

**STATE OF GEORGIA
COUNTY OF CHEROKEE**

ORDINANCE NO. 2023-O-002

AN ORDINANCE OF THE CHEROKEE COUNTY BOARD OF COMMISSIONERS TO REMOVE ARTICLE I SECTION 5(C)(3) OF CHAPTER 38 OF THE CODE OF ORDINANCES OF CHEROKEE COUNTY, GEORGIA TO MODIFY PROVISIONS PERTAINING TO THE USE OF ALL-TERRAIN VEHICLES IN CHEROKEE COUNTY, GEORGIA; TO PROVIDE GUIDELINES FOR ENFORCEMENT AND PENALTIES FOR SUCH ORDINANCE; 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, the Board of Commissioners desires to remove Section 38-5(c) of the Cherokee County Code of Ordinances to modify provisions pertaining to the use of all-terrain vehicles in Cherokee County, Georgia; and

WHEREAS, the Board of Commissioners desires to remove the sound provision related to all-terrain vehicles contained in Section 38-5(c)(3) and allow any sound restrictions for all-terrain vehicles to be enforced under the general noise ordinance of Cherokee County, Georgia; 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 I Section 5(c)(3) of Chapter 38 of the Code of Ordinances of Cherokee County, Georgia shall be amended to remove sound provisions pertaining to the use of all-terrain vehicles within Cherokee County, Georgia. Said Ordinance shall read as follows:

CHAPTER 38 – OFFENSES AND MISCELLANEOUS PROVISIONS.

ARTICLE I – IN GENERAL.

SEC. 5 (C)(3)– ALL-TERRAIN VEHICLES.

- (c) Unlawful operation. Unless otherwise noted, it is unlawful for any person to operate an ATV:
- (1) In a careless, reckless or negligent manner or heedlessly in disregard of the rights or safety of others, or in a manner so as to endanger, or be likely to endanger, or cause injury or damage to any person or property.
 - (2) So as to tow any person or thing on a public road right-of-way.
 - (3) On airport property.
 - (4) On private property without the express permission to do so by the owner and occupant of the property.
 - (5) On public school grounds, park property, playgrounds, recreational areas, golf courses, cemeteries or any other public places, except on posted "ATV trail" locations, unless the operator has the express permission of the proper public authority.
 - (6) On United States Department of the Army Corp of Engineers property, unless the operator has the express written permission of the Allatoona Operations Project Manager, which such written permission shall be carried on the person of the permittee at all times during operation of the ATV on such property.
 - (7) On any portion of any public road right-of-way.

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.

[this portion left intentionally blank]

Section 5.

This Ordinance shall become effective immediately upon its adoption.

SO ORDAINED, APPROVED, AND ADOPTED this 21st day of March, 2023.

By:


HARRY B. JOHNSTON, Chairman

Attest:


CHRISTY BLACK, County Clerk

(SEAL)



EXHIBIT A

Article I Section 5(c)(3) of Chapter 38 of the Cherokee County Code of Ordinances shall be amended to modify the provisions related to the use of all-terrain vehicles. The proposed changes have been underlined and prefaced in bold to identify such amendments, and deletions have been struck through to identify such removal from the Section. This Exhibit is included for information purposes only to identify the changes that have occurred in the ordinance from the previous version.

CHAPTER 38 – OFFENSES AND MISCELLANEOUS PROVISIONS.

ARTICLE I – IN GENERAL.

SEC. 5 (C)(3)– ALL-TERRAIN VEHICLES.

- (c) Unlawful operation. Unless otherwise noted, it is unlawful for any person to operate an ATV:
- (1) In a careless, reckless or negligent manner or heedlessly in disregard of the rights or safety of others, or in a manner so as to endanger, or be likely to endanger, or cause injury or damage to any person or property.
 - (2) So as to tow any person or thing on a public road right-of-way.
 - ~~(3) In a manner so as to create loud, unnecessary or unusual and unreasonable noise so as to disturb or interfere with the peace and quiet of other reasonable persons of ordinary sensibilities. Such sound that is plainly audible at a distance of 200 feet from the origin of sound shall be presumed to be a violation of this provision. Additionally, it shall be presumed to be a violation of this provision if an individual rides an ATV continuously past, around, or near an inhabited dwelling place so as to disturb or unduly annoy the inhabitants.~~
 - (4)(3) On airport property.
 - (5)(4) On private property without the express permission to do so by the owner and occupant of the property.
 - (6)(5) On public school grounds, park property, playgrounds, recreational areas, golf courses, cemeteries or any other public places, except on posted "ATV trail" locations, unless the operator has the express permission of the proper public authority.
 - (7)(6) On United States Department of the Army Corp of Engineers property, unless the operator has the express written permission of the Allatoona Operations Project Manager, which such written permission shall be carried on the person of the permittee at all times during operation of the ATV on such property.
 - (8)(7) On any portion of any public road right-of-way.