

CHEROKEE COUNTY HIGH IMPACT FACILITY MORATORIUM

WHEREAS, the Comprehensive Plan adopted for Cherokee County calls for the County:

To implement narrowly defined land-use legislation in order to limit conditions under which high-impact industries and facilities that may disturb the quiet enjoyment of residential properties in the county.

WHEREAS, the Cherokee County Comprehensive was adopted on 18 September 2023.

WHEREAS, The Cherokee County Planning Board and the Cherokee County Board of Commissioners find it necessary to carefully research and develop an ordinance that would define and limit high-impact industries and facilities within the confines of the County.

WHEREAS, Cherokee County currently houses certain industries and facilities that may be considered as high-impact.

WHEREAS, the existing development regulations within the County are not compatible and congruous with the impacts anticipated from the expansion of existing facilities.

WHEREAS, immediate needs for control of new, and expansion of old, potentially high-impact industries and facilities exist in the County.

WHEREAS, the Cherokee County Board of Commissioners in this legislative session conducted a public hearing regarding this issue of this moratorium in accordance with NCGS 160D-601 on this date.

WHEREAS, NCGS 160D-107 provides in subsection (a):

Authority. - As provided in this section, local governments may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

WHEREFORE, Cherokee County Board of Commissioners, incorporating all information stated herein above, and pursuant to NCGS 160D-107(d) states as follows:

1. Cherokee County currently contains at least 3 crypto mining sites, with at least 2 being unenclosed by a building. That

crypto mining facilities are known to use a considerable amount of electricity. That the Tennessee Valley Authority is in the process of installing new power transmission lines in the County to bring more electricity to the area. Unenclosed crypto mining facilities produce noise and other local impacts to communities living near the facilities. The County contains no less than one solid waste collection facility not operated by the County. The County has only recently adopted a comprehensive plan that provides for its desire for limited land use regulation of high impact facilities in a county that is, and in the foreseeable future will remain, un-zoned. The County seeks to develop standards and/or mitigation methods for intensive land usage that may pose detrimental harm to the natural environment. Due to the fact that the County only recently adopted a comprehensive plan, a rezoning and adoption of a high-impact land use ordinance without proper consideration of its terms and impacts is an inadequate alternative to a moratorium. Other alternative solutions and courses of action short of a moratorium have also been considered by local government (i.e. noise ordinance), but none have been found to adequately address the issues.

2. Cherokee County, now having access to land use regulation, desires to develop definitions and procedures for the limitation and or/regulation of certain high impact industries and facilities in the County. As Cherokee County is un-zoned, there are no developmental approvals that would be affected by a moratorium and indeed nothing to stop the construction or expansion of any high impact facility.

For the duration of the moratorium, high impact industries and/or facilities shall be defined as:

- Asphalt producing or distributing facilities.
- Facilities producing or storing bulk inflammables, chemicals, biological waste or explosives
- Facilities that provide a commercial process by which cryptocurrency transactions are verified and added to a public ledger, known as a block chain, and also the means through which new units of cryptocurrencies are released, through the use of a server farm (2 or more interconnected computers) employing data processing equipment, housed together in a single facility whose primary function is to perform crypto currency mining.
- Unenclosed data storage facilities utilizing any powered cooling devices.
- Facilities utilizing a generator or generators capable of producing 600 kilowatts or greater of electricity by the use of fossil fuel power.

- solid waste management and disposal facilities
 - commercial incinerators
 - Bulk concrete producing facilities
 - facilities for the storage or disposal of any nuclear or toxic materials
 - privately operated prisons
3. The Moratorium shall begin on the date of adoption and shall last for (1) one calendar year therefrom or until such time as the Cherokee County Board of Commissioners enacts a high-impact land use ordinance. County Staff and the Planning board are instructed to develop and prepare a high impact land use ordinance that does not include any zoning provisions for consideration of the Cherokee County board of Commissioners. Such time is necessary for development as Cherokee County does not have nor has ever had land use ordinances and needs the time for development.
 4. The Planning Board shall report to the County Commission at the first meeting of the Cherokee County Board of Commissioners in March 2025 for discussion of progress and interim steps toward development of the complete high impact ordinance.
 5. If any person, firm, corporation, organization or association violates or attempt to violate any terms of this ordinance the County may enforce its terms by any means available to it by law, including those provided in N.C. Gen. Stat. § 160D-404.

NOW, THEREFORE, BE IT ORDAINED BY THE CHEROKEE COUNTY BOARD OF COMMISSIONERS THAT:

1. A temporary moratorium is hereby imposed for a period of one (1) year. From and after the effective date of this Ordinance and continuing through its duration, the construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, demolition of any structure, excavation, grading, filling, clearing, alteration of land, subdivision of land as defined in N.C. Gen. Stat. § 160D-802, or initiation or substantial change in the use of land or the intensity of use of land for any of the following uses shall be prohibited:
 - Asphalt producing or distributing facilities.
 - Facilities producing or storing bulk inflammables, chemicals or explosives
 - Facilities that provide a commercial process by which cryptocurrency transactions are verified and added to a public ledger, known as a block chain, and also the means through which new units of cryptocurrencies are released, through the use of a server farm (2 or more interconnected computers) employing data processing

equipment, housed together in a single facility whose primary function is to perform crypto currency mining.

-Unenclosed data storage facilities utilizing any powered cooling devices.

-Facilities utilizing a generator or generators capable of producing 600 kilowatts or greater of electricity by the use of fossil fuel power.

-solid waste management facilities

-commercial incinerators

-Bulk concrete producing facilities

-facilities for the storage of any nuclear or toxic materials

- privately operated prison

2. Scope- this moratorium shall apply to all unincorporated portions of Cherokee County and excludes lands included in the Qualla Boundary of the Eastern Band of Cherokee Indians.

3. Effect on existing facilities: This moratorium strictly prohibits any extension, expansion or additions to any of the above stated facilities. The Office of the Cherokee County Building Inspector is instructed to specifically prohibit the issuance of any permits for the expansion of any operating facility as listed herein above. Any ceasing of any operation of an existing facility for more than 30 days shall be construed as a permanent shutdown and shall make resumption of any such operation subject to this moratorium.

4. Enforcement- If any person, firm, corporation, organization, or association violates or attempts to violate any term of this ordinance the County may enforce its terms by any means available to it in law or equity, including those provided in N.C. Gen. Stat. § 160D-404.

5. Exclusions - In accordance with N.C. Gen. Stat. § 160D-107(c), absent an imminent threat to public health or safety, the Development moratorium adopted pursuant to this Ordinance shall not apply to:

a. Any project for which a special use permit application has been accepted as complete;

b. To development set forth in a site-specific vesting plan approved pursuant to G.S. 160D-108.1;


c. To development for which substantial expenditures have already been made in good-faith reliance on a prior valid development approval;

d. To sketch plans or preliminary or final subdivision plats that have been accepted for review by the County prior to the call for a hearing to adopt the moratorium;

e. Repairs to existing buildings regulated by the North Carolina State Building Codes; and

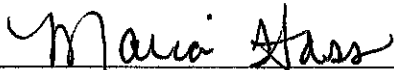
- f. Site improvements for existing uses required to comply with the Americans with Disabilities Act.
 - g. Specifically excluded from this ordinance are mobile electricity-generating units operated by fossil fuels that are for temporary use during periods of power outages.
6. The County Commissioners may renew this moratorium or extend its duration, as necessary, consistent with the requirements of N.C. Gen. Stat. § 160D-107(e). The County Commissioners may also terminate this moratorium earlier than indicated in this Ordinance by action of the County Commission.
 7. Notwithstanding the foregoing, if a complete application for a development approval has been submitted prior to the effective date of this moratorium, the permit choice provisions of N.C. Gen. Stat. § 160D-108(b) shall be applicable when permit processing resumes.
 8. If any section, subsection, sentence, or phrase in this ordinance is held to be invalid or unlawful, such ruling shall not affect the remaining portions of the ordinance. The ordinance shall be construed as having the Board of Commissioners having passed, respectively, each section, clause, or phrase regardless of any ruling that any one of them may be unlawful or invalid.

On this the 2nd day of October, 2023



Cal Stiles, Chairman
Cherokee County Board of Commissioners

ATTEST:



Maria Hass
Clerk to the Board