

**ORDINANCE IMPOSING CIVIL PENALTIES FOR PASSING A STOPPED SCHOOL BUS IN  
CLAY COUNTY, NORTH CAROLINA  
Ordinance #18-10-4**

WHEREAS, G.S. 20-217 (a) requires the driver of a vehicle that approaches a school bus from any direction on the same street, highway, or public vehicular area to come to a full stop and remain stopped when a school bus is displaying its mechanical stop signal or flashing red lights and the bus is stopped for the purpose of receiving or discharging passengers. The driver of the other vehicle shall not proceed to move, pass, or attempt to pass the school bus until after the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has started to move.

WHEREAS, to deter drivers from further passing stopped school buses, the NC Legislature passed G.S. 153A-246 which permits counties to adopt ordinances for the civil enforcement of G.S. 20-217 by means of an automated school bus safety camera installed and operated on the school bus.

WHEREAS, such an ordinance applies only to misdemeanor violations of G.S. 20-217 and not to violations that result in injury or death.

WHEREAS, to protect the health, safety and general welfare of the children who ride school buses within Clay County, North Carolina is a priority of the Clay County Board of County Commissioners;

WHEREAS, to protect the health, safety and general welfare of the children who ride school buses within Clay County, North Carolina can be accomplished by means of an automated school bus safety camera installed and operated on any school bus located within Clay County.

WHEREAS, by adopting such an ordinance in Clay County, it will aid in deterring persons from passing stopped school bus by imposing civil fines to those who pass stopped school buses in violation of the law.

NOW, THEREFORE, BE IT ORDAINED BY THE Clay County Board of Commissioners of Clay County that the following Ordinance shall be in place and effective in Clay County, North Carolina, in accordance with its terms:

**Section 1. Title.**

This Ordinance shall be known and cited as Ordinance #18-10-4, the Ordinance Imposing Civil Penalties for Passing a Stopped School Bus in Clay County, North Carolina.

Section 2. Authority and Jurisdiction.

- A. Authority. This Ordinance is established by the Clay County Board of Commissioners pursuant to the authority conferred in G.S. 153A-121 (general ordinance-making power), G.S. 153A-122 (territorial jurisdiction), G.S. 153A-123 (enforcement) and G.S. 153A-246 (authority to adopt ordinance for civil enforcement of G.S. 20-217).
- B. Jurisdiction. The provisions of this Ordinance shall apply to all areas of Clay County, North Carolina, including those lying inside and outside of all corporate limits of all municipalities located within Clay County.

Section 3. Purpose.

- A. The purpose of this Ordinance is to protect the health, safety and general welfare of the children who ride school buses within Clay County, North Carolina by means of an automated school bus safety camera installed and operated on any school bus located within Clay County.
- B. The purpose of this Ordinance is also to deter persons from passing stopped school bus by imposing civil fines to those who pass stopped school buses in violation of the law.

Section 4. Definitions:

- A. "Automated school bus safety camera" is a device that is affixed to a school bus, as that term is used in G.S. 20-217, that is synchronized to automatically record photographs or video of a vehicle at the time the vehicle is detected for a violation of this ordinance adopted pursuant to G.S. 153A-246.
- B. School bus. As used in G.S. 20-217.

Section 5. Civil Enforcement.

- (1) The County will designate a county official or agent whose duties will include issuing citations to those registered owners of motor vehicles who violate G. S. 20-217(a).
- (2) The County must issue a citation notifying the registered owner of the motor vehicle of the violation of G.S. 20-217(a).
- (3) The citation must be received by the registered owner of the vehicle not more than 60 days after the date of the violation of G.S. 20-217.
- (4) The citation must include an image taken from the automated school bus camera that shows the vehicle involved in the violation.

- (5) The citation must also include an affirmation from a law enforcement officer that his or her inspection of the image reveals that the owner's motor vehicle violated the ordinance.
- (6) The registered owner of a vehicle shall be responsible for a violation unless the vehicle was, at the time of the violation, in the care, custody, or control of another person or unless the citation was not received by the registered owner within 60 days after the date of the violation.
- (7) A person wishing to contest a citation shall, within 30 days after receiving the citation, deliver to the officials or agents of the county that issued the citation a written request for a hearing accompanied by an affidavit stating the basis for contesting the citation, including, as applicable:
  - a. The name and address of the person other than the registered owner who had the care, custody, or control of the vehicle
  - b. A statement that the vehicle involved was stolen at the time of the violation, with a copy of any insurance report or police report supporting this statement.
  - c. A statement that the citation was not received within 60 days after the date of the violation, and a statement of the date on which the citation was received.
  - d. A copy of a criminal pleading charging the persons with a violation of G.S. 20-217 arising out of the same facts as those for which the citation was issued.
- (8) The citation shall include all of the following:
  - a. The date and time of the violation, the location of the violation, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid or contested.
  - b. An image taken from the recorded image showing the vehicle involved in the violation.
  - c. A copy of a statement or electronically generated affirmation of a law enforcement officer employed by a law enforcement agency with whom an agreement has been reached pursuant to G.S. 115C-242.1(c) stating that, the owner's motor vehicle was operated in violation of the ordinance adopted pursuant to this subsection.
  - d. Instructions explaining the manner in which, and the time within which, liability under the citation may be contested pursuant to subdivision (7) of this subsection.
  - e. A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and shall result in a late penalty of one hundred dollars (\$100.00), in addition to the civil monetary penalty.
  - f. In citations issued to the registered owner of the vehicle, a warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall result in refusal by the Division of Motor Vehicles to register

the motor vehicle, in addition to imposition of the civil monetary penalty and late penalty.

- (9) Violations of the ordinance shall be deemed a noncriminal violation for which a civil penalty shall be assessed and for which no points authorized by G.S. 20-16(c) and no insurance points authorized by G.S. 58-36-65 shall be assigned to the registered owner or driver of the vehicle. The amount of such penalty shall be four hundred dollars (\$400.00) for the first offense, seven hundred fifty dollars (\$750.00) for the second violation, and one thousand dollars (\$1,000.00) for each subsequent violation of the ordinance.
- (10) If a registered owner provides an affidavit that the vehicle was, at the time of the violation, in the care, custody, or control of another person or company, the identified person or company may be issued a citation complying with the requirements of subdivision (8) of this subsection.
- (11) The citation shall be processed by officials or agents of the county and shall be served by any method permitted for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure, or by first-class mail to the address of the registered owner of the vehicle provided on the motor vehicle registration or, as applicable, to the address of the person identified in an affidavit submitted by the registered owner of the vehicle.
- (12) If the person to whom a citation is issued makes a timely request for a hearing pursuant to subdivision (7) of this subsection, a summons shall be issued by any method permitted for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure, directing the person to appear at the planned time specified in the summons in order to contest the citation at an administrative hearing.
- (13) A citation recipient who, within 30 days after receiving the citation, fails either to pay the civil penalty or to request a hearing to contest the citation shall have waived the right to contest responsibility for the violation and shall be subject to a late penalty of one hundred dollars (\$100.00) in addition to the civil penalty assessed under this subsection.
- (14) The County shall institute a nonjudicial administrative hearing to hear contested citations or penalties issued or assessed under this section. The decision on a contested citation shall be rendered in writing within five days after the hearing and shall be served upon the person contesting the citation by any method permitted for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure. If the decision is adverse to the person contesting the citation, the decision shall contain instructions explaining the manner and the time within which the decision may be appealed pursuant to subdivision (15) of this subsection.
- (15) A person may appeal to the district court division of the General Court of Justice from any adverse decision on a contested citation by filing notice of appeal in the office of the clerk of superior court. Enforcement of an adverse decision shall be stayed pending the outcome of a timely appeal. Except as otherwise provided in this subdivision, appeal shall be in accordance with the

procedure set forth in Article 19 of Chapter 7A of the General Statutes applicable to appeals from the magistrate to the district court. For purposes of calculating the time within which any action must be taken to meet procedural requirements of the appeal, the date upon which the person contesting the citation is served with the adverse decision shall be deemed to be the date of entry of judgment.

- (16) In the event a person is charged in a criminal pleading with a violation of G.S. 20-217, all of the following shall apply:
- a. The charging law enforcement agency shall provide written notice to the county office responsible for processing civil citations pursuant to subdivision (11) of subsection (b) of this section containing the name and address of the person charged with violation of G.S. 20-217 and the date of the violation.
  - b. After receiving notice pursuant to this subdivision that a person has been charged in a criminal pleading with a violation of G.S. 20-217, the county shall not impose a civil penalty against that person arising out of the same facts as those for which the person was charged in the criminal pleading.
  - c. The county shall issue a full refund of any civil penalty payment received from a person who was charged in a criminal pleading with a violation of G.S. 20-217 if the civil penalty arose out of the same facts as those for which that person was charged in the criminal pleading, together with interest at the legal rate provided by G.S. 24-1 from the date the penalty was paid until the date of refund.
- (17) If a citation is not contested pursuant to subdivision (7) of this subsection, payment of the civil penalty is due within 30 days after receipt of the citation. The penalty shall be paid into Clay County's General Fund. If the citation is contested, and the result of the administrative hearing held pursuant to subdivision (14) of this subsection is a decision adverse to the citation recipient, then payment is due within 30 days after receipt of the adverse decision, unless the citation recipient appeals the adverse decision pursuant to subdivision (15) of this subsection. If the adverse decision is appealed, and if the final decision on appeal is adverse to the citation recipient, then payment of the civil penalty is due within 30 days after the citation recipient receives notice of the final adverse decision on appeal. All penalties shall be paid into Clay County's General Fund.
- (18) If the registered owner of a motor vehicle who receives a citation fails to pay the civil penalty when due, the Division of Motor Vehicles shall refuse to register the motor vehicle for the owner in accordance with G.S. 20-54(11). The county may establish procedures for providing notice to the Division of Motor Vehicles and for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(19) The county shall provide each law enforcement agency within its jurisdiction with the name and address of the county official to whom written notice of persons charged with violation of G.S. 20-217 should be given pursuant to subdivision (16) of this subsection.

(c) Notice. – An automated school bus safety camera installed on a school bus must be identified by appropriate warning signs conspicuously posted on the school bus. All warning signs shall be consistent with a statewide standard adopted by the State Board of Education in conjunction with local boards of education that install and operate automated school bus safety cameras on their school buses.

(d) Application. – Nothing in this section shall be construed to do any of the following:

- (1) Require the installation and operation of automated school bus safety cameras on a school bus.
- (2) Prohibit the use and admissibility of any photograph or video recorded by an automated school bus safety camera in any criminal proceeding alleging a violation of G.S. 20-217.
- (3) Prohibit the imposition of penalties, including the assignment of points authorized by G.S. 20-16(c) and insurance points authorized by G.S. 58-36-65, on any registered owner or driver of the vehicle convicted of a misdemeanor or felony violation of G.S. 20-217.

(e) Criminal Prosecution Encouraged. – The General Assembly of North Carolina encourages criminal prosecution for violation of G.S. 20-217 whenever photographs or videos recorded by an automated school bus safety camera provide evidence sufficient to support such prosecution.

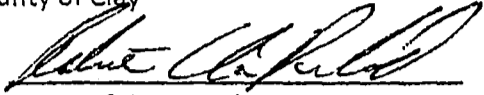
(f) Images as Evidence.- G.S. 115C-242.1(d) requires that any photographs or videos recorded by an automated school bus safety camera that capture a violation of G.S. 20-217 be provided to the investigating law enforcement agency for use as evidence in a criminal prosecution. When such a camera is installed, it must be identified by a warning sign conspicuously posted on the school bus.

(g) The county shall maintain records of all violations of this ordinance for which a civil penalty is assessed. Upon request, the county shall provide at least five years of those records to the North Carolina Child Fatality Task Force and the North Carolina General Assembly.

After public hearing held on October 4, 2018 and having its first reading on the 4<sup>th</sup> day of October, 2018, this Ordinance was adopted by unanimous vote of the Clay County Board of County Commissioners on the 4<sup>th</sup> day of October, 2018,

This Ordinance is effective 10/4/18.

County of Clay

By:   
Chairman of the Board

Attest:

  
Clerk to the Board

(County Seal)