Section 3. Intent

- (a) It is hereby declared to be the intention of the Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.
- (b) It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Resolution. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase

of this Resolution is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Resolution.

- (c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Resolution and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Resolution shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4. Conflicting Parts / Miscellaneous

All Resolutions or parts of Resolutions in conflict with this Resolution are, to the extent of such conflict, hereby repealed. The preamble of this Resolution shall be and is hereby incorporated by reference as if fully set out herein. This Resolution shall be effective on the date of its approval by the Cherokee County Board of Commissioners.

SO RESOLVED, APPROVED, AND ADOPTED this 21st day of December, 2021.

By:



HARRY B. JOHNSTON, Chairman

Attest:



CHRISTY BLACK, County Clerk

