

AN ORDINANCE

Amending the City Charter, Section 9-4-040 - Traffic, speed, truck, parking and other zones, signs and traffic control devices; schedule.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MARIETTA HEREBY ORDAINS:

Section 1: Section 8-8-2-160 of the Marietta City Code is hereby amended as follows:

9-4-040 - Traffic, speed, truck, parking and other zones, signs and traffic control devices; schedule.

A. The City Manager or a designee thereof, or the City Council is authorized to designate and maintain with appropriate traffic control signs, markings and devices after engineering and traffic investigations:

1. Speed zones;
2. Truck routes and streets to be designated specifically to prohibit various classes of trucks;
3. One-way streets and other directional control devices;
4. Freight loading zones and regulations;
5. Parking and no parking zones and regulations thereon;
6. Stop, yield and other right-of-way signs;
7. Stop signals and automated red-light enforcement devices; and
8. Designated streets.

Provided, however, that whenever the City Manager or designee designates any such signs, markings and devices, the City Council shall approve the same within 30 days after their designation.

B. The City Manager or a designee thereof is authorized to issue written orders designating by appropriate traffic control signs, markings and devices after engineering and traffic investigations:

1. Pedestrian crosswalks;
2. Other safety zones for pedestrians;
3. Traffic lanes;
4. Any other sign, marking or zone necessary for orderly and safe conditions on the streets of the city.

C. The City Manager shall maintain or cause to be maintained a current schedule of all traffic rules and regulations.

- D. All traffic control signs, signals, devices, and markings shall be approved by the City Council, after the effective date of this ordinance codified in this section. In determining whether or not to approve or install such traffic control signs, signals, devices and markings, City Council may consider any approved or recommended manual or publication of either the Department of Transportation of the State of Georgia or the Department of Transportation of the United States. However, the final approval of all such traffic control devices shall rest within the sole discretion and approval of the City Council. All such devices so erected shall be official traffic control devices of the city. In addition, any such traffic control device existing on the date of the adoption of the ordinance codified in this section shall be an official traffic control device of the city.
- E. Commercial Vehicles Restricted From Designated Streets.
1. Definitions.
 - a. "Commercial vehicle" is any motorized vehicle designed or used for the transportation of goods, wares, merchandise or mail.
 - b. "Designated streets" are streets designated by the City Council Subsection (3) of this subsection.
 2. Commercial Vehicles Prohibited From Designated Streets. No person shall drive a commercial vehicle on a designated street except while receiving goods or making deliveries along that street, and then only by entering and leaving the street by the nearest intersecting street.
 3. Designated Streets. Streets in the city may be designated so as to reflect commercial vehicle traffic by signs posted so indicating said restrictions but said restriction shall be subject to the exception stated in Subsection (2). It shall be the policy of the City Council to consider reasonable alternate routes for commercial vehicles before designating a street for restricted traffic.
 4. Enforcement. This subsection shall be enforced through Marietta Municipal Court by the issuance of a citation which shall be delivered to the person in control and possession of the commercial vehicle, when possible.
 5. Violations, How Punished. Violations of this subsection shall be punishable by imposition of a fine of not more than \$200.00 and not more than 30 days imprisonment. The bond shall be established by Order of Bond Schedule as ordered by the Chief Judge of Marietta Municipal Court.
- F. Parking. No person shall park a motor vehicle, trailer, or other device for transportation, including a motorcycle, on any sidewalk within the city, or in a prohibited zone, or on a yellow or red curb, or in violation of any sign or other parking control symbol or device posted within the city, including but not limited to lines for designated parking areas.
- 1.a. Enforcement of this Subsection F. shall be through a civil action in the Marietta Municipal Court by the issuance of a citation, which shall either be left with the vehicle or delivered to the person in possession thereof.

- b. Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection F of this Code section, 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. It shall be a legal but a rebuttable presumption that the registered owner of said vehicle as indicated by the appropriate tag registration information from a computer system within the control of the Clerk of Court or other evidence admissible and leading to the determination of the person who is in control and possession thereof. Such an inference may be rebutted if the owner of the vehicle:
 - (i) Testifies under oath in open court that he or she was not the operator of the vehicle at the time of the alleged violation; and/or
 - (ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.
 - c. Violations, How Resolved. Violations of this subsection shall be resolved as follows: The first offense within a 180-day period shall not exceed \$25.00 if paid within ten (10) days and not exceed \$40 if paid after ten (10) days; a second offense within a 180-day period from the day of the first offense shall not exceed \$50.00 if paid within ten (10) days and not exceed \$75 if paid after ten (10) days; and a third offense within a 180-day period from the day of the first offense shall not exceed \$100.00 if paid within ten (10) days and not exceed \$150.00 if paid after ten (10) days. For any new citations received after the 180-day period, the parking fines set forth herein shall revert to the first offense status after the expiration of 180 days from the first offense set forth herein for any other citations written. The fine shall be established by Order of Fine Schedule for Parking Violations, as ordered by the Chief Judge of Marietta Municipal Court.
 - d. If a citation is issued and should the person or entity desire to have a hearing to determine the appropriateness of a fine, then the person charged shall file with the Municipal Court Clerk an appeal or request for hearing within ten (10) days of the issuance of said citation. The clerk shall accept such appeal or request and cause such manner to be set for a regular hearing date before the Municipal Court Judge then presiding on such date and time. Upon any hearing, the City shall have the burden of proof and the judge shall take evidence and, using a preponderance of evidence standard, determine whether said individual or entity failed to follow the parking provisions.
 - e. If no hearing is requested as provided for herein, then upon ten (10) days expiring from date of violation, a fine within the parameters as established by Order of Fine Schedule for Parking Violations issued by the chief judge of said court and said amount shall be due and payable to the City of Marietta at its Municipal Court Clerk.
2. Timed Parking Violation, Separate Violation. With regard to all parking areas for which a time limitation is established, it shall be deemed a separate violation thereof for each successive time period in which any vehicle is parked therein in excess of such limitation.

3. The Marietta police department is authorized to place wheel locks on any motor vehicle that is in violation of this Subsection F. and/or such vehicle may be towed at the owner's expense.
4. Immobilization for Unpaid Fines. Upon the determination of the Municipal Court Clerk, any vehicle which has accumulated five or more citations for which payment has not been made and which is then parked upon the public way or in any public place at any time within the city, may, pursuant to this subsection and at the option of any city police officer or civilian parking enforcement officer, be immobilized in place or may be removed and stored until all such City claims have been released pursuant to F.4.c. and the cost of such impoundment, storage and other charges authorized by this code have been paid. If immobilization is utilized, a fee for such immobilization shall be charged and shall not exceed \$150.00, as established by Order of Fine Schedule for Parking Violations, as ordered by the Chief Judge of Marietta Municipal Court.
 - a. Prior to immobilization and/or impoundment of such vehicle as provided in Subsection F.4., the Municipal Court Clerk shall issue written notice and such notice shall be mailed or delivered personally to the registered owner of any vehicle which has accumulated five or more outstanding citations for which payment has not been made. The notice shall be sent by certified and first class mail to the address contained on the registration of such vehicle and such other addresses, if known, and shall inform said registered owner of the date, nature and number of outstanding citations, that such vehicle may be immobilized in place or impounded, and that said owner will be provided with an opportunity to contest the validity of the proposed immobilization and/or impoundment upon written request to the Clerk of the Municipal Court within ten (10) days of issuance of the notice described in this subparagraph. Any owner who requests an opportunity to contest the validity of the proposed immobilization and/or impoundment of his/her vehicle shall, upon written request, be provided a hearing before the Municipal Court, which hearing shall be scheduled as soon as practicable, and enforcement of the provisions of Subsection F.4. shall be stayed, pending the decision of the Municipal Court. For purposes of such hearing, the registered owner of such vehicle shall be presumed to be in possession and control of such vehicle at all times; however, upon proper evidence, such presumption may be rebutted.
 - b. As soon as a vehicle has been removed and stored or immobilized in place as provided for herein, the city police officer or civilian parking enforcement officer taking such action shall so notify the Chief of Police, and the Chief of Police or his/her duly authorized representative shall notify, by certified and first class mail, the registered owner of such vehicle within five (5) business days of the impoundment or immobilization. Said notice shall state the location of such vehicle and the requirements for release as set forth herein.
 - c. Release of City claims on vehicle after immobilization and/or impoundment.
 - 1) Any City claims on any vehicle immobilized and/or impounded pursuant to this subsection shall not be released until one of the following occurs and proof of such has been provided to Marietta Police Department:

- i. all such lawful fines and other charges authorized by this code, associated costs incurred by the City pursuant to contractual obligations, and costs of impoundment and storage have been paid;
 - ii. bond has been posted as provided for in subsection F.4.d. and all costs of impoundment and storage have been paid and all associated costs incurred by the City pursuant to contractual obligations have been paid; or
 - iii. separate order of the Municipal Court has been issued and all costs of impoundment and storage have been paid and all associated costs incurred by the City pursuant to contractual obligations have been paid.
 - 2) After the provisions of F.4.c.1) above have been satisfied, any person or entity having custody of a motor vehicle impounded pursuant to this subsection, or of the means to release such vehicle, shall not release it until the individual requesting its release presents satisfactory evidence of his/her right to possession and signs a receipt therefore. Notwithstanding anything to the contrary, the release described in this subsection F.4.c. is only a release of the City claim(s) on the vehicle pursuant to this subsection. This release does not affect any other costs, fees or claims on the motor vehicle, including, but not limited to, any impoundment or storage fee owed to the person or entity having custody of such impounded motor vehicle.
- d. Whenever any person requests the right to post bond pursuant to this subsection F.4.c.1).ii., such bond amount shall include all such lawful fines, fees, and associated costs incurred by the City under Code and/or pursuant to contractual obligations, or by separate order of the Municipal Court. Said bond shall be in such form as provided by the Clerk of Court and receipt given therefore. Any bond posted shall be forfeited and applied to lawful fines, fees, and associated costs incurred by the City under Code and/or pursuant to contractual obligations unless the person posting it appears in Marietta Municipal Court in accordance with his/her summons. Upon a finding by the Municipal Court of not violating subsection F, the bond shall be refunded in the amount ordered by the court.
- e. It shall be a separate offense of this subsection for any person to tamper with or attempt to remove any immobilizing device attached to a vehicle or other object to extract or attempt to prevent the removal of any vehicle as provided herein. The penalty for any such violation shall be not less than \$50.00 nor more than \$500.00 and/or not more than 30 days in custody.
4. Failure to pay such fines within the time periods provided for herein or by order of the court may subject the person to a Writ of Fi Fa, execution, or collections by a third-party vendor.

Section 2: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 3: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: August 14, 2019

APPROVED: R. Steve Tumlin, Jr.

R. Steve Tumlin, Jr., Mayor

ATTEST: Stephanie Guy

Stephanie Guy, City Clerk

Approved as to Form: Douglas R. Haynie

Douglas R. Haynie, City Attorney