

**STATE OF GEORGIA
COUNTY OF CHEROKEE**

ORDINANCE NO. 2020-O-006

AN ORDINANCE OF THE CHEROKEE COUNTY BOARD OF COMMISSIONERS TO ADD A NEW ARTICLE III SECTION 19 THROUGH SECTION 23 OF CHAPTER 58 OF THE CODE OF ORDINANCES OF CHEROKEE COUNTY, GEORGIA TO ENACT PROVISIONS PERTAINING TO THE USE OF AUTOMATED TRAFFIC ENFORCEMENT SAFETY SYSTEMS IN SCHOOL ZONES LOCATED WITHIN UNINCORPORATED CHEROKEE COUNTY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective as of July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of a county may adopt clearly reasonable ordinances, resolutions, and regulations; and

WHEREAS, during the 2017-18 legislative session, the Georgia General Assembly passed HB 978 allowing for the use of photo/video enforcement in school zones under O.C.G.A. § 40-6-163 and O.C.G.A. § 40-14-18; and

WHEREAS, the Board of Commissioners desires to enact a new Article III Section 19 through Section 23 of Chapter 58 of the Cherokee County of Ordinances to enact provisions pertaining to the use of automated safety systems in school zones located within unincorporated Cherokee County; and

WHEREAS, this Ordinance change will benefit the safety and welfare of the citizens of Cherokee County; and

WHEREAS, the governing authority of Cherokee County, to wit, the Board of Commissioners, desires to exercise its authority in adopting this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Cherokee County Board of Commissioners, and it is hereby so ordained by authority of the same that:

Section 1

Article III Section 19 through Section 23 of Chapter 58 of the Code of Ordinances of Cherokee County, Georgia shall be amended to enact provisions pertaining to the use of automated safety systems within school zones located within the limits of unincorporated Cherokee County, Georgia. Said Ordinance shall read as follows:

CHAPTER 58 – TRAFFIC AND VEHICLES.

ARTICLE III – AUTOMATED TRAFFIC ENFORCEMENT SAFETY DEVICE.

Sec. 58-19. – Definitions.

For the purpose of this Section, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Agent means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained here and (i) provides services to such law enforcement agency or governing body; (ii) operates, maintains, leases, or licenses a video recording device; or (iii) is authorized by such law enforcement agency or governing body to review and assemble the recorded images captured by the automated traffic enforcement safety device for review by a peace officer.

Automated traffic enforcement safety device means a speed detection device that: (i) is capable of producing photographically recorded still or video images, or both, of the rear of a motor vehicle or of the rear of a motor vehicle being towed by another vehicle, including an image of such vehicle's rear license plate; (ii) is capable of monitoring the speed of a vehicle as photographically recorded pursuant to subparagraph (i) of this paragraph; and (iii) Indicates on each photographically recorded still or video image produced the date, time, location, and speed of a photographically recorded vehicle traveling at a speed above the posted speed limit within a marked school zone.

Owner means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

Recorded images means still or video images recorded by an automated traffic enforcement safety device.

School zone means the area within one thousand (1,000) feet of the boundary of any public or private elementary or secondary school.

Sec. 58-20. – Authorization for use of automated traffic enforcement safety devices.

The speed limit within any school zone as provided for in O.C.G.A. § 40-14-8 and marked pursuant to O.C.G.A. § 40-14-6 may be enforced by using photographically recorded images for violations which occurred only on a school day during the time in which instructional classes are taking place and one hour before such classes are scheduled to begin and for one hour after such classes have concluded when such violations are in excess of ten miles per hour over the speed limit.

Sec. 58-21. – Administration of use of automated traffic enforcement safety devices

- (a) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device provided for under O.C.G.A. § 40-14-18 shall maintain a log for the automated traffic enforcement safety device attesting to the performance of such device's self-test at least once every thirty (30) days and the results of such self-test pertaining to the accuracy of the automated traffic enforcement safety device. Such log shall be admissible in any civil enforcement proceeding for a violation issued pursuant to O.C.G.A. § 40-14-18. The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device shall perform an independent calibration test on the automated traffic enforcement safety device at least once every twelve (12) months. The results of such calibration test shall be admissible in any court proceeding for a violation issued pursuant to O.C.G.A. § 40-14-18.
- (b) Prior to the placement of a device within a school zone, each school within whose school zone such automated traffic enforcement safety device is to be placed shall first apply for and secure a permit from the Department of Transportation for the use of such automated traffic enforcement safety device. Such permit shall be awarded based upon need. The Department of Transportation shall promulgate rules and regulations for the implementation of this paragraph.
- (c) If an automated traffic enforcement safety device is moved to or placed in a location where an automated traffic enforcement safety device had not previously been moved to or placed in, no citation shall be issued for a violation recorded by that automated traffic enforcement safety device until:
 - (1) The County shall erect signs warning of the use of a stationary speed detection device within the approaching school zone. Such signs shall be at least twenty-four (24) by thirty (30) inches in area, shall be visible plainly from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. Such signs shall be placed within five hundred (500) feet prior to the warning sign announcing the reduction of the speed limit for the school speed zone. There shall be a rebuttable presumption that such signs are properly installed pursuant to this subsection at the time of any alleged violation under this Article; and

- (2) That no citation shall be issued for the first thirty (30) days after the first automated traffic enforcement safety device is introduced by a law enforcement agency within a school zone, but rather, a civil warning shall be issued for disregard or disobedience of the speed limit within the school zone.
- (d) A law enforcement agency authorized to enforce the speed limit of a school zone, or an agent working on behalf of a law enforcement agency or governing body, shall send by first class mail addressed to the owner of the motor vehicle within thirty (30) days after obtaining the name and address of the owner of the motor vehicle but no later than sixty (60) days after the date of the alleged violation:
 - (1) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling in photographically recorded images, the maximum speed applicable within such school zone, the civil warning or the amount of the civil monetary penalty imposed, and the date by which a civil monetary penalty shall be paid;
 - (2) An image taken from the photographically recorded images showing the vehicle involved in the infraction;
 - (3) A website address where photographically recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;
 - (4) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the school zone and stating that, based upon inspection of photographically recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law;
 - (5) A statement of the inference provided by Georgia law and of the means specified therein by which such inference may be rebutted for such violations;
 - (6) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested through an administrative hearing; and
 - (7) A warning that the failure to pay the civil monetary penalty or to contest liability in a timely manner as provided for in subsection (d) of this Code section shall waive any right to contest liability.
- (e) Proof that a motor vehicle was operated in disregard or disobedience of the speed limit of the marked school zone shall be evidenced by photographically recorded images. A copy

of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of photographically recorded images, a motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein.

- (f) Liability shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this Code section was operated in violation of the speed limit of the school zone, together with proof that the defendant was, at the time of such violation, the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:
 - (1) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation; or
 - (2) Presents to the court a certified copy of a law enforcement report showing that the vehicle had been reported to law enforcement as stolen prior to the time of the alleged violation.
- (g) A violation for which a civil warning or a civil monetary penalty is imposed pursuant to this Ordinance shall not be considered a moving traffic violation for the purpose of points assessment under O.C.G.A. § 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Ordinance shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.
- (h) Any court having jurisdiction over violations of O.C.G.A. § 40-14-18(a) shall have jurisdiction over cases arising under this Ordinance and shall be authorized to impose the civil monetary penalty provided for by this subsection. Except as otherwise provided pursuant to Georgia law, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations under this Ordinance shall apply to enforcement under this Ordinance; provided however, that any appeal from superior or state court shall be by application in the same manner as that provided by O.C.G.A. § 5-6-35

Sec. 58-22. – Designation of administrative hearing officer.

In accordance with the provisions of O.C.G.A. § 40-14-18, and as of the effective date of this Ordinance, the County shall utilize its Magistrate Court Judge [or designee] to conduct an administrative hearing when timely requested by recipients of notice of violations pursuant to this section.

Sec. 58-23. – Violations and penalties.

- (a) Any person who shall violate any provision of this Article shall be subject to the civil penalties set forth in O.C.G.A. § 40-14-18(b)(1), as amended, including a fine in the amount of seventy-five dollars (\$75.00) for a first violation and one hundred twenty-five dollars (\$125.00) for a second or any subsequent violation, in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed twenty-five dollars (\$25.00).
- (b) The County is hereby authorized to notify the Georgia Department of Revenue for all outstanding notice of violations which are eligible for reporting pursuant to O.C.G.A. § 40-14-18.

Section 2.

It is hereby ordained that the provisions of this Ordinance shall become a part of the Code of Ordinances of Cherokee County, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 3.

(a) It is hereby declared to be the intention of the Cherokee County Board of Commissioners that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Cherokee County Board of Commissioners to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Cherokee County 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 Ordinance. It is hereby further declared to be the intention of the Cherokee County Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance 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 Cherokee County 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 Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside.

Section 5.

This Ordinance shall become effective immediately upon its adoption.

SO ORDAINED, APPROVED, AND ADOPTED this 15th day of September, 2020.

By: _____

HARRY B. JOHNSTON, Chairman

Attest: _____

CHRISTY BLACK, County Clerk

(SEAL)