

**STATE OF GEORGIA
COUNTY OF CHEROKEE**

ORDINANCE NO. 2006- 003

An Ordinance to amend the Code of Ordinances of Cherokee County to add Section 18-500 *et. seq.*; to establish penalties for the harboring of illegal aliens in Cherokee County; to promote the public health, safety and welfare; and for other purposes.

BE IT ORDAINED by the Cherokee County Board of Commissioners and it is hereby enacted pursuant to the authority of the same that the Code of Ordinances of Cherokee County is hereby amended by adding thereto the following:

SECTION 1. FINDINGS. The following findings shall be included in the Code of Ordinances as Section 18-501:

1. Federal law requires that certain conditions be met before an alien may be authorized to be a lawful permanent resident, or be lawfully present, in the United States. Those conditions are found principally at United States Code Title 8, section 1101 *et. seq.*
2. Illegal aliens, as defined by federal law, do not normally meet such conditions as a matter of law when present in the County.
3. The harboring of illegal aliens in dwelling units in the County, and crime committed by illegal aliens harm the health, safety and welfare of legal residents in the County.
4. Because such individuals are not in this country lawfully, there is an increased chance that they will reside in dwelling units without typical leasing, payment and other tenancy arrangements that enable the civil and regulatory processes of this County to be effective.

The regulations of the County regarding housing and property maintenance often depend upon reporting by residents and neighbors as a means of bringing unlawful conditions, and notify authorities, or to participate in subsequent proceedings to remedy such conditions. This creates an increased likelihood that housing and property maintenance violations will remain unreported and because such conditions are unreported, an increased chance that such conditions will multiply in the future.

5. Because of the lack of tenancy arrangements which are subject to normal civil and regulatory processes (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) there is a greater chance that such individuals will occupy residential units in excessively large numbers, or under living conditions, that do not meet applicable building and health and safety codes. This creates unanticipated burdens on the units and the public infrastructure supporting such dwellings.
6. The state and federal government lack the resources to properly protect the citizens of Cherokee County from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens.
7. The County finds that it is in the best interest of and will serve and benefit the health, safety and welfare of the public and law-abiding business entities and property owners to adopt policies and procedures to deter and prevent the harboring of illegal aliens, and criminal activity by illegal aliens.
8. United States Code Title 8 subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring, and has been held by the Courts to constitute the crime of harboring. See United States v. Lopez, 521 F.2d 437(1975); cert. denied, 96 S.Ct.421, 423 U.S. 995, 46L.Ed 2d 368(1975).
9. The County shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

SECTION 2. DEFINITIONS. The following definition shall be included in the Code of Ordinances as Section 18-502 and shall be construed so as to be consistent with state and federal law, including federal immigration law:

For purposes of this Ordinance, *Illegal Alien* means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 *et. seq.*

The County shall not conclude that a person is an illegal alien unless and until an authorized representative of the County has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

SECTION 3. HARBORING ILLEGAL ALIENS.

Section 18-503. HARBORING ILLEGAL ALIENS. It is unlawful for any person or business entity that owns a dwelling unit in the County and is subject to Section 18-37, to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

- a. For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.
- b. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult illegal alien harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the County.

- c. A separate violation of this section shall be deemed to have been committed for each business day on which the property owner has failed, following written notice from the County, to provide the County with identity data needed to obtain a federal verification of immigration status, beginning five business days after the property owner receives written notice from the County.

Section 18-504. ENFORCEMENT. Notwithstanding any other provision of this Ordinance, the Business License Department and/or County Marshal shall enforce the requirements of this section as follows:

- a. An enforcement action shall be initiated by means of a written signed complaint to the County submitted by any official, business entity, or resident of the County. A valid complaint shall include an allegation that describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.
- b. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.
- c. Upon receipt of a valid written complaint, the County shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the County. The property owner shall be required to maintain, at all times, the information from a tenant pursuant to United States Code, Title 8, Section 1101 *et. seq.* and make said information available upon the receipt of a valid written complaint by the Cherokee County Business License Department and/or County Marshal upon request. The County shall forward identity data provided by the property owner to the federal government, and shall provide the property owner with written confirmation of such request for verification.

- d. If after five business days following receipt of written notice from the County that a violation has occurred and that the immigration status of any illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the County shall deny or suspend the business license of the dwelling unit as provided in Section 18-55.
- e. For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.
- f. The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits, to the Business License Division, a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.
- g. The County shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.
- h. Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to penalties as provided in Section 16-249 for each separate violation. The suspension provisions of this section applicable to the first violation shall also apply.
- i. Upon the request of a dwelling unit owner subject to this Section, the County shall, pursuant to United States Code Title 8, section 1373(c) verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the County.

The penalties in this section shall not apply in the case of occupants of a dwelling unit whose status as an alien lawfully present in the United States has been verified.

SECTION 4. EFFECTIVE DATE.

Section 18-505. The requirements and obligations of this section shall be effective as of January 1, 2007. The enforcement provisions, however, shall not apply to the current term of any lease existing as of the effective date of this section. The enforcement provisions of this section shall apply to any leases, entered into or renewed, after the effective date of this section.

SECTION 5. CONSTRUCTION. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional of any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

ENACTED THIS 5th DAY OF December, 2006.

**CHEROKEE COUNTY
BOARD OF COMMISSIONERS**

BY: J. Michael Byrd
J. MICHAEL BYRD, CHAIRMAN

ATTEST:

Sheila R. Corbin
SHEILA R. CORBIN, COUNTY CLERK

(SEAL)